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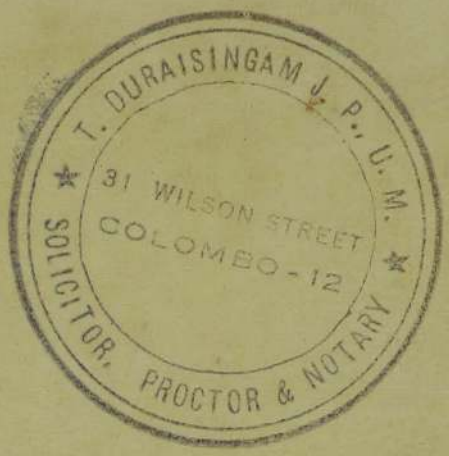

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LEGISLATIVE ENACTMENTS OF CEYLON

1956

REVISED EDITION

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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

THE HONOURABLE HEMA HENRY BASNAYAKE
CHIEF JUSTICE OF CEYLON

ASSISTED BY

E. R. K D. M. HECTOR DEHERAGODA
ADVOCATE OF THE SUPREME COURT OF CEYLON, CROWN COUNSEL

AND

L. H. RAMACHANDRA PEIRIS
ADVOCATE OF THE SUPREME COURT OF CEYLON

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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 90

PAWNBROKERS

AN ORDINANCE TO PROVIDE FOR THE REGULATION OF THE BUSINESS OF PAWNBROKERS AND FOR OTHER MATTERS INCIDENTAL TO OR CONNECTED WITH SUCH REGULATION.

Ordinance No. 13 of 1942, *Act* No. 2 of 1953.

[*24th April, 1942.*]

PART I

GENERAL

Short title.

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

Date of operation and application of Ordinance.

2. (1) On the appointed date this Ordinance shall come into operation in the provinces, districts, towns and places specified in the First Schedule.

(2) It shall be lawful for the Minister, by Order[1] published in the Gazette—

(*a*) to bring any province, district, town or place not specified in the First Schedule within the operation of this Ordinance ; or

(*b*) to amend or vary the First Schedule.

PART II

DUTIES OF PAWNBROKERS

Pawnbroker's licence.

3. (1) No person shall carry on the business of a pawnbroker unless he is the holder of a licence issued in that behalf by the Government Agent.

(2) Every licence issued under this section shall be in the form A set out in the Second Schedule and shall bear stamps to the value of forty rupees.

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(3) Every licence shall be dated on the day of which it is issued, and shall expire on the thirty-first day of July next ensuing.

Copies of licence to be sent to Inspector-General of Police.

4. The Government Agent shall forward to the Inspector-General of Police for his information a copy of each licence issued under section 3.

Application for licence.

5. Every person desirous of obtaining a licence for carrying on the business of a pawnbroker shall make application in that behalf to the Government Agent.

Persons entitled to a licence.

6. No person shall be entitled to a licence for carrying on the business of a pawnbroker unless he produces to the Government Agent satisfactory evidence of good character and unless, at the date on which he makes his application for such licence, he has been resident in Ceylon for a period of at least five years :

Provided that the preceding provisions of this section which relate to a period of residence in Ceylon shall not apply in the case of any person who, at the date of his application for such licence, is the holder of a licence for carrying on the business of a pawnbroker.

Temporary absence from Ceylon.

7. For the purposes of section 6 a person shall not be deemed to cease to be resident in Ceylon by reason of the fact that he is temporarily absent from Ceylon.

Refusal of licence.

8. No licence for carrying on the business of a pawnbroker shall be issued to any person if—

(*a*) at any time during the five years immediately preceding the date on which he makes his application for such licence, he has been found guilty of any act rendered punishable under Chapters XI, XIII, XVII or XVIII of the Penal Code, or under the provisions of this Ordinance ; or

(*b*) in the opinion of the Government Agent, the shop or place in which that person intends to carry on the business of a pawnbroker, or any adjacent house or place possessed by him, is frequented by thieves or persons of bad

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character, or is used for the sale of intoxicating liquor, opium, or the preparations of the hemp plant commonly known as bhang, hashish or ganja ; or

(*c*) a licence issued to him under this Ordinance has been cancelled under section 42. [§ 2, 2 of 1953.]

Auctioneers not entitled to licence.

9. No licence for carrying on the business of a pawnbroker shall be issued to any person who is an auctioneer.

Notice of pawnbroker's absence from Ceylon.

10. Every pawnbroker who intends to be absent from Ceylon for any period exceeding three months shall—

(*a*) give written notice of his intention to the Government Agent ; and

(*b*) appoint a person (being a person entitled under this Ordinance to a licence for carrying on the business of a pawnbroker) to act for him and on his behalf during his absence from Ceylon, and give to the Government Agent written notice of the name of the person so appointed.

Hours of business.

11. No pawnbroker shall take any article on pawn before 8 a.m. or after 8 p.m. on any day.

Pawnbroker not to act as auctioneer.

12. No pawnbroker shall act as or carry on the business of an auctioneer.

Notices, &c., to be exhibited by pawnbrokers.

13. Every pawnbroker shall—

(*a*) always keep exhibited in large characters over the outer door of his shop or place of business his name with the word "Pawnbroker" in English, Sinhalese and Tamil ; and

(*b*) always keep exhibited in a conspicuous part of his shop or place of business so as to be clearly visible to and legible by every person resorting thereto a notice containing in English, Sinhalese and Tamil the particulars set out in the Third Schedule.

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Language to be used in entering particulars.

14. Where any particulars are required by this Ordinance to be entered in any book, form or document, such particulars shall be entered in English, Sinhalese or Tamil.

Books to be kept by pawnbrokers.

15. Every pawnbroker shall keep and use in his business a pledge book in the form B and a sale book of pledges in the form C set out in the Second Schedule, and shall from time to time, as occasion demands, enter therein in a fair and legible manner all the particulars for the recording of which provision is made in such forms, and shall make all inquiries necessary for that purpose.

Pawn tickets.

16. (1) Every pawn ticket shall be executed in foil and counterfoil in the form D set out in the Second Schedule and in accordance with the directions contained in that form.

(2) The particulars specified in the Third Schedule shall be printed in English, Sinhalese and Tamil on the back of the foil of every pawn ticket.

(3) Where a pledge is pawned for twenty rupees or over, the foil of the pawn ticket relating to that pledge shall bear a stamp of the value of six cents. The expense for providing such stamp shall be borne by the pawnbroker.

(4) No article shall be or be deemed to be taken in pawn unless and until—

(*a*) the pawner has signed the counterfoil of the pawn ticket ;

(*b*) the pawnbroker has signed the foil of the pawn ticket and has given the foil to the pawner ; and

(*c*) the pawner has received and accepted the foil of the pawn ticket from the pawnbroker.

Rate of interest.

17. No pawnbroker shall, in respect of a loan on a pledge, charge interest at a rate exceeding the rate specified in the Third Schedule.

In this section "pledge" includes a pledge which has been pawned and which has not been redeemed before the appointed date.

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PART III

PLEDGES

Pledges redeemable within one year.

18. Every pledge shall be redeemable within a period of twelve months (hereinafter in this Ordinance referred to as the "period of redemption") from the day of pawning, exclusive of that day.

Pledges to continue to be redeemable until sale.

19. Notwithstanding anything in this Ordinance to the contrary, every pledge shall continue to be redeemable until it is disposed of as in this Ordinance provided, although the period of redemption has expired.

Procedure for redemption of a pledge.

20. (1) The pawner shall be entitled to redeem a pledge if he surrenders to the pawnbroker the foil of the pawn ticket relating to that pledge and signs the foil in the presence of the pawnbroker or his agent or servant.

(2) A person other than the pawner shall be entitled to redeem a pledge if such person surrenders to the pawnbroker the foil of the pawn ticket relating to that pledge duly endorsed with the signature of the pawner and if such person signs that foil in the presence of the pawnbroker or his agent or servant.

(3) Where by reason of the death or legal disability of the pawner, the holder of the foil of the pawn ticket relating to that pledge (hereinafter in this section referred to as the "holder") claims to be entitled to redeem that pledge but is unable to surrender to the pawnbroker the foil of the pawn ticket duly endorsed with the signature of the pawner, the pawnbroker shall permit the pledge to be redeemed if such holder surrenders to him the foil of the pawn ticket relating to that pledge together with a declaration in the form E set out in the Second Schedule, duly made before a Justice of the Peace by such holder and by the person identifying him.

(4) Subject to the provisions of subsections (1), (2) and (3), the pawnbroker shall, on payment of the loan and the interest due thereon, deliver the pledge to the pawner or holder, as the case may be, who produces the

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foil of the pawn ticket relating to that pledge ; and the pawnbroker is hereby indemnified in respect of such delivery of the pledge :

Provided, however, that if the pawnbroker has reason to suspect that such holder has stolen or otherwise illegally obtained possession of the pawn ticket, the pawnbroker may seize and detain the person and the ticket and deliver them as soon as may be to an officer of police or village headman, who shall forthwith convey the person and the ticket before a court of competent jurisdiction to be dealt with according to law.

Compensation for depreciation of pledge.

21. If a person entitled and offering to redeem a pledge shows to the satisfaction of a civil court of competent jurisdiction that the pledge has become, or has been rendered, of less value than it was at the time of the pawning thereof, by or through the default, neglect, or wilful misbehaviour of the pawnbroker, the court may, if it thinks fit, award a reasonable satisfaction to the owner of the pledge, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker in such manner as the court directs.

Protection of owners and of pawners not having pawn tickets.

22. (1) Any person claiming to be the owner of a pledge, but not holding the foil of the pawn ticket, or any person claiming to be entitled to hold the foil of the pawn ticket, but alleging that the foil of such ticket has been lost, stolen, mislaid, destroyed, or fraudulently obtained from him, may deliver to the pawnbroker a declaration in the form F set out in the Second Schedule, duly made before a Justice of the Peace by himself and by the person identifying him, and shall thereupon have, as between himself and the pawnbroker, all the same rights and remedies as if he produced the foil of the pawn ticket :

Provided that for the purpose of redeeming a pledge he shall sign the counterfoil of the pawn ticket and not the foil thereof as required by section 20.

(2) The pawnbroker is hereby indemnified for delivering the pledge or otherwise acting in conformity with the declaration, unless he has actual or constructive notice that the declaration is fraudulent or false in any material particular.

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Pawn tickets to be retained by pawnbroker after redemption or sale of pledge.

23. (1) Where the foil of a pawn ticket is surrendered to the pawnbroker for the purpose of redeeming a pledge, the pawnbroker shall retain in his possession the foil and counterfoil of that pawn ticket for a period of twelve months reckoned from the date of the redemption of that pledge.

(2) Where a pledge is redeemed without the surrender of the foil of the pawn ticket relating to that pledge, a pawnbroker shall retain in his possession for a period of twelve months reckoned from the date of the redemption of that pledge the counterfoil of the pawn ticket relating to that pledge and the declaration delivered to him under section 22 for the purpose of such redemption.

(3) Where a pledge is sold under the provisions of this Ordinance, the pawnbroker shall retain in his possession the counterfoil of the pawn ticket relating to that pledge for a period of twelve months reckoned from the date of sale.

Liability of pawnbrokers in case of fire.

24. (1) Where a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker shall nevertheless be liable, on demand, within the period of redemption, to pay the value of the pledge, after deducting the amount of the loan and interest.

(2) A pawnbroker shall be entitled to insure to the extent of the value of the article pawned.

Receipt of pawnbroker.

25. Every pawnbroker shall, at the time of redemption of a pledge, give a receipt for the amount of loan and interest paid to him and preserve a copy of such receipt with the pledge book. Such receipt shall be in the form G set out in the Second Schedule and shall not be liable to stamp duty unless the interest amounts to twenty rupees or more.

Pledges to be sold by auction.

26. Every pledge which is not redeemed within the period of redemption may be disposed of by sale by public auction but shall not be disposed of otherwise, and the regulations in the Fourth Schedule shall be observed with reference to the sale.

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Notice of sale.

27. The pawnbroker shall give to every pawner whose pledge is to be sold under this Ordinance at least fourteen days' notice of the date fixed for the sale of his pledge by public auction and of the place at which the sale is to be held.

Procedure on sale of pledge for more than the amount of the loan and interest.

28. In every case where a pledge is sold under this Ordinance for more than the amount of the loan and interest due at the date of the sale, the pawnbroker shall—

(*a*) forthwith give to the pawner of that pledge notice of the amount for which that pledge was sold and of the amount lying to the credit of the pawner after deducting the necessary costs and charges of the sale ; and

(*b*) on demand made within one year from the date of such sale pay to the holder of the pawn ticket relating to that pledge the amount lying to the credit of the pawner ; and

(*c*) if no such demand is made within the said period of one year, forthwith on the expiry of the said period, deposit the amount lying to the credit of the pawner in the nearest kachcheri to the credit of the pawner.

Procedure on sale of pledge before the appointed date for more than the amount due and interest.

29. Where, at any time before the appointed date, any pledge pawned for above five rupees has been sold under the law then in force for more than the amount of the loan and interest due at the time of the sale, and no demand for the amount lying to the credit of the pawner is made to the pawnbroker by the holder of the pawn ticket relating to that pledge within one year after the date of such sale, then in every case where the said period of one year expires on or after the appointed date, the pawnbroker shall, forthwith on the expiry of the said period, deposit such amount in the nearest kachcheri to the credit of the pawner.

Method of giving notice under sections 27 and 28.

30. Every notice under section 27 or section 28 shall be sent by registered post to the pawner at the address entered in the pledge book, and the cost of such registration shall be borne by the pawner.

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Purchase of pledges by pawnbroker.

31. A pawnbroker may bid for and purchase at a sale by auction made or purporting to be made under this Ordinance, a pledge pawned with him ; and on such purchase he shall be deemed to be the absolute owner of the pledge purchased.

PART IV

Inspection, Examination And Seizure

Power to inspect sale books.

32. At any time within two years from the date on which a pledge is sold under this Ordinance, the holder of the pawn ticket may inspect the entry of the sale in the pawnbroker's book and in the filled-up catalogue of the auction authenticated by the signature of the auctioneer, or in either of them ; and the pawnbroker shall permit the holder of the pawn ticket to inspect the entry of the sale in such book and catalogue or in either of them.

Proceedings where persons offering articles in pawn do not give a good account of themselves.

33. Where any person—

(*a*) offers to a pawnbroker an article by way of pawn, but refuses or is unable to give a satisfactory account of the means by which he became possessed of it ; or

(*b*) wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article ; or

(*c*) attempts or endeavours to redeem a pledge, not being entitled to redeem ; or

(*d*) offers to a pawnbroker an article by way of pawn and the pawnbroker has reason to suspect that it has been stolen or otherwise illegally obtained,

the pawnbroker may seize and detain the person and the article and deliver them, as soon as may be, into the custody of an officer of police or village headman, who shall forthwith convey the person and the article before a court of competent jurisdiction to be dealt with according to law.

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Pawnbroker's book subject to examination.

34. It shall be lawful for a Magistrate, by an order served on any pawnbroker, to require such pawnbroker to attend before him on a day and hour to be specified in the order, and to produce for examination all books and papers relating to his business ; and every pawnbroker on whom any order is served under this section shall comply with the requirements of such order.

Power to search pawnbroker's shop or residence.

35. It shall be lawful for any officer of police not below the rank of Sub-Inspector or any Divisional Revenue Officer to enter any pawnbroker's shop or place of business or residence at any hour of the day and examine and take note of any article pledged with the pawnbroker, or any books and papers kept by him ; and no person shall resist such officer of police or Divisional Revenue Officer in the execution of his duty.

PART V

Offences And Penalties

Offences by pawners and other persons.

36. Every person who—

(*a*) offers to a pawnbroker an article by way of pawn but refuses or is unable to give a satisfactory account of the means by which he became possessed of it ; or

(*b*) wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article ; or

(*c*) attempts or endeavours to redeem a pledge not being a person entitled to redeem such pledge ; or

(*d*) without lawful excuse pawns with a pawnbroker anything being the property of another person ; or

(*e*) makes a declaration under this Ordinance either for himself or as identifying another, knowing such declaration to be false in any material particular ; or

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(*f*) contravenes any provision of this Ordinance or fails to do anything which he is required to do by this Ordinance,

shall be guilty of an offence.

Offences by pawnbrokers.

37. Every pawnbroker who—

(*a*) takes an article in pawn from any person appearing to be under the age of sixteen years or to be intoxicated ; or

(*b*) takes an article in pawn without giving the pawner the foil of the pawn ticket ; or

(*c*) purchases, or takes in pawn or exchange, the foil of a pawn ticket issued by another pawnbroker ; or

(*d*) employs any servant apparently under the age of twenty-one years to take articles in pawn ; or

(*e*) purchases, except at a sale by public auction under this Ordinance, any pledge while in pawn with him ; or

(*f*) suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it ; or

(*g*) agrees with any person, pawning or offering to pawn any article, to purchase, sell or dispose of such article within the period of redemption ; or

(*h*) sells or otherwise disposes of any pledge pawned with him, except at such time and in such manner as is authorized by this Ordinance ; or

(*i*) makes any false entry in any book required to be kept by him under this Ordinance or fails to make therein any entry which he is required to make by this Ordinance ; or

(*j*) seizes or detains any person under the provisions of section 20 or section 33 without reasonable or probable cause ; or

(*k*) contravenes any provision of this Ordinance or fails to do anything which he is required to do by this Ordinance, [§ 3, 2 of 1953.]

shall be guilty of an offence.

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Prohibition of taking in pawn linen, clothing, unfinished goods, &c., in certain cases.

38. Every pawnbroker who knowingly takes in pawn any linen or apparel, or unfinished goods or materials entrusted to any person to wash, scour, iron, mend, manufacture, work up, finish, or make up, shall be guilty of an offence ; and where any court convicts any pawnbroker of an offence under this section the court may, in addition to any other punishment which it may impose for that offence, order the pawnbroker to restore the pledge to the owner thereof in the presence of the court or as the court directs.

Pawnbroker failing to deposit in kachcheri money lying to the credit of a pawner.

39. Every pawnbroker who fails to deposit in the kachcheri the amount lying to the credit of a pawner as required by section 28 or section 29 shall be guilty of an offence ; and where any court convicts any pawnbroker of such offence, the court may, in addition to any other punishment which it may impose for that offence, order a sum equal to such amount to be recovered from that pawnbroker as though it were a fine imposed by the court. Every such sum when recovered by the court shall be deposited in the nearest kachcheri to the credit of the pawner.

Offences by servant or agent of pawnbroker.

40. Anything done or omitted to be done by the servant or agent of a pawnbroker in the course of or in relation to the business of a pawnbroker shall be deemed to be done or omitted, as the case may be, by the pawnbroker :

Provided that where, in the absence of a pawnbroker from his shop or place of business, anything is done or omitted to be done by any servant or agent of the pawnbroker in contravention of any provision of this Ordinance such servant or agent shall also be guilty of an offence and shall be liable on conviction to the penalty prescribed for that offence by this Ordinance.

Penalty.

41. Every person who is guilty of an offence under this Ordinance shall be liable to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Cancellation of pawnbroker's licence.

42. Where a pawnbroker or, in his absence, any agent or servant of the pawnbroker is convicted of any offence under this Ordinance, or of any fraud in his

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business, or of receiving stolen goods knowing them to be stolen, the Government Agent may after the first conviction and shall after the second, cancel the licence issued to that pawnbroker.

Articles in unlawful possession of pawnbroker.

43. Whenever, in any proceeding under this Ordinance, it is made to appear to a court that any article is in the unlawful possession of any pawnbroker, it shall be competent to such court to order the production of the article and its delivery to any person named by such court, under such terms, if any, as it may think proper.

PART VI

SUPPLEMENTARY

Sums of money deposited to pawner's credit in kachcheries.

44. A pawner to whose credit any sum of money is deposited in pursuance of the provisions of section 28, section 29 or section 39 shall be entitled to receive payment of such sum on demand made to the Government Agent within one year from the date of such deposit. If no such demand is made within the said period of one year, such sum shall, on the expiry of the said period, be credited to the Consolidated Fund. [1]

Agents, servants, &c., of a pawnbroker.

45. Anything by this Ordinance required or authorized to be done by a pawnbroker may be done by his servant or agent.

Keepers of certain shops to be deemed pawnbrokers.

46. For the purposes of this Ordinance the following persons shall be deemed to be persons carrying on business of taking goods in pawn, that is to say, every person who keeps a shop for the purchase or sale of goods, or for taking in goods by way of security for money advanced thereon, and who purchases or receives or takes in goods and pays or advances or lends thereon any sum of money, with or under an agreement

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or understanding expressed or implied, or to be from the nature and character of the dealing reasonably inferred, that those goods may be afterwards redeemed or repurchased on any terms ; and every such transaction, article, payment, advance, and loan shall be deemed a pawning, pledge, and loan, respectively, within this Ordinance.

Interpretation.

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

" appointed date " means the 24th day of April, 1942 ;

" district " means administrative district ;

" month " means a period of thirty days for the purpose of charging profit or interest ;

" pawnbroker " includes every person who carries on the business of taking goods in pawn ;

" pawner " means a person delivering an article for pawn to a pawnbroker ;

" pledge " means an article pawned with a pawnbroker ;

" shop " includes a dwelling house, warehouse, place of business, and any place where business is transacted ;

" sign " with its grammatical variations and cognate expressions means, in the case of a person who is unable to write his name, the impression in ink or some other suitable medium of the left thumb of that person ;

" unfinished goods or materials " includes any goods of any manufacture or of any part or branch of any manufacture, either mixed or separate, or any materials whatever plainly intended for the composing or manufacturing of any goods, after such goods or materials are put into a state or course of manufacture, or into a state for any process or operation to be performed thereupon or therewith, and before the same are completed or finished for the purpose of wear or consumption.

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FIRST SCHEDULE [Section 2.]

The Central Province.

The Western Province.

The Province of Uva.

The Galle District.

The Hambantota District.

The Jaffna District.

The Kegalla District.

The Kurunegala District.

The Mannar District.

The Matara District.

The Puttalam and Chilaw Districts.

The Ratnapura District.

The area within the administrative limits of the Anuradhapura Urban Council.

The area within the administrative limits of the Batticaloa Urban Council.

The area within the administrative limits of the Trincomalee Urban Council.

The area within the administrative limits of the Weligama Urban Council.

The area within the administrative limits of the Eravur Town Council.

The area within the administrative limits of the Kalmunai Town Council.

The area within the administrative limits of the Mullaittivu Town Council.

The area within the administrative limits of the Vavuniya Town Council.

SECOND SCHEDULE [Section 3.]

Form A

LICENCE

I, ————, Government Agent for the ———— District, do hereby authorize and license ————, of ————, to carry on the business of a pawnbroker at ————, within the limits of ————, in the ———— District, under the provisions of the Pawnbrokers Ordinance.

This licence will expire on July 31, 19—.

————,

Government Agent.

Stamps.
Rs. 40.

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[Section 15.]

Form B

PLEDGE BOOK

Pledge Book of ————, Pawnbroker, of ————.

No. and Date of the issue of Pawn Ticket	No. of Pledge in the Month	Amount of Loan upon each Article	Profit or Interest charged upon each Article	Name of Pawner	Address of Pawner	Name of Owner if other than Pawner	Description of each Article pawned	Weight of Article if Jewellery	Value of each Article pawned	Date of Redemption	Name and Address of Person redeeming
		Rs. c.	Rs. c.						Rs. c.		

[Section 15.]

Form C

SALE BOOK OF PLEDGES

Date and Place of Sale : ————.

Name and Address of Auctioneer : ————.

No. of Pledge as in Pledge Book	Date of Pawning	Name of Pawner	Amount of Loan	Amount of Interest due	Amount for which each Pledge was sold by Auctioneer	Name and Address of Purchaser
			Rs. c.	Rs. c.	Rs. c.	

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Form D [Section 16.]

PAWN TICKET

Counterfoil. No. —.
To be retained by Pawnbroker.
Date : ——.

Name and address of pawnbroker ——.

I, the undersigned, —— of (address of pawner) —— have this day pawned with the aforesaid pawnbroker —— worth Rs. —— for Rs. ——.

Signature of pawner, or left thumb impression of pawner if unable to write his name. ——

Foil. No. —.

Date : ——.

—— (name and address of pawner) has this day pawned with the undersigned —— (name and address of pawnbroker) —— worth Rs. —— for Rs. ——.

Signature of pawnbroker or servant or agent of pawnbroker. ——

Form E [Section 20.]

DECLARATION WHERE THE FOIL OF THE PAWN TICKET IS SURRENDERED UNDER SECTION 20 WITHOUT THE SIGNATURE OF THE PAWNER ENDORSED THEREON

I, A. B., ————, of ————, in pursuance of the Pawnbrokers Ordinance, do solemnly and sincerely declare that ———— pledged at the shop of ————, Pawnbroker, the article/s described below and received the foil of a pawn ticket for the same and that for the purpose of redeeming the pledge I am unable to surrender the foil of the pawn ticket to the pawnbroker with the signature of the said ———— (pawner) duly endorsed thereon, because the said ———— (pawner) is dead/under a legal disability, to wit ———— (nature of legal disability).

The article/s above referred to is/are ————.

I, C. D., ———— in pursuance of the same Ordinance, do solemnly and sincerely declare that I know the person now making the foregoing declaration to be A. B., ———— of ————.

Declared before me this ———— day of ————, 19—.

Signature of A. B., ————.

Signature of C. D., ————.

————,
Justice of the Peace.

Form F [Section 22.]

DECLARATION WHERE THE FOIL OF THE PAWN TICKET IS LOST, &c.

Take notice, if this declaration is false the person making it is punishable.

I, A. B., of ————, in pursuance of the Pawnbrokers Ordinance, do solemnly and sincerely declare that ———— pledged at the shop of ————, Pawnbroker, the article (*or* articles) described below, being ————, property, and received the foil of the pawn ticket for the same, which has since been ———— by ————, and that the foil of the pawn ticket has not been sold or transferred to any person by ———— or to ———— knowledge or belief.

D 5——J. N. R 7590 (4/60)

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The article (*or* articles) above referred to is (*or* are) the following :————.

And I, C. D., of ————, in pursuance of the same Ordinance do solemnly and sincerely declare that I know the person now making the foregoing declaration to be A. B., of ————.

Declared before me this ———— day of ————, 19—.

————,
Justice of the Peace.

[Section 25.]

Form G

RECEIPT

Date :————.

Received on redemption of Pledge No.—— :

	Rs. c.
Amount of loan	
Profit or interest	
Total ..	

[Sections 13 and 17.]

THIRD SCHEDULE

RATES OF INTEREST CHARGEABLE BY PAWNBROKERS

A.—On a loan of twenty rupees or under : Cents.

For any time during which the pledge remains in pawn not exceeding one month, for every rupee or fraction of a rupee lent 1

For every month after the first, including the current month in which the pledge is redeemed, although that month is not expired, for every rupee or fraction of a rupee lent .. 1

If the pledge is redeemed before the end of the first fourteen days after the expiration of any month, the pawnbroker shall, in respect of those fourteen days, be entitled to take half of the amount which he would be entitled to take for the whole month.

B.—On a loan of above twenty rupees :

For every month or part of a month, for every sum of one rupee and twenty-five cents or fraction of a sum of one rupee and twenty-five cents .. 1

C.—Restriction on recovery of enhanced interest :

Where a pawnbroker is entitled to enhanced interest as from any date, such enhanced interest shall not be recoverable if the pawner shows to the satisfaction of a civil court of competent jurisdiction that he failed to redeem the pledge before such date only because the pawnbroker's shop remained closed between 8 a.m. and 8 p.m. on the day preceding that date.

If the pawn to which this ticket relates is not redeemed within a period of twelve months from the day of pawning, it is liable to be sold by public auction.

If the surplus profits, if any, from the sale are not claimed by the pawner within one year from such sale, the said profits will be placed to his credit in the kachcheri for one year.

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FOURTH SCHEDULE [Section 26.]

REGULATIONS RELATING TO AUCTIONS OF PLEDGES

1. The auctioneer shall cause all pledges to be exposed to public view.

2. He shall publish catalogues of the pledges, stating—

(*a*) the pawnbroker's name and place of business ;
(*b*) the month in which each pledge was pawned ;
(*c*) the number of each pledge as entered at the time of pawning in the pledge book.

3. The pledges of each pawnbroker in the catalogue shall be separate from any pledges of any other pawnbroker.

4. The auctioneer shall insert in some public newspaper an advertisement giving notice of the sale, and stating—

(*a*) the pawnbroker's name and place of business ;
(*b*) the months in which the pledges were pawned.

5. The advertisement shall be inserted on two several days in the same newspaper, and the second advertisement shall be inserted at least ten clear days before the first day of sale.

6. Where a pawnbroker bids at a sale, the auctioneer shall not take the bidding in any other form than that in which he takes the biddings of other persons at the same sale ; and the auctioneer on knocking down any article to a pawnbroker shall forthwith declare audibly the name of the pawnbroker as purchaser.

7. The auctioneer shall, within fourteen days after the sale, deliver to the pawnbroker a copy of the catalogue, or of so much thereof as relates to the pledges of that pawnbroker, filled up with the amount for which the several pledges of that pawnbroker were sold, and authenticated by the signature of the auctioneer.

8. The pawnbroker shall preserve every such catalogue for two years at least after the auction.

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CHAPTER 91

MAINTENANCE

Ordinances Nos. 19 of 1889, 13 of 1925.

AN ORDINANCE TO AMEND THE LAW RELATING TO THE MAINTENANCE OF WIVES AND CHILDREN.

[*31st December, 1889.*]

Short title.

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

Order for maintenance of wife or of legitimate or illegitimate child.

2. If any person having sufficient means neglects or refuses to maintain his wife, or his legitimate or illegitimate child unable to maintain itself, the Magistrate may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child at such monthly rate, not exceeding one hundred rupees, as the Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. Such allowance shall be payable from the date of the order.

Where wife refuses to live with her husband.

3. If such person offers to maintain his wife on condition of her living with him, the Magistrate may consider any grounds of refusal stated by her, and may make an order under section 2, notwithstanding such offer, if the Magistrate is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Where wife is living in adultery or apart from her husband without sufficient reason or by mutual consent.

4. No wife shall be entitled to receive an allowance from her husband under section 2 if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

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Circumstances warranting cancellation of order under section 2.

5. On proof that any wife in whose favour an order has been made under section 2 is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

Period within which application for maintenance of illegitimate child should be made.

6. In the case of an application for an order under section 2 in respect of an illegitimate child, such application shall not be entertained unless made within twelve months from the birth of such child, or unless it be proved that the man alleged to be the father of such child has at any time within twelve months next after the birth of such child maintained it or paid money for its maintenance, or unless such application is made within the twelve months next after the return to Ceylon of the man alleged to be the father of such child, and upon proof that he ceased to reside in Ceylon within the twelve months next after the birth of such child, and no order shall be made on any such application as aforesaid on the evidence of the mother of such child unless corroborated in some material particular by other evidence to the satisfaction of the Magistrate.

Evidence of mother to be corroborated.

Time of cessation of order.

7. No order for an allowance for the maintenance of any child, legitimate or illegitimate, made in pursuance of this Ordinance shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of sixteen years, or after the death of such child :

Provided that the Magistrate may in the order or subsequently direct that the payments to be made under it in respect of the child shall continue until the child attains the age of eighteen years, in which case such order shall be in force until that period.

Enforcement of order of maintenance.

8. If any person against whom an order is made under section 2 neglects to comply with the order, the Magistrate may for every breach of the order issue a

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warrant directing the amount due to be levied in the manner by law provided for levying fines imposed by Magistrates in the Magistrates' Courts, and may sentence such person for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to simple or rigorous imprisonment for a term which may extend to one month.

Order as to costs, and enforcement thereof.

9. When disposing of any application or appeal under this Ordinance, the Magistrate's Court or the Supreme Court may order either party to pay all or any part of the costs of such application or of the costs of application and appeal, as the case may be, and such order shall be subject to the provisions and conditions laid down in the Civil Procedure Code, relating to costs so far as they may be applicable, and the amount due under the order shall be recoverable as if it were a fine, and in default of payment imprisonment of either description may be imposed for a period not exceeding one month :

Provided that bills of costs shall be taxed according to the lowest rates specified in the Second Schedule of the said Code under heads " Courts of Requests " and " Appeals from Courts of Requests ".

Application for cancellation of order or alteration in amount of allowance.

10. On the application of any person receiving or ordered to pay a monthly allowance under the provisions of this Ordinance, and on proof of a change in the circumstances of any person for whose benefit or against whom an order for maintenance has been made under section 2, the Magistrate may either cancel such order or make such alteration in the allowance ordered as he deems fit, provided that the maximum monthly rate under the said section be not exceeded.

Copy of order given to party.

11. A copy of the order of maintenance certified under the hand of the Magistrate shall be given without payment to the person in whose favour it is made, or to his or her guardian, if any, or to the person

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to whom the allowance is to be paid; and any Magistrate having jurisdiction in any place where the person against whom such order is made may be, shall, on the production of such order and on being satisfied as to the identity of the parties and the non-payment of the allowance due, proceed to issue such warrant, and if necessary pass such sentence as a Magistrate is empowered to do by section 8.

Order enforceable in any place.

12. The person applying for an order of maintenance or for a warrant to enforce such order (hereinafter called the applicant), and the person against whom such order or warrant is applied for (hereinafter called the defendant), may either appear personally or by pleader:

Procedure. Attendance of parties at inquiry.

Provided that it shall be competent to the Magistrate to require the personal attendance of either the applicant or the defendant at any stage of the inquiry.

13. The application for an order of maintenance or for a warrant to enforce such order shall be in writing, and shall be signed by the applicant, and shall bear a stamp of twenty-five cents, and every summons to a defendant or witness shall bear a stamp of fifteen cents; such stamps being supplied by the person at whose instance the defendant or witness is summoned:

Inquiry how applied for. Requirement as to stamps.

Provided that the application may be made orally to the Magistrate, who shall, upon the necessary stamp being supplied, reduce the application to writing and cause it to be signed by the applicant;

Provided also that it shall be lawful for the Magistrate, on being satisfied that the applicant has not sufficient means to defray the cost of such stamps, to dispense with stamps and to entertain the application and issue process as if stamps had been supplied by the applicant.

14. Upon application being made for such order or warrant as aforesaid, the Magistrate shall commence the inquiry by examining the applicant on oath or

Commencement of inquiry.

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affirmation, and such examination shall be duly recorded. If after such examination there is in the judgment of the Magistrate no sufficient ground for proceeding, he may make order refusing to issue a summons.

Attendance of defendant and witnesses how enforced.

15. The Magistrate may proceed in manner provided in Chapters V and VI of the Criminal Procedure Code, to compel the attendance of the defendant and of any person required by the applicant or defendant or by the Magistrate to give evidence, and the production of any document necessary for the purposes of the inquiry.

Form of proceedings.

16. All evidence taken by the Magistrate under this Ordinance shall be taken in the presence of the defendant, or, when his personal attendance is not required by the Magistrate, in the presence of his pleader, and shall be recorded in the manner prescribed for trials in the Magistrate's Court :

Provided that it shall not be necessary to frame a charge or to record the statement of the defendant in the manner prescribed in the Criminal Procedure Code ;

The parties competent witnesses.

Provided also that in any proceedings under this Ordinance it shall be competent to the defendant to give evidence upon oath or affirmation as an ordinary witness, and that a wife shall be a competent witness against her husband.

Right of appeal.

17. Any person who shall be dissatisfied with any order made by a Magistrate under section 2 or section 14 may prefer an appeal to the Supreme Court in like manner as if the order was a final order pronounced by a Magistrate's Court in a criminal case or matter, and sections 338 to 352 (inclusive) of the Criminal Procedure Code shall apply to such appeal.

Forms.

18. The forms set forth in the Schedule, with such variations as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

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SCHEDULE

[Section 18.]

No. 1

SUMMONS TO A DEFENDANT

To ———, of ———.

Whereas your attendance is necessary to answer to a charge of not maintaining your wife (*name*) (*or* legitimate *or* illegitimate child) (*name, or say* child by———, *giving mother's name*) :

Or :

Whereas your attendance is necessary to answer to a charge of having committed a breach of an order of maintenance made against you under the Maintenance Ordinance by non-payment of the allowance due to your wife (*or* child) ——— (*give name or describe as above*) for ——— (*state period*) :

You are hereby required to appear in person (*or* by pleader, *as the case may be*) before the Magistrate's Court of ———, on the ——— day of ———, 19 —. Herein fail not.

Dated this ——— day of ———, 19 —.

———,
Signature of Chief Clerk.

———

No. 2

WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE

To the Fiscal of the ——— Province.

Whereas (*name, description, and address*) has been proved to be possessed of sufficient means to maintain his wife (*name*) (*or* his child) (*name, or describe as in summons*), who is unable to maintain herself (*or* himself), and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of ——— rupees ; and whereas it has been further proved that the said (*name*), in wilful disregard of the said order, has failed to pay ——— rupees, being the amount of the allowance for the month (*or* months) of ———, and thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment for the period of ——— :

This is to authorize and require you, the said Fiscal, to receive the said (*name*) into your custody in the prison at ———, together with this warrant, and there carry the said order into execution according to law ; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand this ——— day of ———, 19—.

Signature ———.

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No. 3

WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE

To the Fiscal of the ———— Province.

Whereas an order has been duly made requiring (*name*) to allow to his wife (*or* child) for maintenance the monthly sum of ———— rupees ; and whereas the said (*name*), in wilful disregard of the said order, has failed to pay ———— rupees, being the amount of the allowance for the month (*or* months) of ———— :

This is to authorize and require you to make distress by seizure of any movable property belonging to the said (*name*) which may be found within the district of ————, and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the movable property distrained, or so much thereof as shall be sufficient to satisfy the said sum ; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand this ———— day of ————, 19—.

Signature ————.

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CHAPTER 92

BRITISH MAINTENANCE ORDERS

AN ORDINANCE TO FACILITATE THE ENFORCEMENT IN CEYLON OF MAINTENANCE ORDERS MADE IN BRITAIN OR ANY BRITISH POSSESSION OR PROTECTORATE.

Ordinances Nos. 15 of 1921, 11 of 1922, 24 of 1929.

[*16th December, 1921.*]

Short title.

1. This Ordinance may be cited as the Maintenance Orders (Facilities for Enforcement) Ordinance.

Interpretation.

2. For the purposes of this Ordinance—

"certified copy" in relation to an order of a court means a copy of the order certified by the proper officer of the court to be a true copy ;

"dependents" means such persons as that person is, according to the law in force in England, Northern Ireland, or Ceylon, as the case may be, liable to maintain ;

"maintenance order" means an order other than an order of affiliation for the periodical payment of sums of money towards the maintenance of the wife or other dependents of the person against whom the order is made ;

"prescribed" means prescribed by regulations made by the Governor-General.[3]

Enforcement in Ceylon of maintenance orders made in England or Northern Ireland.

3. Where a maintenance order has, whether before or after the passing of this Ordinance, been made against any person by any court in England or Northern Ireland, and a certified copy of the order has been transmitted to the Governor-General[3] by a Secretary of State,[3] the Governor-General[3] shall send a copy of the order to the prescribed officer of a Magistrate's Court in Ceylon for registration ; and on receipt thereof the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the

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same force and effect, and, subject to the provisions of this Ordinance, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

Transmission of maintenance orders made in Ceylon.

4. Where a Magistrate's Court in Ceylon has, whether before or after the commencement of this Ordinance, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in England or Northern Ireland, the court shall send to the Governor-General [3] for transmission to a Secretary of State [3] a certified copy of the order.

Power to make provisional orders of maintenance against persons resident in England or Northern Ireland.

5. (1) Where an application is made to a Magistrate's Court in Ceylon for a maintenance order against any person, and it is proved that that person is resident in England or Northern Ireland, the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a competent court in England or Northern Ireland.

(2) The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.

(3) Where such an order is made, the court shall send to the Governor-General, [3] for transmission to a Secretary of State, [3] the depositions so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person, and ascertaining his whereabouts.

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(4) Where any such provisional order has come before a court in England or Northern Ireland for confirmation, and the order has by that court been remitted to the Magistrate's Court in Ceylon which made the order for the purpose of taking further evidence, that court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application. If upon the hearing of such evidence it appears to such Magistrate's Court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Governor-General [3] and dealt with in like manner as the original depositions.

(5) The confirmation of an order made under this section shall not affect any power of a Magistrate's Court to vary or rescind that order :

Provided that on the making of a varying or rescinding order the court shall send a certified copy thereof to the Governor-General, [3] for transmission to a Secretary of State, [3] and that in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

Power of Magistrate's Court to confirm maintenance order made in England or Northern Ireland.

6. (1) Where a maintenance order has been made by a court in England or Northern Ireland, and the order is provisional only, and has no effect unless and until confirmed by a Magistrate's Court in Ceylon, and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the Governor-General, [3] and it appears to the Governor-General [3] that the person against whom the order was made is resident in Ceylon, the Governor-General [3] may send the said documents to the prescribed officer of a Magistrate's

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Court, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the court shall issue such a summons and cause it to be served upon such person.

(2) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(3) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modifications as to the court after hearing the evidence may seem just.

(4) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(5) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

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Power of Governor-General to make regulations for facilitating communications between courts.

7. The Governor-General [3] may make regulations as to the manner in which a case can be remitted by a court authorized to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts.

Mode of enforcing orders.

8. (1) A court in Ceylon in which an order has been registered under this Ordinance, or by which an order has been confirmed under this Ordinance, and the officers of such court, shall take all such steps for enforcing the order as may be prescribed.

(2) Every such order shall be enforceable as if it were an order made by such court under section 8 of the Maintenance Ordinance.

(3) A warrant of distress or commitment issued by the court for the purpose of enforcing any order so registered or confirmed may be executed in any part of Ceylon in the same manner as if the warrant had been originally issued by a Magistrate's Court having jurisdiction in the place where the warrant is executed.

Criminal Procedure Code to apply to proceedings under this Ordinance.

9. The Criminal Procedure Code shall apply to proceedings before a Magistrate's Court under this Ordinance as it applies to proceedings under the Maintenance Ordinance.

Proof of documents signed by officers of court.

10. Any document purporting to be signed by an officer of a court of summary jurisdiction in England or Northern Ireland shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Depositions to be evidence.

11. Depositions taken in a court in England or Northern Ireland may be received in evidence in proceedings before Magistrates' Courts under this Ordinance.

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Reciprocal arrangements with British possessions or protectorates.

12. Where the Governor-General [3] is satisfied that reciprocal provisions have been made by the Legislature of any British possession or any territory under Her Majesty's protection for the enforcement within such possession or territory of maintenance orders made by courts in Ceylon, the Governor-General [3] may by Proclamation to be published in the Gazette extend this Ordinance to such possession or territory, and this Ordinance shall thereupon apply in respect of such possession or territory as though the references to England or Northern Ireland were references to such possession or territory and the references to a Secretary of State [3] were references to the Governor of such possession or territory.

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CHAPTER 93

ENFORCEMENT OF FOREIGN JUDGMENTS

Ordinance No. 4 of 1937.

AN ORDINANCE TO MAKE PROVISION FOR THE ENFORCEMENT IN CEYLON OF JUDGMENTS GIVEN IN COUNTRIES WHICH ACCORD RECIPROCAL TREATMENT TO JUDGMENTS GIVEN IN CEYLON, FOR FACILITATING THE ENFORCEMENT IN OTHER COUNTRIES OF JUDGMENTS GIVEN IN CEYLON AND FOR OTHER PURPOSES IN CONNECTION WITH THE MATTERS AFORESAID.

Short title and date of operation.

1. This Ordinance may be cited as the Enforcement of Foreign Judgments Ordinance, and shall come into operation on such date * as the Minister [3] shall appoint by Order [3] published in the Gazette.

PART I

REGISTRATION OF FOREIGN JUDGMENTS

Power to extend Part I to foreign countries giving reciprocal treatment.

2. (1) The Minister,[3] if he is satisfied that, in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the superior courts of Ceylon, may by Order [3] published in the Gazette direct—

(*a*) that this Part shall extend to that foreign country ; and

(*b*) that such courts of that foreign country as are specified in the Order [3] shall be deemed to be superior courts of that country for the purposes of this Part.

(2) Any judgment of a superior court of a foreign country to which this Part extends, other than a judgment of such a court given on appeal from a court

* Not in operation on 30th June, 1956.

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which is not a superior court, shall be a judgment to which this Part applies if—

(*a*) it is final and conclusive as between the parties thereto ; and

(*b*) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty ; and

(*c*) it is given after the coming into operation of the Order [3] directing that this Part shall extend to that foreign country.

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it or that it may still be subject to appeal, in the courts of the country of the original court.

(4) The Minister [3] may by a subsequent Order [3] vary or revoke any Order [3] previously made under this section.

Application for, and effect of, registration of foreign judgment.

3. (1) A person, being a judgment-creditor under a judgment to which this Part applies, may apply to the registering court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the registering court and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Ordinance, order the judgment to be registered :

Provided that a judgment shall not be registered if at the date of the application—

(*a*) it has been wholly satisfied ; or

(*b*) it could not be enforced by execution in the country of the original court.

(2) Subject to the provisions of this Ordinance with respect to the setting aside of registration—

(*a*) a registered judgment shall, for the purposes of execution, be of the same force and effect ; and

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(*b*) proceedings may be taken on a registered judgment ; and

(*c*) the sum for which a judgment is registered shall carry interest ; and

(*d*) the registering court shall have the same control over the execution of a registered judgment,

as if the judgment had been a judgment originally given in the registering court and entered on the date of registration :

Provided that execution shall not issue on the judgment so long as, under this Part and the rules of court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where an application is made, until after the application has been finally determined.

(3) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Ceylon the judgment shall be registered as if it were a judgment for such sum in the currency of Ceylon as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.

(4) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.

(5) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the

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original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

Rules of court.

4. (1) The power to make rules of court under section 49 of the Courts Ordinance shall, subject to the provisions of this section, include power to make rules for the following purposes :—

(*a*) for making provision with respect to the giving of security for costs by persons applying for the registration of judgments ;

(*b*) for prescribing the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters ;

(*c*) for providing for the service on the judgment-debtor of notice of the registration of a judgment ;

(*d*) for making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed ;

(*e*) for prescribing the method by which any question arising under this Ordinance whether a foreign judgment can be enforced by execution in the country of the original court or what interest is payable under a foreign judgment under the law of the original court, is to be determined ;

(*f*) for prescribing any matter which under this Part is to be prescribed.

(2) Rules made for the purposes of this Part shall be expressed to have, and shall have, effect subject to any such provisions contained in Orders[s] made under section 2 as are declared by the said Orders[s] to be necessary for giving effect to agreements made between Her Majesty and foreign countries in relation to matters with respect to which there is power to make rules of court for the purposes of this Part.

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Cases in which registered judgments must, or may be set aside.

5. (1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment—

(*a*) shall be set aside if the registering court is satisfied—

(i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the foregoing provisions of this Ordinance ; or

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case ; or

(iii) that the judgment-debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear ; or

(iv) that the judgment was obtained by fraud ; or

(v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court ; or

(vi) that the rights under the judgment are not vested in the person by whom the application for registration was made ;

(*b*) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the country of the original court shall, subject to the

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provisions of subsection (3), be deemed to have had jurisdiction—

(*a*) in the case of a judgment given in an action *in personam*—

(i) if the judgment-debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court ; or

(ii) if the judgment-debtor was plaintiff in, or counter-claimed in, the proceedings in the original court ; or

(iii) if the judgment-debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject-matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court ; or

(iv) if the judgment-debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court ; or

(v) if the judgment-debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place ;

(*b*) in the case of a judgment given in an action of which the subject-matter was immovable property or in an action *in rem* of which the subject-matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court ;

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(c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (*a*) or paragraph (*b*) of this subsection, if the jurisdiction of the original court is recognized by the law of the registering court.

(3) Notwithstanding anything in subsection (2) of this section, the courts of the country of the original court shall not be deemed to have had jurisdiction—

(*a*) if the subject-matter of the proceedings was immovable property outside the country of the original court ; or

(*b*) except in the cases mentioned in sub-paragraphs (i), (ii), and (iii) of paragraph (*a*) and in paragraph (*c*) of subsection (2), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court ; or

(*c*) if the judgment-debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

Powers of registering court on application to set aside registration.

6. (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

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(2) Where the registration of a judgment is set aside under the last foregoing subsection, or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment-creditor, order judgment to be registered for the balance remaining payable at that date.

Foreign judgments which can be registered not to be enforceable otherwise.

7. No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in Ceylon.

Application of Part I to Her Majesty's Realms and Territories outside Ceylon.

8. (1) This Part shall apply to Her Majesty's Realms and Territories outside Ceylon and to judgments obtained in the courts of the said realms and territories as it applies to foreign countries and judgments obtained in the courts of foreign countries; and, on and after the date on which this Ordinance is brought into operation by Order[3] under section 1, the Reciprocal Enforcement of Judgments Ordinance shall cease to have effect except in relation to those parts of the said realms and territories to which it extends on that date.

(2) If an Order[3] is made under section 2 extending this Part to any part of Her Majesty's Realms and Territories to which the Reciprocal Enforcement of Judgments Ordinance extends as aforesaid, the said Reciprocal Enforcement of Judgments Ordinance shall cease to have effect in relation to that part of Her Majesty's Realms and Territories.

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(3) References in this section to Her Majesty's Realms and Territories shall be construed as including references to any territories which are under Her Majesty's protection and to any territories in respect of which a mandate under the League of Nations has been accepted by Her Majesty.

PART II

Miscellaneous And General

General effect of certain foreign judgments.

9. (1) Subject to the provisions of this section, a judgment to which Part I applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognized in any court in Ceylon as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgment—

(*a*) where the judgment has been registered and the registration thereof has been set aside on some ground other than—

(i) that a sum of money was not payable under the judgment ; or

(ii) that the judgment has been wholly or partly satisfied ; or

(iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court ; or

(*b*) where the judgment has not been registered, it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (*a*) of this subsection.

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(3) Nothing in this section shall be taken to prevent any court in Ceylon recognizing any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognized before the date on which this Ordinance is brought into operation by Order [s] under section 1.

Power to make foreign judgments unenforceable in Ceylon if no reciprocity.

10. (1) If it appears to the Minister [s] that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the superior courts of Ceylon is substantially less favourable than that accorded by the courts of Ceylon to judgments of the superior courts of that country, the Minister [s] may by Order [s] published in the Gazette apply this section to that country.

(2) Except in so far as the Minister [s] may by Order [s] under this section otherwise direct, no proceedings shall be entertained in any court in Ceylon for the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

(3) The Minister [s] may by subsequent Order [s] vary or revoke any Order [s] made under this section.

Issue of certificates of judgments obtained in Ceylon.

11. Where a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, has been entered in a superior court in Ceylon against any person and the judgment-creditor is desirous of enforcing the judgment in a foreign country to which Part I applies, the court shall, on an application made by the judgment-creditor and on payment of the prescribed fee, issue to the judgment-creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the action, including the causes of action, and the rate of interest, if any, payable on the sum payable under the judgment, as may be prescribed :

Provided that, where execution of a judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

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Interpretation.

12. (1) In this Ordinance, unless the context otherwise requires—

"appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

"country of the original court" means the country in which the original court is situated;

"judgment" means a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;

"judgment-creditor" means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;

"judgment-debtor" means the person against whom the judgment was given and includes any person against whom the judgment is enforceable under the law of the original court;

"original court" in relation to any judgment means the court by which the judgment was given;

"prescribed" means prescribed by rules of court made under section 49 of the Courts Ordinance;

"registering court" in relation to any judgment means the District Court of Colombo;

"registration" means registration under Part I, and the expressions "register" and "registered" shall be construed accordingly;

"superior court" when used with reference to a court in Ceylon means the Supreme Court or a District Court.

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(2) For the purposes of this Ordinance, the expression " action *in personam* " shall not be deemed to include any matrimonial cause or any proceedings in connexion with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, insolvency, winding-up of companies, unsoundness of mind, guardianship of a minor or curatorship of the estate of a minor.

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CHAPTER 94

RECIPROCAL ENFORCEMENT OF JUDGMENTS

AN ORDINANCE TO PROVIDE FOR THE ENFORCEMENT IN CEYLON OF JUDGMENTS OBTAINED IN THE SUPERIOR COURTS OF THE UNITED KINGDOM AND OF OTHER PARTS OF HER MAJESTY'S REALMS AND TERRITORIES.

Ordinance No. 41 of 1921.

[*14th November, 1921.*]

Short title.

1. This Ordinance may be cited as the Reciprocal Enforcement of Judgments Ordinance.

Interpretation.

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

"judgment" means any judgment, decree, or order given or made by a court in any civil proceedings, whether before or after the passing of this Ordinance, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place ;

"judgment-creditor" means the person by whom the judgment was obtained, and includes the legal representatives, successors, and assigns of that person ;

"judgment-debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was made ;

"original court" in relation to any judgment means the court by which the judgment was given ;

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"registering court" in relation to any judgment means the District Court of Colombo ;

"superior court in the United Kingdom" means the High Court in England or Northern Ireland and the Court of Session in Scotland ;

"United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

(2) Subject to rules of court, any of the powers conferred by this Ordinance on the registering court may be exercised by a judge of the court.

Enforcement in Ceylon of judgments obtained in superior courts in the United Kingdom.

3. (1) Where a judgment has been obtained in a superior court in the United Kingdom, the judgment-creditor may apply to the registering court at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case they think it is just and convenient that the judgment should be enforced in Ceylon, and, subject to the provisions of this section, order the judgment to be registered accordingly.

(2) No judgment shall be ordered to be registered under this section if—

(*a*) the original court acted without jurisdiction ; or

(*b*) the judgment-debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court ; or

(*c*) the judgment-debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear notwithstanding that he—

(i) was ordinarily resident, or

(ii) was carrying on business within the jurisdiction of that court, or

(iii) agreed to submit to the jurisdiction of that court ; or

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(*d*) the judgment was obtained by fraud ; or

(*e*) the judgment-debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal against the judgment ; or

(*f*) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

(3) Where a judgment is registered under this section—

(*a*) the judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering court ;

(*b*) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section ;

(*c*) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment ;

(*d*) the same stamp duties shall be payable in respect of proceedings under this Ordinance as would have been payable if the judgment had been an original judgment of the registering court.

(4) Rules of court shall provide—

(*a*) for service on the judgment-debtor of notice of the registration of a judgment under this section ; and

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(*b*) for enabling the registering court on an application by the judgment-debtor to set aside the registration of a judgment under this section on such terms as the court thinks fit ; and

(*c*) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment-debtor may apply to have the registration set aside.

(5) In any action brought in any court in Ceylon on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action, unless an application to register the judgment under this section has previously been refused, or unless the court otherwise orders.

Issue of certificates of judgments obtained in Ceylon.

4. Where a judgment has been obtained in any District Court or in the Supreme Court of Ceylon against any person, the court shall, on an application made by the judgment-creditor and on proof that the judgment-debtor is resident in the United Kingdom, issue to the judgment-creditor a certified copy of the judgment.

Rules of court.

5. Rules of court may be made in the manner provided by section 49 of the Courts Ordinance, for the purposes of this Ordinance, and also for the purpose of regulating the practice and procedure (including evidence), in respect of proceedings of any kind under this Ordinance.

Extent of Ordinance.

6. (1) Where the Minister [s] is satisfied that reciprocal provisions have been made by the Legislature of any part of Her Majesty's Realms and Territories outside the United Kingdom for the enforcement within that part of Her Realms and Territories of judgments obtained in any District Court or in the Supreme Court of Ceylon, the Minister [s] may, by Order [s] published in the Gazette, declare that this Ordinance shall extend to judgments obtained in a superior court in that part of

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Her Realms and Territories in like manner as it extends to judgments obtained in a superior court in the United Kingdom, and on any such Order[3] being made this Ordinance shall extend accordingly.

(2) For the purposes of this section the expression "part of Her Majesty's Realms and Territories outside the United Kingdom" shall be deemed to include any territory which is under Her Majesty's protection, or in respect of which a mandate is being exercised by the Government of any part of Her Majesty's Realms and Territories.

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CHAPTER 95

VEXATIOUS ACTIONS

Ordinance No. 20 of 1919.

AN ORDINANCE TO PREVENT ABUSE OF THE PROCESS OF THE COURTS BY THE INSTITUTION OF VEXATIOUS CIVIL LEGAL PROCEEDINGS.

[*30th August, 1919.*]

Short title.

1. This Ordinance may be cited as the Vexatious Actions Ordinance.

Power of Supreme Court to prohibit institution of action without leave.

2. (1) It shall be lawful for the Attorney-General to apply to the Supreme Court or a Judge thereof for an order under this Ordinance, and if he satisfies such court or Judge that any person has habitually and persistently instituted vexatious civil legal proceedings without any reasonable ground for instituting such proceedings in any court, and whether against the same person or against different persons, such court or Judge may, after hearing such person or giving him an opportunity of being heard after assigning counsel in case such person is unable on account of poverty to retain counsel, order that no civil legal proceeding shall be instituted by that person in any court unless he obtains the leave of the Supreme Court or a Judge thereof, and satisfies the court or Judge that such legal proceeding is not an abuse of the process of the court, and that there is prima facie ground for such proceeding.

(2) A copy of such order shall be published in the Gazette.

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CHAPTER 96

CROWN DEBTORS

AN ORDINANCE TO PROVIDE FOR THE BETTER SECURITY AND RECOVERY OF DEBTS DUE TO THE CROWN.

Ordinance No. 14 of 1843.

[*8th November, 1843.*]

Short title.

1. This Ordinance may be cited as the Crown Debtors Ordinance.

Government Agent to seize property of debtor upon knowledge or notice of debt.

2. It shall be lawful for any Government Agent (or other person duly authorized by writing signed by such Government Agent) within his administrative district, and upon his own knowledge of the default of payment by any debtor to Her Majesty, or notice to him given of any debt having accrued due to Her Majesty, promptly and immediately to seize, take, and in safe custody to keep, but without removing the same (except in those cases only where there are no adequate means for safely and securely keeping the said property at the place where it is seized, and no sufficient security given for the value thereof), all and every the property of any debtor or debtors to the Crown, to an amount computed to be sufficient to cover the said debt so due and owing and the costs attending the same.

Notice, libel, or information to be filed in court.

Process thereupon.

3. Within seven days at farthest (exclusive of Sundays and other authorized public holidays) after such seizure as aforesaid, a libel or information setting forth the nature and amount of the debt so due to Her Majesty, shall be filed in any court having jurisdiction in the case, and every such court, upon any such libel or information being filed, together with the certificate of the property seized, signed by the person making the seizure, is hereby required to deliver to the Fiscal a warrant to sequester the property of the said debtor, and any further proceedings which may be had thereon

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shall be according to such general rules of practice as now are or hereafter may be framed by the Judges of the Supreme Court.

Property of public accountant liable for debt, &c.

4. All lands and tenements which any Treasurer, Government Agent, Assistant Government Agent, Collector of Customs, Government farmer or renter, or other officer employed in the collection, charge, receipt, or expenditure of the revenue, public money, stores, or other property belonging to Government, or any other public accountant, now hath or at any time hereafter shall have, within the time during which he shall respectively remain accountable to Government, shall be liable for the payment of all arrearages or debts, and all fines, penalties, and forfeitures due or adjudged to Her Majesty, Her Heirs, and Successors, by or from such officer or public accountant, and the said lands and tenements, and all other the goods, chattels, property, and effects of the said officer or public accountant, shall be seized and sold in execution for the payment of all such arrearages or debts, fines, penalties, or forfeitures as may be adjudged due and payable to Her Majesty, Her Heirs, and Successors, by any competent court of law, in like and as large and beneficial a manner, to all intents and purposes, as if the said officer or public accountant had, the day he became first an officer or accountant as aforesaid, specially mortgaged the said lands and tenements to Her Majesty, Her Heirs, and Successors, for the full payment of such arrearages or debts, fines, penalties, and forfeitures, and had also at the same time, by a notarial bond, acknowledged the said arrearages or debts, fines, penalties, and forfeitures to be due to Her Majesty, Her Heirs, and Successors.

Crown debts on mortgage, &c., preferred to all subsequent debts.

5. All debts due to Her Majesty, Her Heirs, and Successors, upon mortgage, judgment, award, bond, or other specialty, or upon simple contract, from any other persons than officers and public accountants mentioned in the preceding clause, shall be entitled from the accruing thereof respectively to a preference of payment over all specialties or other debts which shall, subsequent to such date, have been contracted by or become due from such Crown debtors to any other person or persons whatsoever

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Previous mortgage of immovable property not affected.

6. This Ordinance, or anything therein contained, shall not extend to or affect the right of any person or persons or body corporate who has or have any special mortgage or hypothecation of any land or other immovable property of a prior date to the claim of the Crown, and duly executed before a notary public or other person appointed by Government for the passing of deeds or other instruments, or to affect the right of any person or persons or body corporate who has or have a legal lien, mortgage, or privilege which is entitled to preference over any such prior special mortgage or hypothecation as aforesaid of immovable property, according to the Roman-Dutch law as now administered in the Maritime districts of Ceylon, anything before mentioned to the contrary thereof notwithstanding.

Previous transfer of movable property not affected.

7. No sale, pledge, transfer, or alienation of any goods, chattels, or other movable property, upon good consideration and bona fide to any person or persons or body corporate, prior to the date of the execution of the Crown upon any judgment or award of any debt, fine, penalty, or forfeiture being due and payable to it, shall be invalidated by anything contained in this Ordinance to the contrary notwithstanding.

Fraudulent transfer, &c., void.

8. All gifts, grants, sales, transfers, mortgages, bonds, suits, judgments, and executions, as well of lands and tenements as of goods and chattels, of any debtors to Her Majesty, Her Heirs, or Successors, which have been or shall at any time hereafter be contrived, executed, had, or made by fraud, covin, collusion, or guile, to the end, purpose, and intent to delay, hinder, or defraud Her Majesty, Her Heirs, or Successors, of Her or Their just and lawful action, suit, debts, accounts, damages, penalties, or forfeitures, shall be from henceforth deemed and taken to be utterly void and of none effect; and any party or parties thereto, knowing of such fraud, covin, collusion, or guile, shall be guilty of an offence, and be liable on conviction thereof to a fine of the amount of one year's value of such lands or tenements, and the whole value of the said goods or chattels, as well as the consideration given for the same, and to imprisonment, with or without hard labour, for any period not exceeding one year.

Penalty.

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CHAPTER 97

INSOLVENTS

Ordinances Nos. 7 of 1853, 24 of 1884.

AN ORDINANCE TO PROVIDE FOR THE DUE COLLECTION, ADMINISTRATION, AND DISTRIBUTION OF INSOLVENT ESTATES.

[*2nd July, 1854.*]

Short title.

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

Cessio bonorum abolished.

2. It shall not be lawful for any person to obtain from any court within Ceylon, or for any such court to grant to any person, the benefit or relief of cession of goods and property commonly called the *cessio bonorum,* as heretofore known to and allowed by the Roman-Dutch law in force within Ceylon:

Provided that nothing herein contained shall be deemed or taken to affect in any way the estate or condition of any person to whom before the commencement of this Ordinance the said benefit or relief shall have been duly granted, which estate shall be administered, and which condition shall be judged of, as if this Ordinance had not been enacted.

Judges may make rules.

3. The Judges of the Supreme Court may from time to time make such rules and orders as they may think fit for the better carrying of this Ordinance into effect, and generally for regulating the practice of the District Court and the forms of proceedings under this Ordinance in all insolvency matters not provided for in this Ordinance:

Provided that such rules and orders shall not be inconsistent with or repugnant to the provisions of this Ordinance, and that no such rules or orders shall be of any force or effect until they shall have been laid before the Senate and the House of Representatives [1] and notified in the Gazette in manner provided in section 49 of the Courts Ordinance.

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District Courts to be auxiliary to each other for proof of debts and taking examinations.

4. The several District Courts throughout Ceylon shall be courts for the administration of insolvent estates under this Ordinance, and shall be auxiliary to each other for proof of debts and for the examination of persons or witnesses in all matters under this Ordinance, or for any or either of such purposes :

Provided that all such examinations shall be taken down in writing, and shall be transmitted to the court in which the petition for sequestration is being prosecuted, and shall be annexed to and form part of the proceedings in the matter to which the same shall relate, and that no such examination shall be taken without the request in writing of the Judge of the District Court before whom the matter is being prosecuted.

Appeals to Supreme Court.

5. All decisions and orders of the District Courts made under the authority of this Ordinance shall be subject to an appeal to the Supreme Court.

Procedure on appeal.

6. Every such appeal shall be brought on and prosecuted in such manner and shall be subject to such regulations as now exist or shall be hereafter made by any rule or order of the Supreme Court.

Acts of Insolvency in General

Acts of insolvency.

7. If any person residing in Ceylon, or having any property, real or personal, therein, shall depart therefrom, or being out of Ceylon shall remain abroad, or shall depart from his dwelling house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested or taken in execution for any debt not due, or yield himself to prison, or procure himself to be arrested or taken in execution, or his goods, money, lands, or other property to be attached, sequestered, or taken in execution, or make or cause to be made, either in Ceylon or elsewhere, any fraudulent grant, conveyance, or mortgage of any of his lands or goods, or make or cause to be made any fraudulent gift, delivery, or transfer of any of his goods or other property, every such person doing, suffering, procuring, executing, permitting, making, or causing to be made

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any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed to have thereby committed an act of insolvency.

Conveyance by a person of all his property to trustees not an act of insolvency, unless petition for sequestration is filed within three months.

8. If any person shall execute any conveyance or assignment by deed of all his property to a trustee or trustees for the benefit of all the creditors of such person, the execution of such deed shall not be deemed an act of insolvency, unless a petition for sequestration of the estate of such person be filed within three months from the execution thereof :

Provided such deed shall be executed by every such trustee within fifteen days after the execution thereof by such first-mentioned person, and notice thereof be given within one month after the execution thereof by such first-mentioned person in the Gazette and in some newspaper published in Colombo ; and such notice shall contain the date and execution of such deed and the name and place of abode of every such trustee.

Lying in prison for twenty-one days, and escaping out of prison, acts of insolvency.

9. If any person having been arrested or committed to prison for debt or on any attachment for non-payment of money shall, upon such or any other arrest or commitment for debt or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause shall lie in prison for twenty-one days after any writ of execution issued against him and not discharged, every such person shall thereby be deemed to have committed an act of insolvency ; or if any such person having been arrested, committed, or detained for debt shall escape out of prison or custody, every such person shall be deemed to have thereby committed an act of insolvency from the time of such arrest, commitment, or detention.

Filing declaration of insolvency an act of insolvency.

10. If any person residing in Ceylon shall file in the District Court of the district in which he shall have resided or carried on business for six months next immediately preceding a declaration in writing in the form A in the Schedule signed by such person and attested by a proctor of such court, or some other witness, that he is unable to meet his engagements, every such person shall be deemed thereby to have

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committed an act of insolvency at the time of filing such declaration, provided a petition for sequestration of his estate shall be filed by or against such person within two months from the filing of such declaration.

Compounding with petitioning creditor an act of insolvency.

11. If any person, after the filing of any petition for sequestration of his estate, shall pay money to the petitioning creditor, or give or deliver to such petitioning creditor any satisfaction or security for his debt or any part thereof, whereby such petitioning creditor may receive more for every ten rupees in respect of his debt than the other creditors, such payment, gift, delivery, satisfaction or security shall be an act of insolvency ; and if adjudication that such estate be sequestered shall have been made upon such petition, the court may either declare such adjudication to be valid, and direct the same to be proceeded in, or may order it to be annulled, and a petition or new petition for sequestration may be filed, and such petition or new petition may be supported either by proof of such last-mentioned or any other act of insolvency.

Defendant not paying, securing, or compounding for a judgment-debt within thirty days after notice an act of insolvency.

12. If any plaintiff shall recover judgment in any action for the recovery of any debt or money demand in any court in Ceylon against any person residing within the same, and shall be in a situation to sue out execution upon such judgment, and there be nothing due from such plaintiff by way of set-off against such judgment, and the defendant shall not within thirty days after notice in writing personally served upon such defendant requiring immediate payment of such judgment-debt, pay, secure, or compound for the same to the satisfaction of such plaintiff, every such defendant shall be deemed to have committed an act of insolvency on the thirty-first day after service of such notice :

Provided that if such execution shall in the meantime be suspended or restrained by any rule, order, or proceeding of any court having jurisdiction in that behalf, no further proceeding shall be had on such notice, but it shall be lawful nevertheless for such plaintiff, when

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he shall again be in a situation to sue out execution on such judgment, to proceed again by notice in manner aforesaid ;

Provided also that if the defendant appeals against such judgment no such notice shall be given, or if given no further proceeding shall be had thereon pending such appeal.

Person disobeying order of court for payment of money after service of peremptory order an act of insolvency.

13. If any decree or order shall be pronounced in any cause depending in any court or any order shall be made in any matter of insolvency against any person residing in Ceylon, ordering such person to pay any sum of money, and such person shall disobey such decree or order, the same having been personally served upon him, and no appeal against the same shall be pending, the person entitled to receive such sum under such decree or order, or interested in enforcing the payment thereof pursuant thereto, may make an *ex parte* application to the court by which the same shall have been pronounced to fix a peremptory day for the payment of such money, which shall accordingly be fixed by an order for that purpose ; and if such debtor, being personally served with such last-mentioned order thirty days before the day therein appointed for payment of such money, shall neglect to pay the same, every such debtor shall be deemed to have committed an act of insolvency on the thirty-first day after the service of such order.

Notice of acts of insolvency to agents of corporate bodies, &c.

14. If any accredited agent of any body corporate or public company shall have had notice of any act of insolvency, such body corporate or company shall be deemed to have had such notice.

No person liable upon an act of insolvency committed more than twelve months before petition.

15. No person shall be liable to be adjudged insolvent by reason of any act of insolvency committed more than twelve months prior to the filing of any petition for sequestration of his estate ; and no adjudication of insolvency shall be deemed invalid by reason of any act of insolvency prior to the debt of the petitioning creditor, provided there be a sufficient act of insolvency subsequent to such debt.

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PROCEEDINGS BEFORE THE ESTATE OF ANY PERSON IS ADJUDGED INSOLVENT

Proceedings to originate by petition.

16. Proceedings to obtain the sequestration of the estate of any person as insolvent shall be by petition to the District Court of the district in which the debtor shall have resided or carried on business for six months next immediately preceding the time of filing such petition, except where otherwise in this Ordinance specially provided (such petition, if presented by a creditor, being in the form B in the Schedule, and the truth thereof verified by the affidavit of the petitioner in the form C in the Schedule ; and if presented by a person against himself under section 20, being in the form D in the Schedule, and the truth thereof and of the matters required to be stated in the list annexed to such petition verified by the affidavit of such person in the form C in the Schedule) ; and every such petition shall be filed of record and prosecuted as directed by this Ordinance ; and from and after the filing of such petition the said court shall have full power and authority to take such order and direction with the body of the insolvent as mentioned in this Ordinance, as also with all his property, real and personal, which he shall have in his own right before he became insolvent, as also with all such interest in any such property as such insolvent may lawfully part with, and with all his money, fees, annuities, goods, wares, merchandise, and debts, wheresoever they may be found or known, and to make or order sale thereof in manner herein mentioned, or otherwise order the same for satisfaction and payment of the creditors of such insolvent.

Supreme Court may direct petition to be prosecuted in any District Court, &c.

17. Provided that the Supreme Court or any Judge thereof shall have power, whenever such court or Judge may deem it expedient, to order any petition against or by any person for the sequestration of his estate, to be prosecuted in any District Court with or without reference to the district in which such person resided or carried on business, and whether or not such person has resided or carried on his business for six months preceding the filing of such petition, and whether or not such person has carried on his business for that time in any particular district ; or to consolidate the proceedings or any part thereof under two or more

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petitions for the sequestration of such estate, or to transfer any petition for such sequestration and the proceedings thereunder, and the prosecution or the further prosecution thereof, from any one District Court to any other District Court, and the court to which any such transfer shall be made shall have and exercise full jurisdiction therein ; and any such order by the Supreme Court, or by any Judge thereof, may be in such of the forms E, F, or G in the Schedule as may be adapted to the case, or to the like effect.

Petitioning creditor's debt :

18. The amount of the debt of any creditor petitioning for sequestration of the estate of any person as insolvent shall be as follows : that is to say, the single debt of such creditor, or of two or more persons being partners, so petitioning shall amount to five hundred rupees or upwards ; and the debt of two creditors so petitioning shall amount to seven hundred rupees or upwards ; and the debt of three or more creditors so petitioning shall amount to one thousand rupees or upwards ; and every person who has given credit to any person upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such person committed an act of insolvency, may so petition or join in petitioning, whether he shall have had any security in writing for such sum or not.

though payable at a future time, and security given.

Petition by public officer of certain co-partnership.

19. A petition for sequestration as insolvent of the estate of any person indebted in the amount aforesaid to any co-partnership, duly authorized to sue and be sued in the name of a public officer of such co-partnership, may be filed by such public officer as the nominal petitioner for and on behalf of such co-partnership.

Person may petition against himself.

20. Any person may petition for the sequestration as insolvent of his own estate ; and there shall be annexed to such petition a list containing a full and true account of the petitioner's debts, and the claims against him, with the names of his creditors and claimants and the dates of contracting the debts and claims severally, as near as such dates can be stated, the nature of the debts and claims and securities (if any) given for the same, and whether the same are disputed ; and also a

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true account of the nature and amount of the petitioner's property, and an inventory of the same, and of the debts owing to him, with their dates, as nearly as such dates can be stated, and the names of his debtors, and the nature of the securities (if any) which he has for such debts :

Provided that unless such person shall forthwith after the filing of his petition, and before adjudication of insolvency thereunder, make it appear to the satisfaction of the court that his available estate is sufficient to pay his creditors at least two rupees and fifty cents for every ten rupees, clear of all charges (to be estimated by the court) of prosecuting the petition, such petition shall be dismissed, and no further petition shall be filed by such person in the same district without the leave of the court first obtained for that purpose ; and the adjudication on any further petition shall be subject to the like condition as aforesaid as to the available estate of the petitioner ;

So also may an insolvent prisoner.

Provided, however, that it shall be lawful for any person, whatever the amount of his available estate, who shall be in actual custody within the walls of any prison in Ceylon, upon any writ of execution against his person, or other like process, for or by reason of any debt, damages, or costs, at any time after twenty-one days from the commencement of the actual custody of such prisoner, to file a declaration of insolvency, and to petition for the sequestration as an insolvent of his own estate.

If adjudication be not obtained within three days after petition, any other creditor may proceed on it.

21. If the petitioning creditor in any petition for sequestration of his debtor's estate as insolvent shall not proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as shall be allowed by the court, the court may at any time within fourteen days then next following, upon the application of any other creditor to the amount required to constitute a petitioning creditor, proceed to adjudicate on such petition, upon the proof of the debt of such second-mentioned creditor and of the other requisites to support such petition (except the debt of the petitioning creditor) ; but if

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neither the petitioner nor any other creditor shall, within such fourteen days or within such extended time as may be granted by the court for that purpose, apply to the court to adjudicate upon such petition, no further proceeding shall be taken thereon.

Petitions may be presented against one or more partners in a firm; and petitions against two or more may be dismissed as to one without affecting the others.

22. Any creditor whose debt is sufficient to entitle him to petition for the sequestration as insolvent of the estate of all the partners of any firm may petition for such sequestration against one or more partners of such firm, and every such petition shall be valid, although it does not include all the partners of the firm ; and in every petition for sequestration against two or more persons the court may dismiss the same as to one or more of such persons, and the validity of such petition shall not be thereby affected as to any person as to whom such petition is not ordered to be dismissed, nor shall any such person's certificate be thereby affected.

In one member of a firm be insolvent, a petition against the others shall be filed in the same court.

23. After a petition for sequestration filed against or by one or more member or members of a firm, any petition for sequestration against or by any other member of such firm shall be filed and prosecuted in the court in which the first petition was prosecuted ; and immediately after the adjudication under such other petition all the estate, real and personal, of any such insolvent shall vest in the assignee, if any, under the first petition ; and thereafter all separate proceedings under such other petition shall be stayed and such petition shall without affecting the validity of the first petition, be annexed to and form part of the same :

Provided that the Supreme Court, or any Judge thereof, may direct that such other petition shall be filed and prosecuted in any other District Court, or be proceeded in, either separately or in conjunction with the first petition.

After petition filed, if the insolvent be about to quit Ceylon, or to remove or conceal his goods, he may be arrested and his goods seized.

24. Whenever any petition for sequestration as insolvent of the estate of any person shall have been filed against any person, and it shall be proved to the satisfaction of the court in which such petition has been filed that there is probable cause for believing that such person is about to quit Ceylon, or to remove or conceal

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any of his goods with intent to defraud his creditors, unless he be forthwith apprehended, it shall be lawful for the court to issue a warrant, directed to the Fiscal, or to such person as the court shall think fit, whereby such Fiscal or other person shall have authority to arrest the person against whom such petition shall have been filed, and also to seize his books, papers, moneys, securities for moneys, goods, and effects, wheresoever he or they may be found, and him and them safely keep until the expiration of the time allowed for adjudication on such petition, or until such person shall be adjudged insolvent under such petition, and be thereon dealt with according to this Ordinance :

Person so arrested may apply to the court for his discharge.

Provided that any person arrested upon any such warrant or any person whose books, papers, moneys, securities for moneys, goods, or effects have been seized under any such warrant, may apply at any time after such arrest or seizure to the court for an order or rule on the petitioning creditor to show cause why the person arrested should not be discharged out of custody, or why his books, papers, moneys, securities for moneys, goods, and effects should not be delivered up to him ; and it shall be lawful for such court to make absolute or discharge such order or rule.

Court, before adjudication, may summon witnesses to prove act of insolvency.

25. The court, before adjudication, may summon before it any person whom such court shall believe capable of giving any information concerning any act of insolvency committed by the person against whom any petition for the sequestration of his estate as insolvent has been filed, and may require any person so summoned to produce any books, papers, deeds, writings, and other documents in his custody, possession, or power which may appear to the court to be necessary to establish such act of insolvency ; and it shall be lawful for the court to examine any such person upon oath by word of mouth, or interrogatories in writing, concerning such act of insolvency ; and such court, before or at the time of adjudication, may examine the person by or against whom any such petition has been presented, or any other person, as

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to the probable value of the property of such first-mentioned person available for the payment of his debts.

ADJUDICATION OF THE ESTATE OF ANY PERSON AS INSOLVENT, AND THE PROCEEDINGS FOR SECURING THE PROPERTY AND SURRENDER OF THE INSOLVENT

Adjudication, and upon what proof.

26. The District Court, under a petition filed by a creditor shall, upon proof of the petitioning creditor's debt and of the act of insolvency of the person against whom such petition is filed, adjudge such person insolvent ; or if in case of the failure of the petitioning creditor to proceed and obtain adjudication within three days after his petition shall have been filed, or within such extended time as may be allowed by the court, another creditor shall apply for adjudication upon such petition, then upon such application, and proof of such creditor's debt, and of the act of insolvency of the person against whom such petition is filed, the court shall adjudge such person insolvent ; and under a petition filed by any person against himself the court, upon the application of such person, and upon proof of the filing a declaration of insolvency, and of the sufficiency of his available estate to the extent required by this Ordinance, or upon proof of the filing of such declaration of insolvency, and that such person has been in actual custody within the walls of a prison for debt for more than twenty-one days, shall adjudge such person insolvent.

Attachment upon the estate and how to be made.

27. Forthwith, after any person shall be adjudged insolvent, the District Court shall issue to the Fiscal an order (in the form H in the Schedule) placing the estate of the insolvent under sequestration in his hands, and such Fiscal shall enter and lay an attachment on the estate, under inventory thereof ; and when the same shall be sequestered upon the petition of any creditor the said Fiscal shall be accompanied by the petitioning creditor, or someone authorized by him, on behalf of himself and the other creditors of the said estate ; and when the said estate shall be sequestered upon the petition of any insolvent against himself, it shall be

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lawful for any of the creditors, or for the agent of any of the creditors, of the insolvent to accompany the Fiscal and to be present with him while making out the inventory aforesaid.

Attachment of personal property how to be made, and as to penalty for defeating the same.

28. When any personal property belonging to any insolvent is attached as aforesaid in virtue of any order for the sequestration thereof, the Fiscal making such attachment shall leave with the person in whose possession any such property is attached a copy of the said inventory, having subjoined thereto a notice in the English language, and also, if he does not understand English, in the language spoken by such person, that the property therein specified has been attached by the said Fiscal, by virtue of an order of the court for the sequestration thereof ; and any person who knowing the same to have been so attached, shall dispose of, remove, conceal, or receive the same, or any part thereof, with intent to defeat the said attachment, shall be liable on conviction of such offence to be transported for any period not exceeding seven years, or to be imprisoned, with or without hard labour, for any period not exceeding five years :

Provided that it shall be lawful for such Fiscal to secure on the premises, by sealing up in any room or repository, any articles which in the discharge of his duty it shall seem to him expedient so to secure, causing no unnecessary hindrance or inconvenience to any party by so doing, or to leave some person on the premises in charge thereof ; and the said Fiscal shall forthwith report his execution of the said attachment to the said court, and the court may give such directions for the safe custody of the said property as shall seem fit.

If petitioning creditor's debt insufficient, court may proceed upon the application of any other creditor.

29. If, after adjudication of insolvency, the debt of the petitioning creditor be found by the court to be insufficient to support such adjudication, it shall be lawful for the court, upon the application of any other creditor having proved any debt sufficient to support an adjudication, to order the petition for sequestration to be proceeded in, and it shall by such order be deemed valid, which order may be in the form I in the Schedule, or to the like effect.

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Insolvent to have notice of adjudication and to be allowed a certain time to show cause against it before advertisement.

30. Before notice of any adjudication of insolvency shall be given in the Gazette of Ceylon, and at or before the time of putting in execution any order of sequestration which shall have been granted upon such adjudication, a duplicate of such adjudication shall be served on the person adjudged insolvent, personally or by leaving the same at the usual or last known place of abode or place of business of such person ; and such person shall be allowed seven days, or such extended time not exceeding fourteen days in the whole as the court shall think fit, from the service of such duplicate, to show cause to the court against the validity of such adjudication ; and if such person shall within such time show to the satisfaction of the court that the petitioning creditor's debt, and the act of insolvency upon which such adjudication has been grounded, or either of such matters, are insufficient to support such adjudication, and upon such showing no other creditor's debt and act of insolvency sufficient to support such adjudication or such of the said last-mentioned matters as shall be requisite to support such adjudication in lieu of the petitioning creditor's debt and act of insolvency, or either of such matters which shall be deemed insufficient in that behalf, as the case may be, shall be proved to the satisfaction of the court, the court shall thereupon order (in the form K in the Schedule or to the like effect) such adjudication to be annulled, and the same shall by such order be annulled accordingly ; but if at the expiration of the said time no cause shall have been shown to the satisfaction of the court for the annulling of such adjudication, the court shall forthwith, after the expiration of such time, cause notice of such adjudication to be given in the said Gazette, and, if the court considers it expedient, in the London Gazette and in the Gazettes published at each of the Presidencies of India, and shall thereby appoint two public sittings of the court for the insolvent to surrender and conform, the last of which sittings shall be on a day not less than thirty days and not exceeding sixty days from such advertisement in the Gazette of Ceylon, and shall be the day limited for such surrender ; and copies and translations of such advertisement shall also be affixed on the wall of the District Court and of the nearest kachcheri :

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Provided that the court shall have power from time to time to enlarge the time for the insolvent surrendering himself for such time as the court shall think fit, so as every such order be made six days at least before the day on which such insolvent was to surrender himself ; and also from time to time to adjourn either of the said sittings if the court shall deem it necessary to do so ;

Adjudication may, with insolvent's consent, be advertised before the time for showing cause.

Provided also that if any person so adjudged insolvent shall, before the expiration of the time allowed for showing cause, surrender himself and give his consent, testified in writing under his hand, to such adjudication being advertised, the court after such consent so given shall forthwith cause the notice of adjudication to be advertised, and appoint the sittings for the insolvent to surrender and conform.

Insolvent to deliver up his books of account to the court upon oath ;

31. Forthwith after the insertion of the notice of adjudication in the Gazette of Ceylon, or, if the insolvent before the expiration of the time allowed for showing cause against the adjudication surrender himself and give consent to such insertion, forthwith after such surrender, the insolvent shall (if thereto required by the court) deliver up to the court upon oath all books of account, papers, and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person ; and

to attend assignees ;

every insolvent not in prison or custody shall at all times after such surrender attend the assignees, upon every reasonable notice in writing for that purpose given by them to him or left at his usual or last known place of abode, and shall assist such assignees in making out the accounts of his estate ; and such insolvent after he shall have surrendered

to be at liberty to inspect books, &c. ;

may, at all seasonable times before the expiration of such time as shall be allowed to him to finish his examination, inspect his books, papers, and writings in the presence of his assignees, or any person appointed by them, and bring with him each time any two persons to assist him ; and every such insolvent

after allowance of certificate to attend assignees in settling accounts.

after he shall have obtained his certificate shall, upon demand in writing given to him or left at his usual or last known place of abode, attend the assignees to settle any accounts between his estate and any debtor to or

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creditor thereof, or attend any court to give evidence touching the same, or do any act necessary for getting in or protecting the said estate, for which attendance he shall be paid by the assignees out of his estate such sum not exceeding five rupees per day, as they shall deem reasonable.

Allowance for attendance.

Search warrants in what cases.

32. In all cases where it shall be made to appear to the satisfaction of the District Court that there is reason to suspect and believe that any property of any insolvent is concealed in any house or other place not belonging to such insolvent, the court may grant a search warrant to the Fiscal or other person appointed by the court, and it shall be lawful for such Fiscal or other person to execute such warrant according to the tenor thereof ; and such Fiscal or other person shall be entitled to the same protection as is allowed by law in execution of a search warrant for property reputed to be stolen, and every such search warrant shall be in the form L in the Schedule, or to the like effect.

No action against persons for acting under warrant of the court without demand of copy of warrant.

33. No action shall be brought against any Fiscal or other person appointed by the court for anything done in obedience to any warrant of the court, unless demand of the perusal and copy of such warrant hath been made or left at the usual place of abode of such Fiscal or other person by the party intending to bring such action, or by his proctor or agent, in writing, signed by the party demanding the same, and unless the same hath been refused or neglected for six days after such demand ; and if after such demand, and compliance therewith, any action be brought against such Fiscal or person so appointed, without making the petitioning creditor defendant, if living, the court at the trial of such action, on the production and proof of such warrant, shall give judgment for the defendant, notwithstanding any defect of jurisdiction in the court by which such warrant shall have been granted ; and if such action be brought against the petitioning creditor and the Fiscal or person so appointed, the court shall, on proof of such warrant, give judgment for such Fiscal or person so appointed, notwithstanding any such defect

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of jurisdiction; and if the judgment shall be given against the petitioning creditor, the plaintiff shall recover his costs against him, to be taxed so as to include such costs as the plaintiff is liable to pay to the Fiscal or person so appointed as aforesaid.

Proof in such actions that defendant is petitioning creditor sufficient to render him liable.

34. In any such action brought against the petitioning creditor, either alone or jointly with any Fiscal or other person so appointed by the court, for anything done in obedience to the warrant of the court, proof by the plaintiff in such action that the defendant or defendants or any of them is or are petitioning creditor or creditors shall be sufficient for the purpose of making such defendant or defendants liable in the same manner and to the same extent as if the act complained of in such action had been done or committed by such defendant or defendants.

Fiscal may break open the insolvent's doors, &c., and seize upon his body or property.

35. It shall be lawful for any Fiscal, acting under warrant of the court, to break open any house, chamber, shop, warehouse, door, trunk, or chest of any insolvent where such insolvent or any of his property shall be reputed to be, and seize upon the body or property of such insolvent; and if the insolvent be in prison or in custody, it shall be lawful for the Fiscal to seize any property of the insolvent (his necessary wearing apparel only excepted) in the custody or possession of such insolvent, or of any other person, in any prison or place where such insolvent is in custody.

Insolvent not in custody to be free from arrest in coming to surrender, &c.

36. If the insolvent be not in prison or custody at the date of the adjudication, he shall be free from arrest or imprisonment by any creditor in coming to surrender, and after such surrender during the time by this Ordinance limited for such surrender, and for such further time as shall be allowed him for finishing his examination, and for such time after finishing his examination until his certificate be allowed, as the court shall from time to time by endorsement upon the summons of such insolvent, or by writing under the hand of the Judge of such court, think fit to appoint;

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If in custody, he may be brought up to be examined, or to surrender, &c.; and if for debt, the court may, except in certain cases, order his release.

and whenever any insolvent is in prison or in custody under any process, attachment, execution, commitment, or sentence, the court may by warrant directed to the person in whose custody he is confined cause him to be brought before it at any sitting, either public or private, and if he be desirous to surrender, he shall be so brought up, and the expense thereof shall be paid out of his estate, and such person shall be indemnified by the warrant of the court for bringing up such insolvent; and where any person who has been adjudged insolvent, and has surrendered and obtained his protection from arrest, is in prison or in custody for debt at the time of his obtaining such protection, the court may, except in the cases next hereinafter mentioned, order his immediate release, either absolutely or upon such conditions as it shall think fit :

Court may order release of insolvent if in custody for debt contracted by fraud, &c., when detained for more than one year.

Provided that the court shall not order such release where it shall appear by any judgment, order, commitment, or sentence under which the insolvent is in prison or in custody, or by the record or entry of any such judgment, order, commitment, or sentence, and the pleadings or proceedings previously thereto, that he is in prison or in custody for any debt contracted by fraud or breach of trust, or by reason of any prosecution against him whereby he had been convicted of any offence, or for any debt contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious trespass, or maliciously filing or prosecuting a petition for sequestration of the estate of any person as insolvent, unless it shall appear to the satisfaction of the court that the insolvent shall at the time of this Ordinance coming into operation, or at any time thereafter, have been in prison or custody under or by reason of any such judgment, order, commitment, or sentence as aforesaid for a period of or exceeding one year ;

Provided also that such release shall in no wise affect any rights of the creditor at whose suit the insolvent may be in prison or in custody against the insolvent, except the right of detaining him in prison or in custody whilst protected from imprisonment by order of the court.

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If arrested, to be discharged on producing protection.

37. If any insolvent shall be arrested for debt in coming to surrender, or shall after his surrender and while protected by order of the court be so arrested, he shall, on producing such protection to the officer who shall arrest him, and giving such officer a copy thereof, be immediately discharged; and if any officer shall detain any such insolvent after he shall have shown such protection to him, except for so long as shall be necessary for obtaining a copy of the same, such officer shall forfeit to such insolvent, for his own use, the sum of fifty rupees for every day he shall detain such insolvent, to be recovered by action in any competent court in the name of such insolvent, with costs of suit.

Petitioning creditor to proceed at his own cost until choice of assignees.

38. The petitioning creditor shall, at his own cost, file and prosecute his petition until the choice of assignees by the creditors; and the court shall at or after the sitting for such choice make order for the payment thereof out of the estate of the insolvent.

No objection to petition for sequestration, that the act of insolvency was concerted.

39. No petition for sequestration of the estate of any person as insolvent shall be dismissed, nor any adjudication thereon reversed, by reason only that the petition, or adjudication, or act of insolvency has been concerted or agreed upon between the insolvent, his proctor or agent, or any of them, and any creditor or other person.

Court may proceed notwithstanding death of insolvent.

40. If any person shall die after he has been adjudged insolvent, the court may proceed in the matter of such insolvency as if such insolvent were living.

Court may summon and examine insolvent.

41. The court may summon any insolvent before it, whether such insolvent shall have obtained his certificate or not; and in case he shall not come at the time appointed by the court (having no lawful impediment made known to and allowed by the court at such time), it shall be lawful for the court, by warrant, to authorize and direct the Fiscal, or any person the court shall think fit, to apprehend and arrest such insolvent and bring him before the court; and upon the appearance of such insolvent, or if such insolvent be present at any sitting of the court, it shall be lawful for the court to

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examine or to permit the examination by the creditors of such insolvent after he shall have made and signed a declaration in the form M in the Schedule, either by word of mouth or on interrogatories in writing, touching all matters relating to his trade, dealings, or estate, or which may tend to disclose any secret grant, conveyance, or concealment of his lands, goods, money, or debts, and to reduce his answers into writing, which examination, so reduced into writing, the said insolvent shall sign.

Court may summon and examine the insolvent's wife.

42. It shall be lawful for the court to summon before it the wife of any insolvent, and to examine her, or to permit her examination by the creditors of such insolvent, after she shall have made and signed a declaration in the form M in the Schedule, either by word of mouth or interrogatories in writing, for the finding out and discovery of the property of such insolvent concealed, kept, or disposed of by such wife in her own person or by her own act, or by any other person, and she shall incur such danger or penalty for not coming before the court, or for refusing to make and sign such declaration and to be examined, or to sign her examination, or for not fully answering to the satisfaction of the court, as is hereinafter provided.

If insolvent keep out of the way, or be about to quit Ceylon, &c., warrant.

43. If in any case it shall be proved to the satisfaction of the court that any insolvent is keeping out of the way and cannot be personally served with a summons, and that due pains have been taken to effect such personal service, or that there is probable cause for believing that he is about to quit Ceylon, or to remove or conceal any of his goods or effects, unless he be forthwith apprehended, it shall be lawful for such court, by warrant, to authorize and direct the Fiscal, or any person it shall think fit, to apprehend and arrest such insolvent, and bring him before the court to be examined in like manner as if he appeared upon a summons.

Court may summon person suspected of having insolvent's property, &c.

44. After any person has been adjudged insolvent it shall be lawful for the District Court to summon before it any person known or suspected to have any of the estate of the insolvent in his possession, or who is supposed to be indebted to the insolvent. or any person

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the court may believe capable of giving information concerning the person, trade, dealings, or estate of the insolvent, or concerning any act of insolvency committed by him, or any information material to the full disclosure of his dealings ; and the court may require such person to produce any books, papers, deeds, writings, or other documents in his custody or power which may appear to the court necessary to the verification of the deposition of such person, or to the full disclosure of any of the matters which the court is authorized to inquire into ; and if such person so summoned as aforesaid shall not come before the court at the time appointed, having no lawful impediment (made known to the court at the time of its sitting, and allowed by it), it shall be lawful for the court by warrant to authorize and direct the Fiscal, or other person therein named for that purpose, to apprehend and arrest such person and bring him before the court for examination.

and if they fail to attend, warrant.

45. Where it shall be shown by affidavit to the satisfaction of the court that any person to whom any such summons is directed as aforesaid is keeping out of the way and cannot be personally served therewith, and that due pains have been taken to effect such personal service, it shall be lawful for the court to order by endorsement upon the summons that the delivery of a copy of such summons to the wife or servant, or some adult inmate of the house or family of the person at his usual or last known place of abode or business, and explaining the purport thereof to such wife, servant, or inmate, shall be equivalent to personal service ; and in every such case the service of such summons in pursuance of such order shall be and be deemed and taken to be of the same force and effect to all intents and purposes as if the party to whom such summons was directed had been personally served therewith.

Service of summons where person keeps out of the way.

46. Upon the appearance of any person summoned or brought before the court upon any warrant as aforesaid, or if any person be present at any sitting of the court, it shall be lawful for the court to examine or to permit the examination by the creditors of every such person upon oath, either by word of mouth or by

Power to examine persons summoned or present at any sitting.

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interrogatories in writing, concerning the person, trade, dealings, or estate of any insolvent, or concerning any act of insolvency by any insolvent committed, and to reduce into writing the answers of every such person; and such answers so reduced into writing such person examined is hereby required to sign.

Court may order payment of debts admitted to be due to the estate;

47. If any such person examined as last aforesaid shall, in and by his examination signed as aforesaid, and also in and by a separate writing in the form N in the Schedule, admit that he is indebted to the insolvent in any sum of money upon the balance of accounts, it shall be lawful for the court, if it think fit, to order (in the form O in the Schedule, or to the like effect) that such person shall forthwith, or at such time and in such manner as to the court may seem expedient, pay the amount so admitted, in full discharge thereof, to the assignees, together with the costs of and incident to the summons of such person, if the court think fit to award costs, or the court may, if it think fit, in the said form O, order the assignees to pay the costs of the person summoned out of the estate of the insolvent; and every such order shall have the effect of a judgment in the said court, and may be enforced accordingly:

such order to have effect of judgment.

Provided always that no such order shall be made unless such party has been informed by the Judge of the effect of such admission before the same is signed as aforesaid;

Provided also, that if part only of the sum actually due be so admitted, or if the court make an order for part only of the sum admitted, the residue may be recoverable in the same manner in all respects as if no such admission or order had been made.

Court may order letters addressed to insolvent to be redirected or delivered to assignees, &c.

48. The District Court may order that for a period of three months from the date of any such order all post letters directed or addressed to any insolvent at the place of which he shall be described in the petition for sequestration of his estate as insolvent, shall be redirected, readdressed, sent, or delivered by the

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Postmaster-General, or the officers acting under him, to the assignees named in such order ; and upon notice by transmission of a duplicate of any such order to the Postmaster-General, or the officers acting under him, by the assignees or other person named in such order, of the making of such order, it shall be lawful for the Postmaster-General, or such officers as aforesaid, to readdress, redirect, send, or deliver all such post letters to the assignees named in such order accordingly ; and the court may, upon any application to be made for that purpose, renew any such order for a like or for any other less period as often as may be necessary.

Power of the District Court over certain Descriptions of Property

Goods in the possession, order, or disposition of the insolvent to be deemed his property.

49. If any insolvent, at the time he commits the act of insolvency, shall, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or effects whereof he was reputed owner, or whereof he had taken upon him the sale or disposition as owner, the court shall have power to order the same to be sold or disposed of for the benefit of the creditors of the insolvent :

Assignments of vessels under the Merchant Shipping Act. (57 & 58 Vict. c. 60.)

Provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt, either by way of mortgage or assignment, duly registered according to the provisions of the Merchant Shipping Act, 1894.

Consigned goods, &c., to be given up to the owner.

50. But if there shall be found among the insolvent's property at the time of its seizure any wares, goods, or merchandise consigned to him for the special purpose of being sold by him on commission, or intrusted in his hands for any specific purpose, and which evidently are the property of the consignor or person so intrusting, notice thereof shall be transmitted to the owners as soon as possible, in order that they may take the necessary measures to secure their property, and the same shall be carefully preserved, and shall be delivered over to the lawful owners.

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Conveyances, &c., by insolvent without valuable consideration, void.

51. If any person adjudged insolvent under this Ordinance shall (except upon the marriage of any of his children, or for some valuable consideration) have conveyed, assigned, or transferred to any of his children, or to any other person, any real or personal property whatsoever, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or into any other person's name, such first-mentioned person being at the time of making any such conveyance, assignment, transfer, or delivery insolvent, the court shall have power to order any such property to be sold and disposed of for the benefit of the creditors under the insolvency; and every such sale shall be valid against the insolvent and such children and persons, and against all persons claiming under him.

Seizure of goods for rent not to be available for more than one year's rent due; the landlord to prove for the residue.

52. No seizure or detention of the goods of any insolvent for rent made after an act of insolvency, and whether before or after the filing of the petition for sequestration of his estate, shall be available for more than one year's rent accrued prior to the day of the filing of such petition, but the landlord or person to whom the rent shall be due shall be allowed to come in as creditor for the overplus of the rent due, and for which the goods seized shall not be available.

Where insolvent is a trustee, the court may order conveyance or assignment to another trustee.

53. If any insolvent shall as trustee be seized, possessed of, or entitled to, either alone or jointly, any real or personal estate, or any interest secured upon or arising out of the same, or shall have standing in his name as trustee, either alone or jointly, any funds or annuities, or any of the stock of any public company in Ceylon, it shall be lawful for the court, on the petition of the person entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice given to all other persons (if any) interested therein, to order the assignees, and all persons whose act or consent thereto is necessary, to convey, assign, or transfer the said estate, interest, funds, or annuities to such person as the said court shall think fit, upon the same trusts as the said estate, interest, funds, or annuities were subject to before the insolvency, or such of them as shall be then subsisting

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and capable of taking effect, and also to receive and pay over the rents, issues, and profits, dividends, interest, or produce thereof as the said court shall direct.

Title to property sold not to be impeached unless insolvency disputed within a certain time.

54. No title to any real or personal estate sold under any insolvency shall be impeached by the insolvent, or any person claiming under him, in respect of any defect in the petition for sequestration or in any of the proceedings under the same, unless the insolvent shall, within the time allowed by this Ordinance, have commenced proceedings to dispute, dismiss, or annul the petition or adjudication thereunder, and duly prosecuted the same.

The court, after adjudication, may order any agent of the insolvent to deliver over all moneys, &c.

55. After the adjudication of insolvency in any case shall have been advertised in the Gazette, it shall be lawful for the court to order any treasurer or other officer, or any banker, attorney, proctor, or other agent of the insolvent, to pay and deliver over to the assignees, to the credit of the estate of such insolvent, all moneys or securities for moneys in his custody, possession, or power as such officer or agent, and which he is not by law entitled to retain against the insolvent or his assignees.

Transactions with the Insolvent, and Executions against his Property up to the time of the filing of the Petition for Sequestration of his Estate as Insolvent, or within a limited time previously thereto

Payment by insolvent;

conveyances by him;

contracts and dealings with him;

and executions;

56. All payments really and bona fide made by any insolvent, or by any person on his behalf, before the filing of a petition for sequestration of his estate as insolvent to any creditor of such insolvent, and all payments really and bona fide made to any insolvent before the filing of such petition, and all conveyances by any insolvent bona fide made and executed before the filing of such petition, and all contracts, dealings, and transactions by and with any insolvent really and bona fide made and entered into before the filing of such petition, and all executions and attachments

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against the lands of any insolvent bona fide executed by seizure, and all executions and attachments against the goods and effects of any insolvent bona fide executed and levied by seizure and sale before the date of the filing of such petition, shall be deemed to be valid notwithstanding any prior act of insolvency by such insolvent committed, provided the person so dealing with or paying to or being paid by such insolvent, or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such payment, conveyance, contract, dealing, or transaction, or at the time of such executing or levying such execution or attachment, or at the time of making any sale thereunder, notice of any prior act of insolvency by him committed :

in what cases valid, if no notice of act of insolvency ;

Provided always that nothing herein contained shall be deemed or taken to give validity to any payment, or to any delivery or transfer of any goods or effects made by any insolvent being a fraudulent preference of any creditor of such insolvent, or to any conveyance or mortgage made or given by any insolvent by way of fraudulent preference of any creditor of such insolvent, or to any execution founded on a judgment on a power of attorney to confess judgment, or consent to a judgment given by any insolvent by way of fraudulent preference.

but not to extend to fraudulent preferences, &c.

57. No purchase from any insolvent bona fide and for valuable consideration where the purchaser had notice at the time of such purchase of an act of insolvency by such insolvent committed, shall be impeached by reason thereof, unless a petition for sequestration of the estate of such insolvent shall have been filed within twelve months after such act of insolvency.

Bona fide purchases not to be impeached by notice of act of insolvency, unless petition be filed within twelve months after the act of insolvency.

58. Every transaction, dealing, transfer, delivery, alienation, mortgage, pledge, or payment by any insolvent to or with any creditor of such insolvent, or to or with any other person, which by the law of England at the corresponding period would be and be deemed to be a fraudulent preference of one creditor before other creditors in any proceeding in bankruptcy, or in any suit or action, shall, in the like case arising within

Fraudulent preferences according to the law of England to be deemed such in like cases within Ceylon.

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Ceylon, be and be deemed to be a fraudulent preference according to the true intent and meaning of this Ordinance.

Certain powers of attorney to confess judgment and consents to judgments, given within two months of filing petition to be null and void.

59. Every power of attorney to confess judgment in any personal action given by any insolvent after the commencement of this Ordinance, and within two months of the filing of a petition for sequestration of his estate by or against such insolvent, and being for or in respect of (wholly or in part) an antecedent debt or money demand, and every consent to a judgment given by any insolvent at any time after the commencement of this Ordinance, and within two months of the filing of any such petition, in any action commenced by collusion with the insolvent, and not adversely or purporting to have been given in an action, but having been in fact given before the commencement of any action against the insolvent, such insolvent being unable to meet his engagements at the time of giving such power of attorney or consent (as the case may be), shall be deemed and taken to be null and void, whether the same shall have been given by such insolvent in contemplation of the sequestration of his estate as insolvent or not.

STAMPS

Deeds and other instruments relating to insolvency not liable to stamp duty.

60. No deed, conveyance, assignment, admission, or other assurance of or to or relating solely to any lands, or to any mortgage, charge, or other incumbrance upon, or any estate, right, or interest of and in any lands, or personal estate, being the estate of or belonging to any insolvent, or part or parcel thereof, and which after the execution of such deed, conveyance, assignment, or assurance respectively shall either be or remain the estate and property of such insolvent or of the assignees appointed or chosen under any insolvency, and no power of attorney, order, certificate of conformity, affidavit, or other instrument or writing whatsoever relating solely to the estate or effects of any insolvent, or to any part thereof, or to any proceeding under any insolvency, and no affidavit, bond, or other proceeding under this Ordinance relating solely to insolvency matters, shall be liable to any stamp duty, save and except such stamp duty as is provided in Part V of Schedule A of the Stamp Ordinance

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Provisions of Stamp Ordinance to extend to stamps under this Ordinance.

61. The provisions contained in the Ordinance for the time being in force relating to stamps shall (so far as the same are applicable and consistent with the provisions of this Ordinance), in all cases not hereby expressly provided for, be of full force and effect with respect to the stamps to be provided under and by virtue of this Ordinance, and shall be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively.

APPOINTMENT BY THE COURT OF PROVISIONAL ASSIGNEES

As to appointment by court of provisional assignee.

62. It shall be lawful for the District Court, on cause shown by any person interested in the due administration of the insolvent estate at any time after the adjudication of insolvency, by order of court to appoint one or more fit person or persons to be assignee or assignees of any insolvent estate provisionally and until the creditors of the said estate shall have made choice of assignees.

Removal of provisional assignee.

63. Provisional assignees may be removed at the meeting of creditors for the choice of assignees if the said creditors shall think fit, or may then be chosen as assignees, but shall and may, until so removed, act in the collection, administration, and distribution of the said estate in all respects the same as assignees elected by the creditors are by this Ordinance authorized or required to do.

Provisional assignee not to sell property without authority of Court.

64. No such provisional assignees shall proceed to make sale of any part of the said estate without the authority for that purpose of the said court first had and obtained.

Effect of appointment of provisional assignee.

65. Every order of court appointing provisional assignees shall, so soon as made, have the effect in law to vest in such provisional assignees for the uses and purposes of the sequestration, and until their

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removal, all the present and future estate of the insolvent, real and personal, as fully and completely to all intents and purposes as the said estate is by virtue of sections 70 and 71 of this Ordinance vested in the assignees chosen by the creditors.

CHOICE OF ASSIGNEES, AND THEIR RIGHTS AND DUTIES

Assignees when and how chosen.

66. At the first public sitting appointed by the court under any insolvency, or at any adjournment thereof, assignees of the insolvent's estate and effects shall and may be chosen and appointed; and all creditors who have proved debts to the amount of one hundred rupees and upwards shall be entitled to vote in such choice; and also any person authorized by letter of attorney from any such creditor, upon proof of the execution thereof, either by affidavit or by oath before the court viva voce; and the choice and appointment shall be made by the major part in value of the creditors so entitled to vote:

Court may reject or remove any person chosen as unfit.

Provided that the court shall have power to reject any person so chosen who shall appear to such court unfit to be an assignee, or to remove any assignee; and upon such rejection or removal a new choice and appointment of another assignee shall be made in like manner.

Joint creditor entitled to prove under separate estate for the purpose of voting in the choice of assignees.

67. If one or more of the partners of a firm be adjudged insolvent, any creditor to whom the insolvent is indebted jointly with the other partners of the firm, or any of them, shall be entitled to prove his debt for the purpose only of voting in the choice of assignees and of being heard against the allowance of the insolvent's certificate, or of either of such purposes; but such creditors shall not receive any dividend out of the separate estate of the insolvent until all the separate creditors shall have received the full amount of their respective debts.

Who incompetent to be appointed assignee.

68. In no case shall it be competent for the creditors to elect as assignee the insolvent himself, nor any person related to the insolvent by consanguinity or affinity within the fourth degree, nor any minor, nor any proctor, nor any person not resident within Ceylon, nor any person having an interest opposed to the general interest of the creditors in the insolvent estate,

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nor any person declared to be incapable of being elected by virtue of the provisions in the next succeeding section contained.

Acts of assignee entitling the court to set election aside, and declare offender disqualified.

69. If any person elected as assignee shall be proved to the satisfaction of the District Court to have, either directly or indirectly, given or promised to give to any creditor of the insolvent any species of valuable consideration whatsoever, in order to obtain the vote of such creditor at the choice of assignees, or to have agreed to secure and make good to any creditor some certain sum or dividend in discharge or diminution of his debt, upon condition or in order that such creditor should give his vote to such assignee, or to have offered or agreed, in case any creditor of the insolvent should consent to vote for such assignee, to abstain from opening up or investigating some previous transactions between such creditor and the insolvent which were, or were supposed to be, of questionable validity, or to have contrived or been privy to any plan or arrangement by which debts or securities really belonging to some one or more persons have been divided amongst a greater number of persons for the purpose merely of increasing the number of votes at the election for assignees and thereby influencing the same, or to have undertaken to share with any creditor of the insolvent, in return for his vote, the commission or remuneration to be awarded to him as such assignee, the court shall declare such assignee to have forfeited the office of such assignee in regard to the insolvent estate for which he shall have been elected, and to be incapable of being again elected thereto ; and it shall be lawful for such court, if it should so think fit, to further declare that the person so offending shall be incapable of being elected an assignee under the provisions of this Ordinance for and during his natural life, or for such period as such court shall determine and adjudge ; and any person interested in the due administration of the insolvent estate may apply by motion to such court to declare any such assignee to have forfeited his office by reason of any such misconduct as aforesaid ; and as often as a vacancy in the office of assignee shall be created by any such forfeiture, the court declaring the

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same shall order a new assignee to be chosen by the creditors, and the same proceedings shall be had thereon as on the original election of assignees.

Movable property to vest in assignees.

70. When any person shall have been adjudged an insolvent, all his personal estate and effects, present and future, wheresoever the same may be found or known, and all property which he may purchase, or which may revert, descend, be devised or bequeathed, or come to him before he shall have obtained his certificate, and all debts due or to be due to him, wheresoever the same may be found or known, and the property, right, and interest in such debts, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors of the insolvent, by virtue of their appointment ; and after such appointment neither the insolvent nor any person claiming through or under him shall have power to recover the same, nor to make any release or discharge thereof ; but such assignees shall have like remedy to recover the same in their own names as the insolvent himself might have had if he had not been adjudged insolvent.

Immovable property to vest in assignees.

71. When any person shall have been adjudged an insolvent, all lands in Ceylon to which any insolvent is entitled, and all interest to which such insolvent is entitled in any such lands, and of which he might according to the laws of Ceylon have disposed, and all such lands in Ceylon as he shall purchase, or as shall descend, be devised, revert to, or come to such insolvent before he shall have obtained his certificate, and all deeds, papers, and writings respecting the same, shall become absolutely vested in the assignees for the time being, for the benefit of the creditors of the insolvent, by virtue of their appointment, without any deed of conveyance for that purpose, and as often as any such assignee shall die or be lawfully removed or displaced, and a new assignee shall be duly appointed, such of the aforesaid real estate as shall remain unsold or unconveyed, shall, by virtue of such appointment, vest in the new assignee, either alone or jointly with the existing assignees, as the case may require, without any conveyance for that purpose.

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Insolvent not liable to rents or covenants in conveyances, leases, &c., if assignees accept the same.

72. If the assignees of the estate and effects of any insolvent having or being entitled to any land under a conveyance to him, or under an agreement for any such conveyance, subject to any perpetual yearly rent reserved by such conveyance or agreement, or having or being entitled to any lease or agreement for a lease, shall elect to take such land, or the benefit of such conveyance or agreement, or such lease or agreement for a lease, as the case may be, the insolvent shall not be liable to pay any rent accruing after the filing of the petition for sequestration of his estate against him, or to be sued in respect of any subsequent non-observance or non-performance of the conditions, covenants, or agreements in any such conveyance or agreement, or lease or agreement for a lease; and if the assignees shall decline to take such land, or the benefit of such conveyance or agreement or lease or agreement for lease, the insolvent shall not be liable if, within fourteen days after he shall have had notice that the assignees have declined, he shall deliver up such conveyance or agreement or lease or agreement for lease to the person then entitled to the rent, or having so agreed to lease, as the case may be; and if the assignees shall not (upon being thereto required) elect whether they will accept or decline such land or conveyance or agreement for conveyance, or such lease or agreement for a lease, any person entitled to such rent, or having so conveyed or agreed to convey, or leased or agreed to lease, or any person claiming under him, shall be entitled to apply to the District Court, and the District Court may order them to elect and deliver up such conveyance or agreement for conveyance or lease, or agreement for lease, in case they shall decline the same, and the possession of the premises, or may make such other order therein as it shall think fit.

How if assignees decline.

How assignees compelled to elect.

Assignees how compelled to elect whether they will abide by or decline agreement for the purchase of land.

73. If any insolvent shall have entered into any agreement for the purchase of any estate or interest in land, the vendor thereof, or any person claiming under him, if the assignees shall not (upon being thereto required) elect whether they will abide by and execute such agreement or abandon the same, may apply to the District Court, and the court may thereupon order them to deliver up the agreement and the possession of the

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premises to the vendor or person claiming under him, or may make such other order therein as such court shall think fit.

Assignees may execute power vested in the insolvent.

74. All powers vested in any insolvent which he might legally execute for his own benefit may be executed by the assignees for the benefit of the creditors in such manner as the insolvent might have executed the same.

Court may order insolvent to join in conveyances.

75. It shall be lawful for the District Court, upon the application of the assignees or of any purchaser from them of any part of the insolvent's estate, if such insolvent shall not try the validity of the adjudication, or if there shall have been a judgment establishing its validity, to order the insolvent to join in any conveyance of such estate or any part thereof; and if he shall not execute any such conveyance within the time directed by the order, such insolvent and all persons claiming under him shall be stopped from objecting to the validity of such conveyance, and all estate, right, or title which such insolvent had therein shall be as effectually barred by such order as if such conveyance had been executed by him.

Property mortgaged or pledged may be redeemed by the assignees.

76. If any insolvent shall have granted, conveyed, assured, or pledged any real or personal estate, or deposited any deeds, such grant, conveyance, assurance, pledge, or deposit being upon condition or power of redemption at a future day by payment of money or otherwise, the assignees may, before the time of the performance of such condition, make tender or payment of money or other performance, according to such condition, as fully as the insolvent might have done, and after such tender, payment, or performance such real or personal estate may be sold and disposed of for the benefit of the creditors.

Assignees may appoint the insolvent to manage the estate.

77. In every case the assignees may, with the approbation of the District Court, appoint the insolvent himself to superintend the management of the estate, or to carry on the trade of such insolvent for behoof of the creditors, and in all or any other respects they may think fit to aid them in administering the insolvent's

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estate and effects, in such manner and on such terms as they may think best for the benefit of the persons interested in the estate.

Assignees to be subject to orders of the court.

78. The assignees shall be subject to the orders of the District Court in their conduct as assignees ; and it shall be lawful for the court at all times to summon the assignees, and require them to produce all books, papers, deeds, writings, and other documents relating to the insolvency in their possession, and to direct them to pay and deliver over to the court all moneys, books, papers, deeds, writings, and other documents which may have come to their possession or custody as such assignees.

Where one of a firm is insolvent, the court may authorize action in name of the assignees and of the other partner.

79. If any person adjudged insolvent shall at the time of the adjudication of insolvency be a member of a firm, it shall be lawful for the District Court to authorize the assignees, upon their application to commence or prosecute any action in the name of such assignees and of the remaining partner against any debtor of the partnership, and such judgment, decree, or order may be obtained therein as if such action had been instituted with the consent of such partner, and if such partner shall execute any release of the debt or demand for which such action is instituted such release shall be void :

Partner to have notice, and may show cause.

Provided that every such partner shall have notice given him of such application, and be at liberty to show cause against it, and if no benefit be claimed by him by virtue of the said proceedings shall be indemnified against the payment of any costs in respect of such action in such manner as the court may direct ; and it shall be lawful for such court, upon the application of such partner, to direct that he may receive so much of the proceeds of such action as such court shall direct.

As to sale of estates by assignees, conditions of sale, &c.

80. The assignees shall, subject to the directions of the creditors given at any meeting of such creditors, forthwith proceed to make sale of all the property belonging to the insolvent, real and personal, giving due notice thereof in the Gazette, and also such other notice as they shall think fit :

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Provided that from the sale of the said personal property shall be excepted, until the creditors shall determine thereon, the wearing apparel, bedding, household furniture, and tools of trade of the insolvent and his family ; and

Provided that the sale of all real property shall take place in such manner and under such conditions as shall be determined on by the greater part in number and value of the creditors present at any meeting duly summoned ;

Provided, however, that such conditions shall be subject to the approval or disapproval of the District Court on the application of any person interested therein.

As to wearing apparel, tools, &c., of insolvent.

81. It shall be lawful for the assignees, with the consent of the greater part in number and value of the creditors who shall have proved their debts present at any meeting of creditors whereof, and of the purpose of which ten days' notice shall have been given in the Gazette, to permit the insolvent to retain, for his own use, the whole or such part of his wearing apparel, bedding, household furniture and tools of trade excepted from the sale of his personal property, as the said creditors shall agree to allow to the said insolvent :

Provided that every such permission shall be subject to the approval or disapproval of the District Court on the application of any person interested in the due administration of the estate.

Assignees, with leave of the court, may bring or defend actions ;

82. The assignees, with the leave of the District Court first obtained, upon application to such court, but not otherwise, may commence, prosecute, or defend any action which the insolvent might have commenced and prosecuted or defended, and in such case the costs to which they may be put in respect of such action shall be allowed out of the proceeds of the estate and effects of the insolvent ; and with like leave of the court, after notice to the creditors, and subject to such condition (if any) as to obtaining the consent of creditors, or any proportion of them as the court shall think fit to direct, the assignees may take such reasonable part of any debt due to the insolvent's estate as may by composition be obtained, or may give time or take security for the

may compound debts ;

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and refer disputes to arbitrators.

payment of such debts, and may, with like leave of the court, submit to arbitration any difference or dispute between the assignees and any other person for or on account or by reason of anything relating to the estate and effects of the insolvent.

Reference to arbitration may be made a rule of court.

83. If the assignees shall agree in manner aforesaid to refer any matter in dispute to arbitration, such agreement of reference may be made a rule of court, whether such agreement contain a clause to that effect or not.

If petition or adjudication be annulled, &c., persons from whom the assignees have recovered, or who have bona fide paid the assignees, &c., discharged from claims by the insolvent.

84. All persons from whom the assignees shall have recovered any real or personal estate, either by judgment or decree, are hereby discharged, in case the petition for sequestration or the adjudication of insolvency thereunder be afterwards annulled or dismissed, from all demands which may thereafter be made in respect of the same by the person against whom such adjudication was made, and all persons claiming under him ; and all persons who shall, without action, bona fide deliver up possession of any real or personal estate to the assignees, or pay any debt claimed by them, are hereby discharged from all claim of any such person as aforesaid in respect of the same, or any person claiming under him :

Provided the person so delivering up any real or personal estate, or paying any debt, shall not have had notice of an action or other proceeding to dispute or annul the petition for sequestration or adjudication thereunder, and such action or other proceeding shall not have been commenced and prosecuted within the time and in manner allowed by this Ordinance.

Assignee indebted to the estate becoming insolvent, his future property liable.

85. If any assignee, indebted to the estate of which he is such assignee in respect of money, being part of the estate of the insolvent retained or employed by him, become insolvent, and obtain his certificate, it shall have the effect only of freeing his person from arrest and imprisonment, but his future effects, (his tools of trade, necessary household goods, and the necessary wearing apparel of himself, his wife, and children excepted,) shall remain liable for so much of his debt to the estate of which he was assignee as shall not be

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paid by dividends under his insolvency, and for interest at the rate of nine *per centum* per annum on the whole debt.

Suits not to abate by death or removal of assignees.

86. Whenever any assignee shall die or be removed, or a new assignee shall be chosen, no action shall be thereby abated, but the court in which any action is depending may, upon the suggestion of such death or removal and new choice, allow the name of the surviving or new assignee to be substituted in the place of the former, and such action shall be prosecuted in the name or names of the said surviving or new assignee or assignees in the same manner as if he had originally commenced the same.

In action against a debtor to the estate, in what case he may pay money into court.

87. If the assignees commence any action for any money due to the insolvent's estate before the time allowed for the insolvent to dispute the insolvency shall have elapsed, any defendant in any such action shall be entitled, after notice given to the assignees, to pay the same or any part thereof into the court in which such action is brought, and all proceedings with respect to the money so paid into court shall thereupon be stayed until such time shall have elapsed; and if within that time the insolvent shall not have commenced such action or other proceeding as allowed by this Ordinance, and prosecuted the same with due diligence, the money shall be paid out of court to the assignees, but otherwise shall abide the event of such action or other proceeding, and upon such event shall be paid out of court, either to the assignees or the person adjudged insolvent, as the court shall direct; and after such payment of money so made into court it shall not be lawful for the person so adjudged insolvent to proceed against the defendant for recovery of the same money.

Limitation of actions.

88. Every action brought against any person for anything done in pursuance of this Ordinance shall be commenced within three months next after the act committed; and if there be a judgment for the defendant, or if the plaintiff shall be nonsuited or discontinue his action after appearance thereto, the defendant shall receive such indemnity as to all costs, charges, and

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expenses incurred in and about any such action as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer.

LAST EXAMINATION

The insolvent to prepare balance sheet and accounts, &c.

89. The last examination of the insolvent shall be at the second public sitting of the court for the insolvent to surrender and conform, as advertised in the Gazette, and the insolvent shall prepare such balance sheet and accounts, and in such form, as the court shall direct, and shall subscribe such balance sheet and accounts, and file the same in court, and deliver a copy thereof to the assignees ten days at least before the day appointed for the last examination, or the adjournment day thereof for that purpose; and such balance sheet and accounts, before such last examination, may be amended from time to time as occasion shall require and such court shall direct; and the insolvent shall make oath of the truth of such balance sheet and accounts whenever he shall be duly required by the court so to do; and the last examination of the insolvent shall in no case be passed unless his balance sheet shall have been duly filed as aforesaid; and the court may on the application of the assignees or of the insolvent make such allowance out of the estate of the insolvent for the preparation of such balance sheet and accounts, and to such person, as the court shall think fit, in any case in which it shall be made to appear to the satisfaction of the court, from the nature of the accounts or other good cause, that the insolvent required assistance in that behalf.

Insolvents apprehended by warrant.

90. If any insolvent apprehended by any warrant of the court shall, within the time allowed for him to surrender, submit to be examined, and in all things conform, he shall have the same benefit as if he had voluntarily surrendered.

Court may adjourn last examination *sine die*.

91. It shall be lawful for the court, at the time appointed for the last examination of the insolvent, or at any enlargement or adjournment thereof, to adjourn such examination *sine die*; and in such case the insolvent shall be free from arrest or imprisonment for such

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time (if any) as such court shall from time to time by endorsement on the summons of the insolvent, think fit to appoint.

If insolvent in custody, court may appoint a person to attend him with books, papers, &c., to enable him to prepare a balance sheet.

92. Whenever any insolvent is in prison or in custody under any process, attachment, execution, commitment or sentence, the court may appoint a person to attend him from time to time to produce to him his books, papers, and writings, in order that he may prepare his balance sheet, and show the particulars of his estate and effects, previous to his last examination and discovery thereof.

PROOF OF DEBTS AND PAYMENTS IN FULL

When and how debts may be proved.

93. At the sittings appointed by the court under section 30 of this Ordinance, and at every adjournment thereof, and at every other sitting held for proof of debts, and whereof and of the purport whereof ten days' notice shall have been given in the Gazette, every creditor of the insolvent may prove his debt by his own oath or affidavit ; and all bodies politic and public companies incorporated or authorized to sue or bring actions, either by Charter, Act of the Parliament of the United Kingdom, or enactment, may prove by an agent, provided such agent shall in his deposition swear that he is such agent, and that he is authorized to make such proof :

Provided always that if it shall appear to the court that any clerk, agent, or other person is more fully cognizant of the nature of the debt sought to be proved than the creditor is, the said court shall allow such clerk, agent, or other person to prove such debt by his oath or affidavit ; and

Provided that any creditor who is out of Ceylon may, in case he have no known agent in Ceylon capable of proving the alleged debt, make the necessary affidavit before some person duly qualified to administer oaths in the place where he resides, such person being certified to be so qualified by some sufficient authority in that behalf ;

Creditor may be examined upon oath.

Provided also that it shall be lawful for the court to examine upon oath, either by word of mouth or by interrogatories in writing, every person claiming to

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prove a debt, or to require such further proof, and to examine such other persons in relation thereto, as such court shall think fit.

Bona fide creditors for debts contracted after an act of insolvency may prove.

94. Every person with whom any insolvent shall have really and bona fide contracted any debt or demand before the filing of the petition for sequestration of his estate shall, notwithstanding any prior act of insolvency committed by such insolvent, be admitted to prove the same as if no such act of insolvency had been committed ; provided such person had not at the time the same was contracted notice of any act of insolvency by such insolvent committed.

Amount of taxes.

95. The court, out of the estate and effects of the insolvent, shall order payment of all taxes due by the insolvent at the time of his insolvency up to the end of the current quarter.

If insolvent an officer of friendly society, court to order payment of debt to them before any other debts.

96. If any person already appointed or employed, or who may be hereafter appointed to or employed, in any office in the Ceylon Savings Bank, or in the Loan Board, or in any friendly society duly incorporated, and being intrusted with the keeping of the accounts, or having in his hands or possession by virtue of his office or employment any moneys or effects belonging to such Savings Bank, Loan Board, or society, or any deeds or securities relating to the same, shall become insolvent, the court shall, upon application made by the order of any such society, or any committee thereof, or the major part of them assembled at any meeting thereof, order payment and delivery over to be made to such society, or to such person as such society or committee may appoint, of all moneys and other things belonging to such society, and shall also order payment out of the estate and effects of the insolvent of all sums of money remaining due which the insolvent received by virtue of his said office or employment, before any other of his debts are paid or satisfied.

Three months' wages or salary to clerks or servants.

97. When any insolvent shall have been indebted at the time of filing the petition for the sequestration of his estate to any servant, clerk, or superintendent, labourer, cooly, or workman of such insolvent, in respect of the wages or salary of such servant, clerk, or

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superintendent, labourer, cooly, or workman, it shall be lawful for the court, upon proof thereof, to order so much as shall be so due, not exceeding three months' wages or salary, and not exceeding three hundred rupees, to be paid to such servant, clerk, or superintendent, labourer, cooly, or workman, out of the estate of such insolvent, and such servant, clerk, or superintendent, labourer, cooly, or workman shall be at liberty to prove for any sum exceeding such amount.

Apprentices discharged from their indentures.

98. When any person shall have been an apprentice to an insolvent at the time of the filing of a petition for sequestration of his estate, the filing of such petition shall be and inure as a complete discharge of the indenture whereby such apprentice was bound; and if any sum shall have been really and bona fide paid by or on the behalf of such apprentice to the insolvent as an apprentice fee, it shall be lawful for the court, upon proof thereof, to order any sum to be paid out of the estate of the said insolvent to or for the use of such apprentice which such court shall think reasonable, regard being had, in estimating such sum, to the amount of the sum so paid by or on behalf of such apprentice, and to the time during which such apprentice shall have resided with the insolvent previous to the filing of such petition.

Sum to be paid in respect of apprentice fees.

Mutual debts and credits may be set off.

99. Where there has been mutual credit given by the insolvent and any other person, or where there are mutual debts between the insolvent and any other person, the court shall state the account between them, and one debt or demand may be set against another, notwithstanding any prior act of insolvency committed by such insolvent before the credit given to or the debt contracted by him; and what shall appear due on either side on the balance of such account, and no more, shall be claimed or paid on either side respectively; and every debt or demand hereby made provable against the estate of the insolvent may also be set off in manner aforesaid against such estate; provided that the person claiming the benefit of such set-off had not, when such credit was given, notice of an act of insolvency by such insolvent committed.

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Debts not payable at the time of the insolvency may be proved.

100. Any person who shall have given credit to the insolvent, upon valuable consideration, for any money or other matter or thing whatsoever which shall not have become payable when such insolvent committed an act of insolvency, and whether such credit shall have been given upon any bill, bond, note, or other negotiable security or not, shall be entitled to prove such debt, bill, bond, note, or other security as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of nine *per centum* per annum, to be computed from the declaration of a dividend to the time such debt would have become payable according to the terms upon which it was contracted.

Proof by sureties.

101. Any person who at the time of filing a petition for sequestration of any estate as insolvent shall be surety or liable for any debt of the insolvent, or bail for the insolvent, if he shall have paid the debt or any part thereof in discharge of the whole debt (although he may have paid the same after the filing of the petition for sequestration of the estate), if the creditor shall have proved his debt under the insolvency, shall be entitled to stand in the place of such creditor as to the dividends and all other rights under the insolvency which such creditor possessed or would be entitled to in respect of such proof; or if the creditor shall not have proved, such surety or person liable, or bail, shall be entitled to prove his demand in respect of such payment as a debt under the insolvency, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, liable, or bail as aforesaid after an act of insolvency committed by the insolvent:

Provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice of any act of insolvency by such insolvent committed.

Claim and proof on bottomry or *respondentia* bonds, and policy of insurance.

102. The obligee in any bottomry or *respondentia* bond, and the assured in any policy of insurance made upon good and valuable consideration, shall be admitted to claim, and, after the loss or contingency shall have

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happened, to prove his debt or demand in respect thereof, and receive dividends with the other creditors as if the loss or contingency had happened before the filing of the petition for sequestration of the estate of such obligor or insurer ; and the person effecting any policy of insurance upon ships or goods with any person (as a subscriber or underwriter) having become or becoming insolvent, shall be entitled to prove any loss to which such insolvent shall be liable in respect of such subscription, although the person so effecting such policy was not beneficially interested in such ships or goods, in case the person so interested is not within Ceylon.

Proof by annuity creditor.

103. Any annuity creditor of any insolvent, by whatever assurance the same be secured, and whether there were or not any arrears of such annuity due at the time of the filing the petition for sequestration, shall be entitled to prove for the value of such annuity, which value the court shall ascertain, regard being had to the original price given for such annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the date of the filing of such petition.

Proof by sureties for payment of annuities.

104. It shall not be lawful for any person entitled to any annuity granted by any insolvent to sue any person who may be collateral surety for the payment of such annuity until such annuitant shall have proved against such insolvent's estate for the value of such annuity, and for the arrears thereof ; and if such surety after such proof pay the amount proved, he shall be thereby discharged from all claims in respect of such annuity ; and if such surety shall not (before any payment of the annuity subsequent to the filing the petition for sequestration shall have become due) pay the sum so proved, he may be sued for the accruing payments of such annuity until such surety shall have paid or satisfied the amount so proved, with interest thereon, from the time of notice of such proof and of the amount thereof being given to such surety ; and after such payment or satisfaction such surety shall stand in the place of such annuitant in respect of such proof to the amount so paid or satisfied by such surety ; and the certificate

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of the insolvent shall be a discharge to him for all claims of such annuitant or of such surety in respect of such annuity :

Provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the insolvency before such surety shall have fully paid or satisfied the amount so proved.

Proof for contingent debt.

105. If any insolvent shall before the filing of a petition for sequestration of his estate have contracted any debt payable upon a contingency which shall not have happened before the filing of such petition, the person with whom such debt has been contracted may, if he think fit, apply to the court to set a value upon such debt, and the court is hereby required to ascertain the value thereof and to admit such person to prove the amount so ascertained and to receive dividends thereon ; or if such value shall not be ascertained before the contingency shall have happened, then such person may, after such contingency shall have happened, prove in respect of such debt and receive dividends with the other creditors, not disturbing any former dividends : provided such person had not when such debt was contracted notice of any act of insolvency by such insolvent committed.

Claim and proof for contingent liability.

106. If any person who shall be adjudged insolvent after the commencement of this Ordinance shall have contracted before the filing of a petition for sequestration of his estate a liability to pay money upon a contingency which shall not have happened, and the demand in respect whereof shall not have been ascertained before the filing of such petition, in every such case, if such liability be not provable under any other provision of this Ordinance, the person with whom such liability has been contracted shall be admitted to claim for such sum as the court shall think fit ; and after the contingency shall have happened, and the demand in respect of such liability shall have been ascertained, he shall be admitted to prove such demand and receive dividends with the other creditors, and, so far as is

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practicable, as if the contingency had happened and the demands had been ascertained before the filing of such petition, but not disturbing former dividends :

Provided such person had not at the time such liability was contracted notice of any act of insolvency by such insolvent committed ;

Provided also, that where any such claim shall not have, either in whole or in part, been converted into a proof within six months after the filing of such petition, it may upon the application of the assignees at any time after the expiration of such time, and if the court shall think fit, be expunged either in whole or in part from the proceedings.

Proof for interest.

107. Upon all debts or sums certain, payable at a certain time, or otherwise, whereupon interest is not reserved or agreed for, and which shall be overdue at the filing of the petition for sequestration and provable thereunder, the creditor shall be entitled to prove for interest to be calculated at a rate not exceeding nine *per centum* per annum up to the date of the filing of such petition from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instruments at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment.

Plaintiff or defendant obtaining judgment, &c., entitled to prove for costs, &c.

108. If any plaintiff in any action or petitioner for the sequestration of the estate of any person as insolvent shall have obtained any judgment, decree, or order against any person who shall thereafter become insolvent for any debt or demand in respect of which such plaintiff or petitioner shall prove under the insolvency, such plaintiff or petitioner shall also be entitled to prove for the costs which he shall have incurred in obtaining the same, although such costs shall not have been taxed at the time of the insolvency ; and if any defendant shall have obtained any judgment, decree, or order in any such action or in the matter of any such petition against any person who shall thereafter become insolvent, such defendant shall be entitled to prove for the costs which he shall have incurred in

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obtaining the same, although such costs shall not have been taxed at the time of the insolvency.

Proving debt to be an election not to proceed against the insolvent by action.

109. No creditor who has brought any action against any insolvent in respect of a demand prior to the filing of a petition for sequestration, or which might have been proved as a debt under the insolvency, shall prove a debt under such insolvency or have any claim entered upon the proceedings, without relinquishing such action; and the proving or claiming a debt under a petition for sequestration by any creditor shall be deemed an election by such creditor to take the benefit of such petition with respect to the debt so proved or claimed:

Provided that such creditor shall not be liable to the payment to such insolvent or his assignees of the cost of such action so relinquished by him, and that where any such creditor shall have brought any action against such insolvent jointly with any other person, his relinquishing such action against the insolvent shall not affect such action against such other person;

Provided also, that any creditor who shall have so proved or claimed, if the petition for sequestration be afterwards dismissed, may proceed in the action as if he had not so proved or claimed.

Complaint of debts being proved which are not due; investigation at whose instance, and how.

110. Whenever it shall appear to the assignees, or to two or more creditors who have each proved debts to the amount of two hundred rupees or upwards, that any debt proved is not justly due, either in whole or in part, such assignees or creditors may make representation thereof to the court; and it shall be lawful for the court to summon and examine upon oath any person who shall have so proved, together with any person whose evidence may appear to the court to be material, either in support of or in opposition to any such debt; and if the court, upon the evidence given on both sides, or (if the person who shall have proved shall not attend to be examined, having been first duly summoned, or notice having been left at his last place of abode) upon the evidence adduced by such assignees or creditors, shall be of opinion that such debt is not due, either wholly or in part, the court shall be at liberty to expunge the same, either wholly or in part, from the proceedings:

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Undertaking for costs.

Provided that such assignees or creditors requiring such investigation shall, before it is instituted, sign an undertaking, to be filed with the proceedings, to pay such costs as the court shall adjudge to the creditor who has proved such debt, such costs to be recovered by application to the court, upon which an order for payment thereof may be made by the court.

Creditor having security not to receive more than other creditors.

111. No creditor having security for his debt, or having made any attachment of the goods and effects of the insolvent, shall receive upon any such security or attachment more than a rateable part of such debt, except in respect of any execution served and levied by seizure and sale upon or any mortgage of or lien upon any part of the property of such insolvent before the date of the filing of a petition for sequestration of his estate :

Provided always that nothing herein contained shall be deemed to give validity to any power of attorney to confess judgment or consent to a judgment declared to be null and void by any provision of this Ordinance, nor to give validity to any judgment entered up under or by virtue of any such power of attorney or consent, or to any execution executed or levied under or by virtue of any such power of attorney or consent.

Accounts of assignees.

112. The assignees shall keep an account wherein they shall enter all property of the insolvent received by them and all payments made by them on account of the insolvent's estate, which account every creditor who shall have proved may inspect at all reasonable times ; and it shall and may be lawful for the court, whenever it shall think fit, to summon the assignees to produce the said book, and the said court may examine and inspect the same or appoint some qualified person so to do.

Audit, and Money belonging to the Insolvent Estate

Audit.

113. The District Court shall, whenever it shall think fit, appoint a public sitting to be holden after the sitting appointed for the last examination of the insolvent (of which public sitting and of the purport whereof ten days' notice shall be given in the Gazette) to audit the accounts of the assignees ;

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and at such sitting the assignees shall deliver upon oath a true statement in writing of all money received by them respectively, and when, and on what account, and how the same has been employed ; and the court shall examine such statement, and compare the receipts with the payments, and ascertain what balances have been from time to time in the hands of such assignees respectively ; and it shall be lawful for the court to examine the assignees upon oath touching the truth of such accounts, and to make therein all just allowances.

Remuneration to assignees.

114. The District Court may order and allow to be paid out of the assets of any insolvent estate to the assignees appointed by the court or chosen by the creditors, as a remuneration for their services, such sum as shall, upon consideration of the amount of the said estate and the nature of the duties performed by such assignees, appear to be just and reasonable.

Creditors to choose a bank with which assignees shall open an account and lodge the money of the estate.

115. It shall be lawful for and shall be the duty of the creditors of any insolvent estate, at the meeting held for the choice of assignees, immediately after such election, in case such election shall take place at such meeting, and in case such election shall not then take place, then immediately after the votes of the said creditors in regard to such election shall have been given, to nominate and appoint some bank within Ceylon, with which bank it shall be the duty of the assignees to open an account, and in case of a difference of opinion amongst the said creditors assembled at such meeting, the greater part in value of the said creditors shall determine upon the bank to be so nominated and appointed as aforesaid, and from and after any such nomination and appointment of any such bank the assignees of such insolvent estate whether chosen by the creditors or provisionally appointed, shall, as soon as they shall receive any sum of money exceeding one hundred rupees belonging to such estate, open an account with such bank in the name of the insolvent estate, and such sum and every other sum exceeding one hundred rupees so received by them shall with all convenient speed be paid into such bank, to be placed to the credit of such account, and all cheques or orders

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for the payment of any such money out of the said bank shall truly express the cause of such payment and the name of the person in whose favour it is drawn, and shall be signed by all the assignees, or by one of them for himself and co-assignees :

Provided that in case the creditors of any insolvent estate shall neglect to nominate any such bank it shall be lawful for the assignees to open an account with and pay all such moneys into any such bank in Ceylon as they shall select ;

And provided that every provisional assignee appointed under this Ordinance before the meeting of creditors for the choice of assignees shall, pending such meeting, open an account with and pay all such moneys into any such bank in Ceylon as he shall select ;

And provided that all assignees, whether provisional or elected, shall in regard to the bank with which such account shall be kept, and such moneys lodged, pursue such directions as they shall from time to time receive from any general meeting of the creditors of the insolvent estate ;

Provided that if there shall be no bank at the place where the assignee resides, any sum of money received by them exceeding one hundred rupees belonging to such estate shall forthwith be paid into the District Court.

Penalty upon assignee retaining or employing money belonging to the estate.

116. Any assignee who shall retain in his hands or knowingly permit any co-assignee so to retain any sum of money exceeding one hundred rupees, part of any insolvent estate, longer than until the first day after his receiving the same upon which it shall be possible for him to pay the said sum, or cause it to be paid, into some such bank or into the District Court as aforesaid, and who shall not have any just and lawful cause for so retaining the same, or shall employ for his own benefit, or knowingly permit any co-assignee so to employ, any sum of money part of any insolvent estate, shall forfeit and pay, for the benefit of the said estate, double the amount of the sum so retained or employed ; and the said sum so forfeited shall be deducted out of any claim the said assignee may have against the said estate, and the surplus, if any, shall be recovered by action at the suit of any two or more creditors in any competent court.

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DIVIDENDS

Method of making dividends.

117. The District Court shall, whenever it shall think fit, appoint a public sitting to be holden after the sitting appointed for the last examination of the insolvent, when there are assets wherewith a dividend may be made (of which public sitting and of the purport whereof twenty-one days' notice shall be given in the Gazette), to make a dividend of the insolvent's estate, and shall at such sitting direct such part of the net produce of the insolvent's estate as it may think fit to be forthwith divided amongst such creditors as have proved debts under the insolvency in proportion to their respective debts, and shall make an order in writing under the hand of the District Judge for dividend accordingly, to be filed with the proceedings, which order shall contain an account of the amount of the debts proved, of the money to be divided, of how much in every ten rupees is then ordered to be paid to the creditors, and of the money allowed by the court to be retained, and of the reason for retaining the same; and the assignees, in pursuance of such order, shall forthwith make such dividend in manner directed by the rules at any time in force under this Ordinance relating to the mode of payment of dividends by the assignees, but no dividend shall be declared unless the accounts of the assignees shall have been first audited.

No dividend without previous audit.

Final dividend within eighteen months, except where suit depending or estate standing out, &c.

118. If the insolvent's estate shall not have been wholly divided upon the first dividend, the court shall, within eighteen months after the filing of the petition for sequestration of the estate, appoint a public sitting (whereof and of the purport whereof twenty-one days' notice shall be given in the Gazette) to make a second dividend, when all the creditors who have not proved their debts may prove the same, and at such sitting, but after such an audit as is directed by this Ordinance, shall order the balance in hand to be forthwith divided among such of the creditors as shall have proved their debts; and such second dividend shall be final, unless any action be depending, or any part of the estate be standing out not sold or disposed of, or unless some other estate or effects of the insolvent shall afterwards come to the assignees, in which case they

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shall, as soon as may be, convert such estate and effects into money ; and within two months after the same shall be so converted, the same shall also be divided in manner aforesaid ; and if at the expiration of two years from the filing of any petition for sequestration, there shall remain any outstanding debts or other property due or belonging to the estate of the insolvent, which cannot, in the opinion of the court, be collected and received without unreasonable or inconvenient delay, it shall be lawful for the assignees, under the direction of the court, to sell and assign such debts and other property, and also the books of the insolvent relating to his trade, dealings, or estate, in such manner and subject to such conditions as shall be ordered by the court ; and any person to whom any of such debts shall be so sold or assigned, may sue for the same in his own name as fully as the assignees of such insolvent might have done.

Outstanding debts, &c., may be sold, and the purchaser may sue for them.

119. No action for any dividend shall be brought against any assignee by any creditor who shall have proved under the insolvency ; but if the assignees shall refuse to pay any such dividend, the court may order payment thereof, with interest for the time that it shall have been withheld, and may also order the costs of the application, and such order shall have the effect of a judgment by the said court.

Remedy for dividend.

Unclaimed Dividends

120. All unclaimed dividends, and also any undivided surplus of an insolvent's estate over and above the amount finally directed to be divided amongst the creditors of any insolvent, shall be paid into the Treasury to be carried in the books of the Treasury to the account intituled "The Unclaimed Dividend Account", subject to the order of the District Court, acting in prosecution of any insolvency for the payment thereout of any dividend due to any creditor.

Unclaimed dividends, &c., to be paid into the Treasury.

121. Subject to any rule at any time in force under this Ordinance relating to unclaimed dividends, if any assignee under any insolvency shall have, either in his own hands, or at any bank, or otherwise subject to his order or disposition, or shall know that there is in the

How unclaimed dividends, &c., in the hands of assignees to be disposed of.

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hands or subject to the order and disposition of himself and any co-assignee, or of either of them, any unclaimed dividend or any such undivided surplus as aforesaid, such assignee shall, within three months next after the expiration of one year from the time of the declaration and order of payment of such dividend, either pay the same to the creditor or other the person entitled to the same, or cause a certificate thereof to be filed in the District Court, containing a full and true account of the name of the creditor to whom such unclaimed dividend is due, and of the amount of such dividend, and shall in like manner as to any undivided surplus as aforesaid within three months next after the expiration of one year after the final declaration of dividends, cause a certificate stating the full and true amount of such surplus to be filed in the District Court, and every certificate to be filed as aforesaid shall be signed by the assignees filing the same, and every assignee shall, within one year next after the filing of any such certificate as aforesaid, pay or cause to be paid into the Treasury, to be carried to the account intituled "The Unclaimed Dividend Account", the full amount of the unclaimed dividends mentioned in such certificate, or so much thereof as shall not have been then paid to the creditors or other persons entitled thereto, and also the full amount of such undivided surplus as aforesaid :

Provided always that no certificate of any unclaimed dividends shall be filed until the expiration of one year after the declaration and order for payment of such dividends.

ALLOWANCES TO THE INSOLVENT

Allowance to insolvent for maintenance.

122. It shall be lawful for the District Court, if it think fit, from time to time to make such allowance to the insolvent out of his estate, until he shall have passed his last examination, as shall be necessary for the support of himself and his family :

Provided always that no such allowance shall be made by the court for any period after the adjournment of the last examination *sine die*.

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If estate pay ten rupees for every ten rupees and interest, surplus to be paid to insolvent.

123. If the produce of the estate of any insolvent shall be sufficient to pay ten rupees for every ten rupees of the liabilities, and interest as hereinafter mentioned, and to leave a surplus, the court may order such surplus to be paid to such insolvent, his executors, administrators, or assigns ; and every such insolvent shall be entitled to recover the remainder, if any, of the debts due to him ; but such surplus shall not be paid until all the creditors who have proved shall have received the interest due upon their debts.

Certificate of Conformity

Mode of obtaining certificate.

124. Forthwith after the insolvent shall have passed his last examination the District Court shall appoint a public sitting for the allowance of his certificate (whereof and of the purport whereof twenty-one days' notice shall be given in the Gazette and to the assignees), and at such sitting the assignees or any of the creditors of such insolvent who shall have given to the secretary of the court three clear days' notice in writing of his intention to oppose, may be heard against the allowance of such certificate, and the court having regard to the conformity of the insolvent to this Ordinance, and to his conduct as a trader, or in relation to his estate, before as well as after his insolvency, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the insolvent entitled thereto and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require.

Form of certificate.

125. The certificate of conformity under this Ordinance shall be in writing under the hand of the District Judge, and shall certify that the insolvent has made a full discovery of his estate and effects and in all things conformed, and that so far as the court can judge there does not appear any reason to question the truth or fulness of such discovery (and shall be in the form Q in the Schedule, or to the like effect) ; and notice of the allowance of such certificate and of the class thereof shall be advertised in the Gazette in such manner as may be directed by the court.

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Effect of certificate.

126. The certificate of conformity allowed under this Ordinance, subject to the provisions herein contained, shall discharge the insolvent from all debts due by him when he became insolvent, and from all claims and demands made provable under the insolvency :

Provided always that no such certificate shall release or discharge any person who was a partner with such insolvent at the time of his insolvency, or was then jointly bound or had made any joint contract with such insolvent, or who was a surety for him.

Certificate not granted or void if insolvent has concealed or falsified books, &c.,

or concealed any property, or permitted any fictitious debts to be proved.

127. No insolvent shall be entitled to a certificate of conformity under this Ordinance, and any such certificate if allowed shall be void, if such insolvent shall after an act of insolvency, or in contemplation of insolvency, or with intent to defeat the object of this Ordinance, have parted with, concealed, destroyed, altered, mutilated, or falsified, or caused to be concealed, destroyed, altered, mutilated, or falsified, any of his books, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entry in any book of accounts or other document with intent to defraud his creditors, or shall have concealed any part of his property, or if any person having proved a false debt under the insolvency, such insolvent being privy thereto or afterwards knowing the same, shall not have disclosed the same to his assignees within one month after such knowledge.

Contract or security to induce creditor to forbear opposition void.

128. Any contract or security made or given by any insolvent or other person unto or in trust for any creditor for securing the payment of any money due by such insolvent at his insolvency, as a consideration or with intent to persuade such creditor to forbear opposing, or to consent to the allowance of the insolvent's certificate, or to forbear to petition for the recall of the same, shall be void, and the money thereby secured or agreed to be paid shall not be recoverable.

Certificate may be recalled.

129. At any time within six months after any certificate of conformity shall have been allowed, and subject to such order as to deposit of costs as may be made by the Supreme Court, any creditor of the

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insolvent, or any assignee, may apply to the Supreme Court that such certificate may be recalled and delivered up to be cancelled ; and the Supreme Court may, on good cause shown, order such certificate to be recalled and cancelled.

Insolvent not liable upon any promise to pay debt discharged by certificate.

130. No insolvent, after his certificate shall have been allowed, shall be liable to pay or satisfy any debt, claim, or demand, from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand, upon any contract, promise, or agreement made after the filing of the petition for sequestration of his estate.

Insolvent, having obtained his certificate, free from arrest ; may plead his certificate ; evidence under it.

131. Any insolvent who shall, after his certificate shall have been allowed, be arrested or have any action brought against him for any debt, claim, or demand provable under his insolvency, shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he became insolvent, and may give this Ordinance and the special matter in evidence ; and such insolvent's certificate shall be sufficient evidence of the insolvency, petition for sequestration, and other proceedings precedent to the obtaining such certificate ; and if any such insolvent shall be taken in execution or detained in prison for such debt, claim, or demand where judgment has been obtained before the allowance of his certificate, it shall be lawful for any Judge of the court wherein judgment has been so obtained, on such insolvent's producing his certificate, to order any officer who shall have such insolvent in custody by virtue of such execution, to discharge such insolvent, and such officer shall be hereby indemnified for so doing.

Insolvent, if in execution, discharged.

Appeal against allowance or refusal of certificate.

132. No such certificate shall be delivered to the insolvent until after the expiration of the time allowed for entering an appeal ; and if an appeal be duly entered against the judgment of such court for the allowance of the certificate, or for the refusal, the withholding, or the class of the certificate, and notice thereof be given to the court in such manner as may by any general rule or order to be made in pursuance

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of this Ordinance be directed, the certificate shall be further kept by the court, and abide the judgment of the Supreme Court thereupon ; and upon any appeal duly entered and prosecuted relating to the certificate or to the judgment of the court as to any offence under this Ordinance charged against the insolvent, the Supreme Court shall have power to rescind or vary the order of the District Court, or to make such other order thereon as it may think fit ; and upon an order for the allowance of any certificate by the Supreme Court, and whether with conditions or not, or after a suspension thereof by order of the Supreme Court or not, such certificate may be allowed and signed by the District Judge or by a Judge of the Supreme Court.

Allowance, refusal, or suspension of certificate (except in case of appeal) to be final in what cases.

133. The allowance of the certificate by the District Court, and any order for the refusal or suspension of the allowance thereof (except in case of appeal), shall be final and conclusive, and shall not be revised by the District Court, unless the said court shall thereafter see good and sufficient cause to believe that the allowance of such certificate, or the refusal or suspension thereof, has been obtained on false evidence, or by reason of an improper suppression of evidence, or has otherwise been fraudulently obtained, in any of which cases it shall and may be lawful for the District Court, upon the application of the insolvent, or of any creditor of the insolvent, and subject to such order as to deposit of a sum for costs, and to such notices to the insolvent and to creditors, by advertisement or otherwise, as the court shall think fit, to grant a rehearing of the matter, and to rehear the same accordingly, and upon such re-hearing, the District Court shall make such order as to the allowance of the certificate, or the refusal or suspension thereof, as the justice of the case may require, in like manner, upon like conditions, and having regard to the like circumstances, so far as the case will admit, as upon any original hearing ; and in case the certificate shall have been previously allowed, and upon such rehearing, the allowance thereof shall not be confirmed, such certificate shall have no force or effect whatever, and the same shall be delivered up to the court and cancelled.

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ARRANGEMENTS BY DEED

Deeds of arrangement entered into between any debtor and certain of his creditors, in what cases binding on all.

134. Every deed or memorandum of arrangement now or hereafter entered into between any person and his creditors, and signed by or on behalf of six-sevenths in number and value of those creditors, whose debts amount to one hundred rupees and upwards, touching such person's liabilities and his release therefrom, and the distribution, inspection, conduct, management, and mode of winding up of his estate, or all or any of such matters or any matters having reference thereto, shall, (subject to the conditions hereinafter mentioned) be as effectual and obligatory in all respects upon all the creditors who shall not have signed such deed or memorandum of arrangement as if they had duly signed the same; and such deed or memorandum, when so signed, shall not be or be liable to be disturbed or impeached by reason of any prior or subsequent act of insolvency:

Provided always, that every creditor shall be accounted a creditor in value, in respect of such amount only, as upon an account fairly stated, after allowing the value of mortgaged property and other such available securities or liens from such person, shall appear to be the balance due to him.

When deed not to be effectual against creditor who has not signed.

135. No such deed or memorandum of arrangement shall be effectual or obligatory upon any creditor who shall not have signed the same, until after the expiration of three months from the time at which such creditor shall have had notice from such person of his suspension of payment, and of such deed or memorandum of arrangement, unless such debtor shall within such time obtain from the District Court an order or certificate of the said court, declaring or certifying that such deed or memorandum of arrangement has been duly signed by or on behalf of such majority of the creditors as aforesaid; and it shall be lawful for the District Court of the district in which the person shall have resided or carried on business for six months next immediately preceding his suspension of payment, to make such order or certificate on the petition of any such person, and to exercise jurisdiction in and over the matters of any such application; and no creditor

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who shall not have had fourteen days' notice of any intended application for such order or certificate as aforesaid shall be bound thereby.

Trustee or inspector, &c., to certify as to the deed being signed.

136. When the trustee or inspector under any such deed or memorandum of arrangement, or, if there shall be no such trustee or inspector, when any two of the creditors shall be satisfied that six-sevenths in number and value of the creditors whose debts amount to one hundred rupees and upwards, have signed such deed or memorandum, it shall be lawful for such trustee or inspector, or for such two creditors, as the case may be, to certify the same to the District Court in writing, and such certificate shall be filed in court, and shall thereupon be prima facie evidence in all courts that such deed or memorandum of arrangement has been so signed.

Account of debt, &c., to be annexed to such certificate.

137. Every such certificate as last aforesaid shall have appended thereto a full account of the debts of such debtor, together with the names, residences, and occupations of his creditors, and shall be accompanied by an affidavit by such debtor verifying the same; and any omission in such account or the insertion therein of any debt not really existing, or of any larger amount of debt than that really existing, and which shall appear to the court to have been made through the culpable negligence or fraud of such debtor, with intent to defraud any of his creditors, shall deprive him of the benefit of the provisions of this Ordinance with respect to arrangements by deed, and of the discharge proposed in any such deed or memorandum of arrangement:

Provided always that any omission, insertion, or incorrectness in such account, which shall not have been made through such culpable negligence or fraud as aforesaid, shall not defeat or otherwise affect such deed or memorandum of arrangement.

Rights of creditors.

138. The creditors of every such debtor shall have the same rights respectively as to set-off, mutual credit, lien, and priority, and joint and separate assets shall be distributed in like manner as in insolvency, and no creditor shall be prejudiced or affected by being a

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party to any such deed or memorandum of arrangement as aforesaid, or by the same being obligatory upon him as to his right or remedy against any person other than such debtor ; and every person who would be entitled to prove in insolvency shall be deemed a creditor within the meaning of the provisions of this Ordinance with respect to arrangement by deed.

Court may interfere in case of improper administration of the estate.

139. If any creditor of any person shall be desirous to show that the administration of the estate of such person has not been duly conducted, in conformity with such deed or memorandum of arrangement, it shall be lawful for him to apply to the District Court by petition, supported by affidavit, stating any facts or circumstances to show that such administration has not been duly conducted, and thereupon the court shall have full power, and it is hereby fully authorized, to consider the subject-matter of such application, and if it shall think fit may direct any inquiry, and in such manner as it shall think proper, into the subject of such application, and generally may make such order and exercise such jurisdiction in or over the subject-matter of such application and the costs thereof as to the said court shall appear just.

Composition after Adjudication of Insolvency

If after adjudication certain of the creditors accept composition, it shall bind the rest.

140. Any insolvent, at any time after he shall have passed his last examination, may call a meeting of his creditors (whereof and of the purport whereof twenty-one days' notice shall be given in the Gazette), and if the insolvent or his friend shall make an offer of composition, and nine-tenths in number and value of the creditors assembled at such meeting shall agree to accept the same, another meeting for the purpose of deciding upon such offer shall be appointed to be holden, whereof such notice shall be given as aforesaid ; and if at such second meeting nine-tenths in number and value of the creditors then present shall also agree to accept such offer, the District Court shall and may, upon such acceptance being testified by them in writing, and upon payment of such sum as the court shall direct, annul the adjudication of insolvency and supersede or

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dismiss the petition for sequestration ; and every creditor of such insolvent shall be bound to accept of such composition so agreed to.

Mode of voting in deciding upon such composition.

141. In deciding upon the offer of composition, no creditor whose debt is below two hundred rupees shall be reckoned in number, but the debt due to such creditor shall be computed in value ; and every creditor to the amount of five hundred rupees and upwards, residing out of Ceylon, shall be personally served with a copy of the notice of the meeting to decide upon such offer as aforesaid, and of the purpose for which the same is called, so long before such meeting as that he may have time to vote thereat, and such creditor shall be entitled to vote by letter of attorney, executed and attested in manner required for a creditor's voting in the choice of assignees ; and if any creditor shall agree to accept any gratuity or higher composition for assenting to such offer, he shall forfeit the debt due to him, together with such gratuity or composition ; and the insolvent shall (if thereto required) make oath before the court that there has been no such transaction between him or any person with his privity and any of the creditors, and that he has not used any undue means or influence with any of them to attain such assent.

EVIDENCE

Officer of court to produce proceedings and give copies thereof.

142. The proper officer of the District Court shall, on the reasonable request of any insolvent, or of any creditor of such insolvent (having proved his debt), or on the like request of the proctor of any such insolvent or creditor, produce and show to such insolvent, creditor, or proctor at such times as the court shall direct, every petition for sequestration and adjudication of insolvency against or by such insolvent, and all orders and proceedings under any such petition or adjudication ; and the court shall order the assignees or officer of court, as the case may be, to permit such insolvent, creditor, or proctor to have inspection at all reasonable times of all books, papers, and writings, relating to the matters of such petition or adjudication, and the estate of the insolvent in the possession of the assignees or filed in court in such matter, and permit

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him to inspect and examine the same; and such assignees or such officer shall provide for any such insolvent, creditor, or proctor requiring the same, a copy of such petition or other proceeding, books, papers, and writings as aforesaid, or of such part thereof as shall be required, receiving such fee, or sum, or rate of charge as may be authorized by the court in that behalf.

If insolvent does not dispute the insolvency, Gazette to be evidence of the adjudication and petition, as against insolvent, and in suits or debts, &c., by assignees.

143. If the insolvent shall not (if he were within Ceylon at the date of the adjudication) within twenty-one days after the advertisement of the insolvency in the Gazette, or (if he were in any part of India at the date of the adjudication) within three months after such advertisement, or (if he were elsewhere at the date of adjudication) within twelve months after such advertisement, have commenced an action or other proceeding to dispute or annul the petition for sequestration of his estate as insolvent, and shall not have prosecuted the same with due diligence and effect, the Gazette containing such advertisement shall be conclusive evidence in all cases as against such insolvent, and in all actions brought by the assignees for any debt or demand for which such insolvent might have sustained any action had he not been adjudged insolvent, that such person so adjudged insolvent became an insolvent before the date and filing of the petition for sequestration, and that such petition was filed on the day on which the same is stated in the Gazette to bear date.

In other cases no proof of petitioning creditor's debt or act of insolvency, unless notice to dispute them.

144. In any action, (other than an action brought by the assignees for any debt or demand for which the insolvent might have sustained an action had he not been adjudged insolvent), and whether at the suit of or against the assignees, or against any person acting under the warrant of the court, for anything done under such warrant, no proof shall be required at the trial, of the petitioning creditor's debt, or of the act of the insolvency respectively, unless the other party in such action shall, if defendant at or before answering, and if plaintiff before issue joined, give notice in writing

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to such assignees or other person that he intends to dispute one or both, and which of such matters; and in case such notice shall have been given, if such assignees or other person shall prove the matter so disputed, or the other party admit the same, the Judge before whom the cause shall be tried may (if he think fit) grant a certificate of such proof or admission; and such assignees or other person shall be entitled to the costs occasioned by such notice, and such costs shall, if such assignees or other person shall obtain a judgment, be added to the costs, and if the other party shall obtain a judgment, shall be deducted from the costs which such other party would otherwise be entitled to receive from such assignees or other person.

Court may award costs, and how recovered.

145. The court may, in all matters before it, award such costs as to such court shall seem fit and just; and in all cases in which costs shall be so awarded against any person, it shall and may be lawful for such court to cause such costs to be recovered from such person in the same manner as costs awarded by such court in civil suits may be recovered.

Witnesses and persons known or suspected to have insolvent's property, &c., when entitled to costs.

146. Every person summoned to attend before the court as a person known or suspected to have any of the estate of the insolvent in his possession, or who is supposed to be indebted to the insolvent, shall have such costs and charges as the court in its discretion shall think fit, and every witness summoned to attend before the court shall have his necessary expenses tendered to him in like manner as is now by law required upon service of subpœna to a witness in a civil action.

Offences against the Law relating to Insolvency and other Matters in this Ordinance

Insolvent not surrendering,

147. If any person adjudged insolvent shall not upon the day limited for his surrender, and before three of the clock of such day, or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing to be served upon him personally or left at the usual or last known place of abode or business of such person, or personal notice in case such

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person be then in prison, and notice given in the Gazette of the filing of the petition for sequestration of his estate as insolvent, as the case may be, and of the sittings of the court (having no lawful impediment proved to the satisfaction of the court at such time, and allowed by the court by a memorandum thereof then made on the proceedings), surrender himself to such court and sign or subscribe such surrender, and submit to be examined before such court from time to time ; or if any such insolvent upon such examination shall not discover all his real and personal estate, and how and to whom, upon what consideration, and when he disposed of, assigned, or transferred any of such estate (and all books, papers, and writings relating thereunto), except such part as shall have been really and bona fide before sold or disposed of in the way of his trade or laid out in the ordinary expenses of his family ; or if any such insolvent, upon such examination, shall not deliver up to such court all such parts of such estate, and all books, papers, and writings relating thereunto, as shall be in his possession, custody, or power (except the necessary wearing apparel of himself, his wife, and children) ; or if any such insolvent shall remove, conceal, or embezzle any part of such estate to the value of one hundred rupees or upwards, or any books of accounts, papers, or writings relating thereto, with intent to defraud his creditors, every such insolvent shall be liable to transportation for life, or for such term not less than seven years as the Supreme Court shall judge, or shall be liable to imprisonment, with or without hard labour, for any term not exceeding seven years.

not discovering his property,

not delivering his books, &c.,

removing, concealing, or embezzling property, books, &c.

Punishment.

148. If any insolvent shall, after an act of insolvency committed, or in contemplation of insolvency, or with intent to defeat the object of the law relating to insolvents, destroy, alter, mutilate, or falsify any of his books, papers, writings, or securities, or make or be privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, every such insolvent shall on conviction be liable to imprisonment, with or without hard labour, for any term not exceeding three years.

Insolvent destroying or falsifying books, &c.

Punishment.

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Insolvent obtaining goods on credit under false pretences,

or removing or concealing goods so obtained.

Punishment.

149. If any insolvent shall within three months next preceding the date of the filing of the petition for sequestration of his estate, under the false colour and pretence of carrying on business and dealing in the ordinary course of trade, obtain on credit from any other person any goods or property with intent to defraud the owner thereof; or if any insolvent shall, within such time and with such intent, remove, conceal, or dispose of any goods or property so obtained, every such insolvent shall on conviction be liable to imprisonment, with or without hard labour, for any term not exceeding two years.

False evidence.

Giving false evidence.

150. Any insolvent or insolvent's wife who shall upon any examination directed or authorized by this Ordinance, and any person who shall upon any examination, or in any affidavit or deposition so authorized or directed, or in any affidavit or deposition, wilfully and corruptly give false evidence, or wilfully and corruptly swear anything which shall be false, being convicted thereof, shall be liable to the penalties prescribed for the offence of giving false evidence in a judicial proceeding.

If at last examination it appears that insolvent has been guilty of any of the following offences, further protection refused; certificate refused or suspended.

151. If at the sitting appointed for the last examination of any insolvent, or at any adjournment thereof, it shall appear to the District Court that the insolvent has committed any of the offences hereinafter enumerated, the court shall refuse to grant the insolvent any further protection from arrest, and if at any sitting or adjourned sitting for the allowance of the certificate of any insolvent, it shall appear that he has committed any of such offences, the court shall refuse to grant such certificate, or shall suspend the same for such time as it shall think fit, and shall in like manner refuse to grant the insolvent any further protection—

Offences.

(i) if the insolvent shall at any time after the filing of the petition for sequestration of his estate, or within two months next preceding the filing of such petition, with intent to conceal the state of his affairs, or to defeat the objects of the law of insolvency, have destroyed any book, paper, deed, writing, or other document relating to his trade, dealings, or estate;

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(ii) if the insolvent shall, with the like intent, have kept or caused to be kept false books, or have made false entries in, or withheld entries from, or wilfully altered or falsified any book, paper, deed, writing, or other document relating to his trade, dealings, or estate ;

(iii) if the insolvent shall have contracted any of his debts by any manner of fraud, or by means of false pretences, or shall by any manner of fraud, or by means of false pretences, have obtained the forbearance of any of his debts by any of his creditors ;

(iv) if the insolvent shall at any time within two months next preceding the filing of the petition for sequestration of his estate, fraudulently in contemplation of insolvency, and not under pressure from any of his creditors, with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have paid or satisfied any such creditor wholly or in part, or have made away with, mortgaged, or charged any part of his property, of what kind soever ;

(v) if the insolvent shall at any time after the filing of the petition for sequestration of his estate, and with intent to diminish the sum to be divided among his creditors, or to give an undue preference to any of his creditors, have concealed from the District Court or his assignees any debt due to or from him, or have concealed or made away with any part of his property, of what kind soever ;

(vi) if the insolvent shall under his insolvency, or at any meeting of his creditors, within three months next preceding the filing of the petition for sequestration of his estate, have attempted to account for any of his property by fictitious losses or expenses ;

(vii) if the insolvent shall, within six months next preceding the filing of the petition for sequestration of his estate, have put any of his creditors to any unnecessary expense by any vexatious and frivolous defence or delay to any action for the recovery of any debt or demand provable under his insolvency, or shall be indebted in costs incurred in any action so vexatiously brought or defended ;

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(viii) if the insolvent shall, at any time after the filing of the petition for sequestration of his estate, have wilfully prevented or withheld the production of any book, paper, deed, writing, or other document relating to his trade, dealings, or estate ;

(ix) if the insolvent (being a trader) shall, during his trading have wilfully, and with intent to conceal the true state of his affairs, have omitted to keep proper accounts, or shall wilfully and with intent to conceal the true state of his affairs have kept his accounts imperfectly, carelessly, and negligently.

On refusal of certificate or protection, the court may grant assignees or creditor a certificate on which they may sue out execution against the insolvent.

152. The assignees for the time being of the estate and effects of any insolvent, when the accounts relating to his estate shall have become records of the court, shall be deemed judgment-creditors of such insolvent for the total amount of the debt which shall by such accounts appear to be due from him to his creditors ; and every creditor of any insolvent immediately after the proof of his debt shall have been admitted, shall be deemed a judgment-creditor of such insolvent, to the extent of such proof ; and the court, when it shall have refused to grant the insolvent any further protection, or shall have refused or suspended his certificate, shall, on the application of such assignees or of any such creditor, grant a certificate in the form R in the Schedule, and every such certificate shall have the effect of a judgment entered up in the said court, until the allowance of the certificate of conformity of such insolvent ; and the assignees, or the creditor to whom, according to such certificate, the insolvent shall be indebted as therein mentioned, shall be thereupon entitled to issue and enforce a writ of execution against the body of such insolvent ; and the production of any such certificate to the secretary of such court shall be sufficient authority to him to issue such writ :

Provided always that every such last-mentioned certificate shall be deemed to have been cancelled and discharged by the allowance of the certificate of conformity of such insolvent from the time of such allowance ;

Provided also that no execution by virtue of any certificate which shall be granted to any creditor or assignees as aforesaid, shall be issued, nor shall any such

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certificate or execution in any manner affect any estate or effects which shall come to or be acquired by the insolvent, after the allowance of his certificate of conformity.

Assignees for the time being may issue execution on such certificate.

153. The assignees for the time being may issue and enforce execution upon any such certificate as last aforesaid, as fully to all intents and purposes as the assignees to whom such certificate shall have been originally granted.

Insolvent taken, not discharged for one year.

154. If any insolvent shall be taken in execution after the refusal of protection, or after the refusal or suspension of his certificate, he shall not be discharged from such execution, until he shall have been in prison for the full period of one year, except by order of the District Court.

List of uncertificated insolvents to be published in the Gazette every six months.

155. Every District Judge shall transmit to the Attorney-General on or before the fifteenth day of January and the fifteenth day of July in each year, the name and residence of every insolvent whose certificate shall have been refused or suspended by such Judge, and who shall then be uncertificated; and the said Attorney-General shall thereupon cause a list, alphabetically arranged, showing the names and residences of all such uncertificated insolvents to be prepared, and published in the Gazette for general information.

Any person refusing to be sworn, or refusing to answer, or not answering fully, or refusing to sign examination, or to produce books, &c., may be committed.

156. If any insolvent, or the wife of any insolvent, shall refuse to make and sign the declaration contained in the Schedule, or if any other person shall refuse to be sworn, or shall refuse to answer any lawful question put by the court, or shall not fully answer any such question to the satisfaction of the court, or shall refuse to sign his examination when reduced into writing (not having any lawful objection allowed by the court), or shall not produce any books, papers, deeds, and writings, or other documents in his custody or power, relating to any of the matters under inquiry, which such insolvent, wife of the insolvent, or person is required by the court to produce, and to the production of which he shall not state any objection allowed

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by the court, it shall be lawful for the court, by warrant, to commit such insolvent, wife of such insolvent, or other person to prison, there to remain without bail until he shall submit himself to such court to be sworn, and full answers make to the satisfaction of such court to all such lawful questions as shall be put by the court, and sign such examination, and produce such books, papers, deeds, writings, and other documents in his custody or power, to the production of which no such objection as aforesaid has been allowed.

Questions to be specified in warrant.

157. If any person be committed by the District Court for refusing to answer or for not fully answering any question put to him by the court, such court shall in its warrant of commitment specify every such question :

Provided that if any person so committed shall bring any habeas corpus in order to be discharged from such commitment, and there shall appear on the return of such habeas corpus any such insufficiency in the form of the warrant whereby such person was committed, by reason whereof he might be discharged, it shall be lawful for the Supreme Court, and such court is hereby required, to commit such person to the same prison, there to remain until he shall conform, unless it shall be shown to such court by the person committed that he has fully answered all lawful questions put to him by the District Court, or if such person was committed for refusing to be sworn or for not signing his examinations, unless it shall appear to the Supreme Court that he had a sufficient reason for the same ;

Provided also that the Supreme Court shall, if required thereto by the person committed, in case the whole of the examination of the person so committed shall not have been stated in the warrant of commitment, inspect and consider the whole of the examination of such person whereof any such question was a part ; and if it shall appear from the whole examination that the answer or answers of the person committed is or are satisfactory, such court shall and may order the person so committed to be discharged.

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Persons disobeying any order of court to be committed.

158. If any person shall disobey any rule or order of the District Court, duly made by such court, for enforcing any of the purposes and provisions of this Ordinance, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions, the court may, by warrant in the form S in the Schedule, commit the person so offending to prison, there to remain without bail until such court, or the Supreme Court, shall make order to the contrary.

If petitioning creditor's debt be not due, or if act of insolvency be not proved, and petition be filed fraudulently or maliciously, court may order satisfaction.

159. If the debt stated by the petitioning creditor in his affidavit, or in his petition for sequestration, and verified by affidavit to be due to him from any person, shall not be really due, or if, after a petition for sequestration filed, it shall not have been proved that the person against whom such petition has been filed had committed an act of insolvency, and it shall also appear that such petition was filed fraudulently or maliciously, the court shall and may, upon petition of the person against whom any such petition was so filed, examine into the same, and order satisfaction to be made to him for the damages by him sustained.

Petitioning creditor compounding with person after insolvency to forfeit his debt and pay the money, &c.

160. If any petitioning creditor shall, after the filing of his petition, receive any money, satisfaction, or security for his debt or any part thereof, whereby such petitioning creditor may receive more for every ten rupees in respect of his debt than the other creditors, such petitioning creditor shall forfeit his whole debt, and shall also repay or deliver up such money, satisfaction, or security, or the full value thereof, to the assignees of such insolvent for the benefit of the creditors of the insolvent.

Concealing insolvent's effects.

Penalty.

Allowance to persons making discovery.

161. Any person who shall wilfully conceal any real or personal estate of the insolvent, and who shall not, within forty-two days after the filing of the petition for sequestration, discover such estate to the court or to the assignees, shall forfeit the sum of one thousand rupees, and double the value of the estate so concealed ; and any person, other than the person who shall have concealed the same, who shall after such time voluntarily discover to the court or to the assignees any part

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of such insolvent's estate not before come to the knowledge of the assignees, shall be allowed five *per centum* thereupon, and such further reward as the assignees, with the consent of the court, shall think fit to be paid out of the estate recovered on such discovery.

Obtaining money, &c., to forbear opposition to, or to consent to allowance of, certificate.

Penalty.

162. If any creditor of any insolvent shall obtain any sum of money, or any property whatever, or security for money, from any person as an inducement for forbearing to oppose or for consenting to the allowance of the certificate of such insolvent, or to forbear to petition for the recall of the same, every such creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money, property, or security so obtained (as the case may be).

Inserting advertisements without authority.

163. Any person who shall insert or cause to be inserted in the Gazette, or in any newspaper, any advertisement under this Ordinance without authority, or knowing the same to be false in any material particular, shall be guilty of an offence, and liable on conviction to punishment by fine or imprisonment as the District Court shall award.

Sections 36 and 37 to apply to Crown debtors.

164. Sections 36 and 37 shall apply and extend to Crown debtors as if the Crown had been specially mentioned in the said sections.

SCHEDULE

[Section 10.]

Form A

THE INSOLVENCY ORDINANCE

DECLARATION OF INSOLVENCY

I, the undersigned *A. B.*, of ————, do hereby declare that I am unable to meet my engagements with my creditors.

Dated at the hour of ———— o'clock (in the forenoon, *or* at noon, *or* in the afternoon, *as the case may be*) this ———— day of ————, 19——.

Witness :

C. D.

(Signed) *A. B.*

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Form B [Section 16.]

THE INSOLVENCY ORDINANCE

PETITION BY A CREDITOR FOR SEQUESTRATION OF HIS DEBTOR'S ESTATE

To the District Court of ————.

The humble petition of ————.

Showeth,

That ———— having resided (*or* carried on business, *as the case may be*) for six months next immediately preceding the date of this petition, within the district of this court, that is to say, at ————, is indebted unto your petitioner in the sum of five hundred rupees (*if two petitioners,* seven hundred rupees, *and if three or more,* one thousand rupees, *as the case may be*), and that your petitioner has been informed and believes that the said ———— did lately commit an act of insolvency within the true intent and meaning of the Insolvency Ordinance.

Your petitioner therefore humbly prays that on proof of the requisites in that behalf the estate of the said ———— may be adjudged insolvent and placed under sequestration.

And your petitioner shall ever pray, &c.

Signed by the petitioner on the ———— day of ————, 19—, in the presence of ————.

If the petition be by partners, alter the form accordingly, and let it be signed by one on behalf of himself and partners.

If the petition be by several, not being partners, then it must be signed by each, and in such case the names of the several petitioners should be stated in the attestation or attestations relating thereto respectively.

If the petitioner cannot speak to the place of residence or business of the debtor, strike out the averment as to that, and annex to the petition a separate affidavit of some person who can depose to the fact.

If the petition be against partners, alter the form accordingly.

Form C [Section 16]

THE INSOLVENCY ORDINANCE

AFFIDAVIT OF TRUTH OF ALLEGATIONS IN PETITION

———— day of ————, 19—.

————, of ————, in the district of ————, the petitioner named in the petition hereunto annexed, maketh oath and saith that the several allegations in the said petition (and in the list annexed thereto, *where the petition is by the insolvent himself*) are true.

Sworn at ————, this ———— day of ————, 19—, before me, ————.

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[Section 16.]

Form D

THE INSOLVENCY ORDINANCE

PETITION BY A PERSON FOR SEQUESTRATION OF HIS OWN ESTATE AS INSOLVENT

The humble petition of ————.

Showeth,

That your petitioner having resided (*or* carried on business, *as the case may be*) for six months next immediately preceding the date of this petition, within the district of this court, that is to say, at ————, and being unable to meet his engagements with his creditors, whose names are inserted in the list to this his petition annexed, has filed a declaration of insolvency in manner and form in that case made and provided, and that your petitioner verily believes that he can make it appear to the satisfaction of the court that his available estate is sufficient to pay his creditors at least two rupees and fifty cents on every ten rupees (*or*, that your petitioner is in actual custody within the walls of the prison at ———— for debt, and has been so since the ———— day of ———— last).

That your petitioner has examined the said list, and that it contains a full and true account of your petitioner's debts and the claims against him, with the names of his creditors and claimants, and the dates of contracting the debts and claims severally, as near as such dates can be stated, the nature of the debts and claims and securities (if any) given for the same, and that there is reasonable ground for disputing so much of the debts as are thereby mentioned as disputed ; and also a true account of the nature and amount of his property, and an inventory of the same and of the debts owing to him, with their dates as nearly as such dates can be stated, and the names of his debtors, and the nature of the securities (if any) which he has for such debts.

Your petitioner therefore humbly prays that on proof of the requisites in that behalf his estate may be adjudged insolvent and placed under sequestration.

And your petitioner shall ever pray, &c.

Signed by the petitioner on the ———— day of ————, 19—, in the presence of ————.

If the petition be by partners, alter the form accordingly, and state the names of the several petitioners in the attestation or attestations relating thereto respectively.

———

[Section 17.]

Form E

THE INSOLVENCY ORDINANCE

ORDER TO PROSECUTE A PETITION FOR SEQUESTRATION IN A PARTICULAR DISTRICT

In the Supreme Court of the Island of Ceylon, the ———— day of ————, 19—.

In the matter of a petition for sequestration as insolvent of the estate of *C. D.*, of ————.

Upon application made to ———— this day by ———— of ———— (counsel *or* proctor) for ————, and upon reading the affidavit of ————, it is hereby ordered that the petition for sequestration as insolvent of the estate of the above-named *C. D.* be prosecuted in the District Court of ————.

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Form F [Section 17.]

THE INSOLVENCY ORDINANCE

ORDER TO CONSOLIDATE PROCEEDINGS

In the Supreme Court of the Island of Ceylon, the ———— day of ————, 19 —.

Ex parte ————.

In the matter of ————.

Upon application made to ———— this day by ———— of ———— (counsel *or* proctor) for ————, and upon reading the affidavit of ————, it is ordered that (*stating the order*).

———

Form G [Section 17.]

THE INSOLVENCY ORDINANCE

ORDER TO TRANSFER A PETITION FOR SEQUESTRATION, &C., FROM ONE DISTRICT COURT TO ANOTHER DISTRICT COURT

In the Supreme Court of the Island of Ceylon, the ———— day of ————, 19 —.

Ex parte ————.

In the matter of ————.

Upon application made to ———— this day by ———— of ———— (counsel *or* proctor) for ————, and upon reading the affidavit of ————, it is ordered that (*stating the order*).

———

Form H [Section 27.]

THE INSOLVENCY ORDINANCE

ORDER FOR AN ATTACHMENT UPON THE ESTATE OF THE INSOLVENT

In the District Court of ————, the ———— day of ————, 19—.

In the matter of ————, an insolvent.

To the Fiscal of the ———— Province.

Whereas the above-named ———— has been adjudged an insolvent under the Insolvency Ordinance, the estate of the said ———— is hereby placed under sequestration in your hands, and you are hereby ordered forthwith to lay an attachment on the property of the said ———— under inventory thereof, and to proceed therein as directed by the said Ordinance, and to return this order with what you have done thereon to this court on or before the ———— day of ———— next.

And for so doing this shall be your sufficient warrant.

A. B.,
District Judge.

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[Section 29.]

Form I

THE INSOLVENCY ORDINANCE

ORDER FOR PETITION FOR SEQUESTRATION TO BE PROCEEDED IN, ON A SUBSTITUTED DEBT

In the District Court of ———, the ——— day of ———, 19—.

In the matter of ———, an insolvent.

Upon application made to the court this day, by ——— of ——— (counsel *or* proctor) for ———, a creditor of the above-named insolvent, and who has proved a debt of sufficient amount to support an adjudication, and the debt of the petitioning creditor having been found by the court to be insufficient to support the adjudication of insolvency against the above-named ———, it is hereby ordered that the petition for sequestration filed against the said ——— on the ——— day of ———, 19—, be proceeded in, and that the costs of &c. (*stating such order as to costs of any of the parties concerned as the court thinks fit*).

A. B.,
District Judge.

———

Form K

[Section 30.]

THE INSOLVENCY ORDINANCE

ORDER ANNULLING ADJUDICATION

In the District Court of ———, the ——— day of ———, 19—.

In the matter of ———.

Upon reading the proceedings in the above matter, and upon hearing (the evidence now adduced, *if the case be so*, and) what was alleged by ———, and being satisfied that the petitioning creditor's debt and act of insolvency (*or specify the particular matter deemed insufficient, as the case may require*) upon which the adjudication of insolvency made against the said ——— on the ——— day of ———, 19—, was grounded, were and are (*or*, was and is) insufficient to support such adjudication, and no other debt or act of insolvency (*or specify the particular matter requisite in lieu of that deemed insufficient, as the case may require*) sufficient to support such adjudication being proved, it is ordered that the adjudication of insolvency made against the said ——— on the said ——— day of ———, 19—, be annulled, and the same is hereby annulled accordingly.

A. B.,
District Judge.

———

Form L

[Section 32.]

THE INSOLVENCY ORDINANCE

SEARCH WARRANT

In the District Court of ———, the ——— day of ———, 19—.

Whereas by evidence upon oath it hath been made to appear to this court, acting in the prosecution of a petition for sequestration filed and now in prosecution against ——— of ———,

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bearing date the ——— of ———, 19—, and under which the said ——— has been adjudged insolvent, that there is reason to suspect and believe that property of the said ——— is concealed in the house (*or other place, describing it, as the case may be*) of one ——— of ———, such house not belonging to the said insolvent: These are therefore, by virtue of the Insolvency Ordinance, to authorize and require you, with necessary and proper assistants, to enter, in the daytime, into the house (*or other place, describing it, as the case may be*) of the said ——— situate at ——— aforesaid, and there diligently to search for the said property, and if any property of the said insolvent shall be there found by you on such search, that you seize the same, to be disposed of and dealt with according to the provisions of the said Ordinance.

Given under my hand in the District Court of ———, this ——— day of ———, 19—.

A. B.,
District Judge.

To the Fiscal of the ——— Province.

(*or* To ———, *if any person is specially appointed by the court.*)

Form M

[Sections 41 and 42.]

THE INSOLVENCY ORDINANCE

FORM OF DECLARATION TO BE MADE BY THE INSOLVENT OR THE INSOLVENT'S WIFE

I, *A. B.*, the person adjudged an insolvent under a petition for sequestration of my estate, filed on the ——— day of ———, 19—, (*or* I, *C. B.*, the wife of *A. B.*, adjudged an insolvent under, &c.), do solemnly promise and declare that I will make true answer to all such questions as may be proposed to me respecting all the property of the said *A. B.*, and all dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said property, to the best of my knowledge, information, and belief.

(Signed) *A. B.*
(*or C. B.*, wife of the said *A. B.*).

Form N

[Section 47.]

THE INSOLVENCY ORDINANCE

ADMISSION OF DEBT TO THE INSOLVENT

I, the undersigned *J. K.*, of ———, do hereby, in open court, confess that I am indebted to *E. F.*, of ———, an insolvent, in the sum of ——— upon the balance of accounts between myself and the said *E. F.*

(Signed) *J. K.*

Witness :

A. B.,
District Judge.

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[Section 47.]

Form O

THE INSOLVENCY ORDINANCE

ORDER FOR PAYMENT OF DEBT ADMITTED IN COURT TO BE DUE TO THE ESTATE OF AN INSOLVENT

In the District Court of ————, the ———— day of ————, 19—.

In the matter of *E. F.*, an insolvent.

Whereas *J. K.*, of ————, in his examination taken the ———— day of ————, 19—, and signed by the said *J. K.*, has admitted that he is indebted to the above-named insolvent in the sum of ———— upon the balance of accounts between the said *J. K.* and the said insolvent, it is hereby ordered that the said *J. K.* do pay to the assignees of the estate and effects of the said insolvent, in full discharge of the sum so admitted, the sum of ———— forthwith (*or if otherwise, state the time and manner of payment*), and that the said *J. K.* do also pay to the said assignees the sum of ———— for the costs of and incident to the summons of the said *J. K.* in this behalf.

A. B.,
District Judge.

(*If the court shall not adjudge the costs of and incident to the summons to be paid by the person summoned, or if the court shall adjudge the assignees to pay to the person summoned his costs out of the estate of the insolvent, alter the form accordingly.*)

———

[Section 125.]

Form Q

THE INSOLVENCY ORDINANCE

CERTIFICATE OF CONFORMITY

I, ————, District Judge of ————, acting in the prosecution of a petition for sequestration of the estate of ————, as insolvent, and bearing date the ———— day of ————, 19—, do certify that the said ———— became insolvent before the date and filing of the said petition within the true intent and meaning of the Insolvency Ordinance and was thereupon adjudged insolvent accordingly ; and I further certify that due notice was given in the Gazette of Ceylon of such petition having been filed and of the adjudication thereon, and that two public sittings for the said insolvent to surrender and conform were duly appointed, the last of which said sittings was appointed to be on the ———— day of ———— last ; and I further certify that such two several sittings were had pursuant to such notice, and that upon the said ———— day of ————, 19—, the said insolvent did surrender himself, and

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did sign such surrender and submit to be examined from time to time upon oath ; and I further certify that the said insolvent did on the ———— day of ———— last finish his examination, and upon such examination made a full disclosure and discovery of his estate and effects, and in all things conformed, and so far as the court can judge there doth not appear any reason to question the truth or fulness of such discovery ; and I further certify that on the ———— day of ————, 19—, in the District Court of ————, I held a public sitting for the allowance of this certificate to the said insolvent (whereof and of the purport whereof the notice required in that behalf was duly given), and having regard to the conformity of the said insolvent to the said Ordinance, and to his conduct as a trader (*or* in relation to his estate) before as well as after his insolvency, I did then and there find the said insolvent entitled to such certificate, and did allow the same ; and I further certify that his insolvency has arisen from unavoidable losses and misfortunes, and that he is entitled to and I do award him this certificate as of the first class ; (*or*, that his insolvency has not wholly arisen from unavoidable losses and misfortunes, and that he is entitled to and I do award him this certificate as of the second class ; *or*, that his insolvency has not arisen from unavoidable losses or misfortunes, and that he is only entitled to and I do only award him this certificate as of the third class).

(*If the certificate be allowed with conditions, the same to be inserted here.*)

Given under my hand in the District Court of ————, this ———— day of ————, 19—.

Signed in the presence of ————.

A. B.,
District Judge.

Form R [Section 152.]

THE INSOLVENCY ORDINANCE

CERTIFICATE TO ASSIGNEES OR TO CREDITOR TO ENTITLE THEM TO ISSUE WRIT OF EXECUTION

In the District Court of ————, the ———— day of ————, 19—.

In the matter of ————, an insolvent.

I hereby certify that *A. B.*, of ————, and *C. D.*, of ——, assignees of the estate and effects of the above-named insolvent, are creditors of the said insolvent as such assignees for the sum of Rs. ———— in trust for the creditors of the said insolvent (*or*, that *E. F.*, of ————, is a creditor of the said insolvent for the sum of Rs. ————), and that the said insolvent is not protected by this court from process against his person.

G. H.,
District Judge.

D 12——J. N. R 7590 (4/60)

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[Section 158.]

Form S

THE INSOLVENCY ORDINANCE

WARRANT AGAINST PERSON DISOBEYING ANY ORDER OF THE COURT

Whereas by an order of this court bearing date the ———— day of ————, 19—, made for enforcing the purposes and provisions of the Insolvency Ordinance, it was ordered that (*as in the order*); and whereas it is now proved that after the making of the said order, that is to say, on this ———— day of ————, 19—, a copy of the said order was duly served on the said ———— personally, and the original order at the same time shown to him, but the said ———— then refused (*or* neglected) to obey the same, and hath not as yet obeyed the said order:

These are therefore to require you forthwith to take into your custody the body of the said ————, and him safely to convey to the prison at ————, and him there to deliver to the keeper of the said prison, together with this precept, and the keeper of the said prison is hereby required to receive the said ———— into his custody and him safely to keep and detain, without bail, until this court or the Supreme Court shall make order to the contrary; and for so doing this shall be your sufficient warrant.

Given under my hand in the District Court of ————, the ———— day of ———— in the year ————.

A. B.,
District Judge.

To the Fiscal of the ———— Province and to the keeper of the prison at ————.

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CHAPTER 98

ARBITRATION

AN ORDINANCE RELATING TO ARBITRATION AND AWARDS, AND TO PROVIDE FOR SUMMARY REFERENCE TO COURTS.

Ordinances Nos. 15 of 1866, 2 of 1889.

[*12th December, 1866.*]

1. This Ordinance may be cited as the Arbitration Ordinance. Short title.

PART I

REFERENCE TO ARBITRATION

2. All matters in dispute between parties, which may form the subject of civil action, and not that of an indictment or criminal proceeding, may be submitted to arbitration. All civil matters may be referred to arbitration.

3. A submission to arbitration may be compulsory by order of court, or voluntary by the consent of parties. Arbitration may be compulsory or voluntary.

PART II

COMPULSORY REFERENCE

4. If at any time after the institution of an action it shall appear to the satisfaction of the court that it relates wholly or in part to matters of mere account of an intricate and complicated character, which cannot conveniently be tried in the ordinary way, it shall be lawful for such court to order that such matters, either wholly or in part, be referred to one or more arbitrators to be nominated by the parties, or if they cannot agree or refuse to nominate them, by the court itself upon such terms as to the costs and otherwise as such court shall think reasonable. The award of the arbitrators or of the umpire shall be reported to the court, and shall, Power of court to direct arbitration.

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subject to the provisions hereinafter contained, be treated as if it were a finding of the court on the particular matter referred to arbitration.

Court may determine any question of law upon which allowance of any item of account may depend.

5. If at the time of making reference, or at any time thereafter, it shall appear to the court, on a report to that effect made by the arbitrators, that the allowance or disallowance of any particular item in such account depends upon a question of law fit to be decided by the court, it shall be lawful for such court to try and determine such question, and the finding of the court thereupon shall be taken and acted upon by the arbitrators as conclusive.

Power to send back to arbitrators.

6. In every case where reference shall be made to arbitration by the order of court as aforesaid, the court shall, in addition to the general power to remit conferred upon it by section 15, have power from time to time to remit the matters referred, or any of them, for the reconsideration and redetermination of the said arbitrators or umpire upon such terms as to costs and otherwise as to the court may seem proper.

If action commenced by one party after all have agreed to arbitration, court may stay proceedings.

7. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any existing or future differences between them shall be referred to arbitration, and any one or more of the said parties, or any person claiming through or under them, shall nevertheless commence any action against the other party, or against any person claiming through or under them, in respect of the matters so agreed to be referred, it shall be lawful for the court in which the action is brought, on application by the defendants, or any of them, upon being satisfied that no sufficient reason exists why such matters cannot be referred to arbitration according to such agreement as aforesaid, and that the defendants or any of them were, at the time of the bringing of such action, and still are, ready and willing to join and concur in all acts necessary and proper for causing such matters to be decided by arbitration, to make an order staying all proceedings

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in such action, and compelling reference to arbitration on such terms as to costs and otherwise as to such court may seem fit:

Provided always that any such rule or order may, at any time afterwards, be discharged or varied as justice may require.

Proceedings before, and power of such arbitrator.

8. The proceedings upon any compulsory arbitration shall, unless otherwise directed hereby, or by the deed or instrument authorizing the reference, be conducted in like manner, and subject to the same rules as to the power of the arbitrator and of the court, the attendance of witnesses, the production of documents, the enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of court.

PART III

Proceedings Before Arbitrators *

Power of arbitrators appointed under order of court or in pursuance of submission which may be made on rule of court.

9. When a reference is made to arbitration by an order of court, or in pursuance of an agreement that such reference shall be made an order of court, the court shall issue the same process to the parties and witnesses whom the arbitrators or umpire may desire to have examined as the court is authorized to issue in suits tried before it; and persons not attending in consequence of such process, or making any other default, or refusing to give their testimony, or being guilty of any contempt to the arbitrators or umpire during the investigation of the suit, shall be made subject to the like disadvantages, penalties, and punishments, by order of the court, on the representation of the arbitrators or umpire, as they would incur for the same offence in suits tried before the court.

When arbitrators may administer oath; false oath before them made perjury.

10. When in any order of reference, or in any submission to arbitration, containing an agreement that the submission shall be made a rule or order of court, it shall be ordered or agreed that the parties and

* So much of the provisions of this Part as regards voluntary references repealed by Ordinance No. 2 of 1889.

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witnesses upon such references shall be examined upon oath, it shall be lawful for the arbitrators or umpire, or any one arbitrator, and they are hereby authorized and required, to administer oaths to such witnesses, or to take their affirmation, in cases where affirmation is allowed by law instead of oath ; and if, upon such oath or affirmation, any person making the same shall wilfully and corruptly give false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly.

Award to be made in three months unless parties or court enlarge time.

11. The arbitrators acting under any deed of submission or compulsory order of reference, shall make their award under their hand and (unless such document or order shall contain a different limit of time) within three months after they shall have been appointed and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the court or the parties by consent in writing may enlarge the time for making the award. If no period be stated for the enlargement in such consent or such order for such enlargement, it shall be deemed to be an enlargement for one month ; and, in any case when an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time, or their extended time, to expire without making an award, or shall have delivered to any party or to the umpire, a notice in writing stating that they cannot agree.

PART IV

AWARD *

Award must be signed by party making, and submitted with proceedings, depositions, and exhibits.

12. When an award in a suit shall be made either by the arbitrators or the umpire, it shall be submitted to the court under the signature of the person by whom it may be made, together with all the proceedings, depositions, and exhibits in the suit.

* So much of the provisions of this Part as regards voluntary references repealed by Ordinance No. 2 of 1889.

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Arbitrators may state their award in the form of a special case.

13. It shall be lawful for the arbitrators or umpire, upon any reference, by an order of court, if they shall think fit, and if it is not provided to the contrary, to state their award as to the whole or any part thereof, in the form of a special case for the opinion of the court.

When court may modify or correct an award.

14. The court may, on the application of either party, modify or correct an award, where it appears that a part of the award is upon matters not referred to the arbitrators (provided that such part can be separated from the other part and does not affect the decision on the matter referred), or where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision. The court may also, on such application, make such order as it thinks just respecting the costs of the arbitration, if any question arise respecting such costs and the award contains no sufficient provision concerning them.

When court may remit award.

15. In any of the following cases the court shall have power to remit the award or any of the matters referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it may think proper, that is to say—

(*a*) if the award has left undetermined some of the matters referred to arbitration, or if it determine matters not referred to arbitration ;

(*b*) if the award is so indefinite as to be incapable of execution ;

(*c*) if an objection to the legality of the award is apparent upon the face of the award.

Setting aside of awards.

16. No award shall be liable to be set aside except on the ground of corruption or misconduct of the arbitrators or umpire. Any application to set aside an award shall be made within ten days after the same has been submitted to the court and notified to the parties in the suit, and not thereafter.

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Judgment upon awards.

17. If the court shall not see cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application shall have been made to set aside the award, or if the court shall have refused such application, the court shall proceed to pass judgment according to the award, or according to its own opinion on the special case if the award shall have been submitted to it in the form of a special case ; and the judgment which shall be so given shall be carried into execution in the same manner as other decrees of the court. In every case in which judgment shall be given according to the award, the judgment shall be final, and shall not be subject to appeal. Where judgment shall be given in any case of compulsory reference, such judgment shall be subject to appeal.

Appeal.

Proceedings on awards not made a rule of court.

18. If there be no cause pending in court, and the submission has not been made a rule of court, the mode of enforcing the award is by action on the bond of submission.

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CHAPTER 99

FOREIGN PROBATES

AN ORDINANCE TO PROVIDE FOR THE RECOGNITION AND RESEALING IN CEYLON OF PROBATES AND LETTERS OF ADMINISTRATION GRANTED IN ANY OTHER PART OF HER MAJESTY'S REALMS AND TERRITORIES.

Ordinances Nos. 3 of 1937, 1 of 1938, 68 of 1938.

[*1st April, 1940.*]

Short title.

1. This Ordinance may be cited as the British Courts Probates (Resealing) Ordinance.

Competent courts.

2. The District Court of Colombo or the District Court having jurisdiction over the place where—

(*a*) the Ceylon estate or any part of the Ceylon estate of the deceased person is situate, or

(*b*) the executor or administrator, or the attorney of the executor or administrator, of that part of the estate of the deceased person which is being administered outside Ceylon is resident,

shall be a competent court for the purposes of this Ordinance.

Resealing in Ceylon of probates and letters of administration granted outside Ceylon.

3. Where a court of probate in any part of Her Majesty's Realms and Territories or a British court in a foreign country has, either before or after the date on which this Ordinance comes into operation, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with a competent court, be sealed with the seal of that court, and thereupon shall be of like force and effect, and have the same operation in Ceylon as if granted by that court.

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Conditions to be fulfilled before sealing.
[§ 2, 68 of 1938.]

4. The court shall, before sealing a probate or letters of administration under this Ordinance, be satisfied—

(*a*) that testamentary duty has been paid or secured in respect of so much, if any, of the estate as is liable to testamentary duty in Ceylon ; and

(*b*) in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in Ceylon to which the letters of administration relate ;

and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person.

Security for payment of debts.

5. The court may also, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Ceylon.

Duplicate or copy of probate or letters of administration.

6. For the purposes of this Ordinance, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

Certain duties and liabilities of an executor or administrator under the Civil Procedure Code not affected.

7. The sealing of a probate or letters of administration under section 3 shall not affect the liability of an executor or administrator—

(*a*) to file, within a time appointed by the court, an inventory of the deceased person's property and effects situated in Ceylon, with a valuation of the same as required by section 538 of the Civil Procedure Code ;

(*b*) to file, on or before the expiration of twelve months from the date of such sealing, a true account, as regards the deceased's property and effects situated in Ceylon, of his executorship or administration, as the case may be, verified on oath or affirmation, with all receipts and vouchers attached, as required by section 553 of the said Code ;

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(c) to be compelled to make a judicial settlement of his account as executor or administrator, with respect to the deceased's property situated in Ceylon, under the provisions of Chapter LV of the said Code.

Construction of certain references in Civil Procedure Code and Stamp Ordinance relating to probate and letters of administration.

8. For the purposes of all estates to which this Ordinance applies—

(a) all references in the Civil Procedure Code to any court as being the court from which grant of probate or letters of administration issued shall be construed as references to the court by which the probate or letters of administration have been sealed under this Ordinance, and all references to the grant of probate or letters of administration or to an order absolute declaring a person entitled to such grant shall be construed as referring to the sealing of probate or letters of administration under this Ordinance ; and

(b) all references in the Stamp Ordinance to the grant of probate or letters of administration shall be deemed to include a reference to the sealing of probate or letters of administration under this Ordinance, and all references to probate or letters of administration shall be deemed to include a reference to any probate or letters of administration or to any duplicate or certified copy thereof sealed under this Ordinance.

Rules of court.

9. (1) It shall be competent for the Judges of the Supreme Court, or any three of them, of whom the Chief Justice shall be one, to frame rules of court for regulating the procedure and practice, including fees and costs, of and incidental to an application for sealing a probate or letters of administration under this Ordinance.

(2) The matters for which rules may be framed under subsection (1) shall be deemed to be added to the list of matters for which rules may be framed, constituted and established under section 49 of the

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Courts Ordinance; and the provisions of that section of that Ordinance shall apply accordingly to any rules of court framed for the purposes of this Ordinance.

Interpretation.

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

"British court in a foreign country" means any British court having jurisdiction out of Her Majesty's Realms and Territories in pursuance of an Order of Her Majesty in Council, whether made under any Act of the Parliament of the United Kingdom or otherwise;

"competent court" means a District Court designated as a competent court under section 2;

"court of probate" means any court or authority by whatever name designated, having jurisdiction in matters of probate;

"Her Majesty's Realms and Territories" includes any British protectorate or protected state and any territory in respect of which a mandate on behalf of the League of Nations has been accepted by Her Majesty;

"probate" and "letters of administration" include confirmation in Scotland, and any instrument having in any part of Her Majesty's Realms and Territories the same effect which under English law is given to probate and letters of administration respectively;

"testamentary duty" includes estate duty and any duty payable on the value of the estate and effects for which probate or letters of administration is or are granted.

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CHAPTER 100

PRIVY COUNCIL APPEALS

AN ORDINANCE FOR REGULATING THE PROCEDURE ON APPEALS FROM THE SUPREME COURT OF CEYLON TO HER MAJESTY IN COUNCIL.

Ordinances Nos. 31 of 1909, 19 of 1918.

[*6th May, 1910.*]

1. This Ordinance may be cited as the Appeals (Privy Council) Ordinance. Short title.

2. In this Ordinance and in the rules in the Schedule, unless the context otherwise requires— Interpretation

"appeal" means appeal to Her Majesty in Council;

"court" means the Supreme Court of Ceylon consisting of either not less than three Judges, or of not less than two Judges, or of a single Judge, according as the matter in question is one which by virtue of the enactment or enactments constituting and regulating the Supreme Court or of any rules made thereunder properly appertains to a court of not less than three Judges, or to a court of not less than two Judges, or of a single Judge;

"Her Majesty" includes Her Majesty's Heirs and Successors;

"judgment" includes decree, order, sentence, or decision;

"record" means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence, and judgments) proper to be laid before Her Majesty in Council on the hearing of the appeal;

'Registrar" means the Registrar or other proper officer having the custody of the records in the court appealed from.

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Appeals from Supreme Court to Privy Council how regulated.

3. From and after the commencement of this Ordinance the right of parties to civil suits or actions in the Supreme Court to appeal to Her Majesty in Council against the judgments and orders of such court shall be subject to and regulated by—

(*a*) the limitations and conditions prescribed by the rules set out in the Schedule, or by such other rules as may from time to time be made by Her Majesty in Council ; and

(*b*) such general rules and orders of court as the Judges of the Supreme Court may from time to time make in exercise of any power conferred upon them by any enactment for the time being in force.

Power of Supreme Court to regulate procedure under Ordinance.

4. (1) The Judges of the Supreme Court or any three of them, of whom the Chief Justice or Acting Chief Justice shall be one, may from time to time make such general rules and orders of court as to them shall seem meet for regulating the form and manner of proceeding, where not specially provided for by the rules in the Schedule or by any rules made by Her Majesty in Council, to be observed in any proceedings before the Supreme Court under this Ordinance or under such rules as aforesaid.

(2) In particular and without prejudice to the generality of the power conferred by the foregoing subsection such rules may—

(*a*) declare in any case where express provision in that behalf is not made by the enactments constituting and regulating the Supreme Court, whether the several matters and proceedings referred to in the rules in the Schedule properly appertain to a court of not less than three Judges, or to a court of not less than two Judges, or to a single Judge ;

(*b*) require the appellant to deposit the amount required to defray the cost of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy of the record of the action, and prescribe the time, which shall not exceed three months from the date

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of the hearing of the application for leave to appeal, within which such deposit shall be made ;

(c) prescribe the fees to be paid to the Registrar of the Supreme Court for examining and certifying copies of the record for transmission to the Registrar of the Privy Council.

SCHEDULE

RULES

Amount in respect of which an appeal lies as of right.

1. Subject to the provisions of these rules, an appeal shall lie—

(a) as of right, from any final judgment of the court, where the matter in dispute on the appeal amounts to or is of the value of five thousand rupees or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of five thousand rupees or upwards ; and

Appeals at the discretion of the court.

(b) at the discretion of the court, from any other judgment of the court, whether final or interlocutory, if, in the opinion of the court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

Application for leave to appeal.

2. Application to the court for leave to appeal shall be made by petition within thirty days from the date of the judgment to be appealed from, and the applicant shall, within fourteen days from the date of such judgment, give the opposite party notice of such intended application.

Security to be given by appellant.

3. Leave to appeal under rule 1 shall only be granted by the court in the first instance—

(a) upon the condition of the appellant within a period of one month, from the date of the hearing of the application for leave to appeal, unless the court shall, on the ground of the absence of the appellant from Ceylon or for some other special cause, on application made to it, before the expiration of such period have granted an extension thereof, entering into good and sufficient security, to the satisfaction of the court, in a sum not exceeding three thousand rupees for the due prosecution of the appeal, and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the appellant to pay the respondent's costs of the appeal (as the case may be) ;

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Other conditions.

(b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purpose of procuring the preparation of the record and the dispatch thereof to England as the court, having regard to all the circumstances of the case, may think it reasonable to impose.

Revocation of acceptance of security.

4. At any time before giving final leave to appeal the court may, upon cause shown, revoke the acceptance of any such security and make further direction thereon.

Power to order further security.

5. If at any time after final leave to appeal is allowed, but before the transmission of the copy of the record to Her Majesty in Council, such security appears inadequate, the court may order the appellant to furnish within a specified time other and sufficient security.

Failure to comply with order.

6. If the appellant fails to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order in that behalf of Her Majesty in Council, and in the meantime execution of the decree appealed against shall not be stayed.

Judgment to be executed on security being given for restitution.

7. Where the judgment appealed from requires the appellant to pay money or perform a duty, the court shall have power, when granting leave to appeal, to direct that the said judgment shall be carried into execution if the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the court, for the due performance of such order as Her Majesty in Council shall think fit to make thereon.

Court may stay execution on appellant giving security.

8. Provided, nevertheless, that if the appellant shall establish to the satisfaction of the court that real and substantial justice requires that, pending such appeal, execution should be stayed, the court may order the execution of such judgment to be stayed if the appellant shall give sufficient security for the due performance of such order as Her Majesty in Council shall think fit to make thereon.

Security when not required in case of immovable property.

9. In any case where the subject of litigation shall consist of immovable property, and the judgment appealed from shall not change, affect, or relate to the actual occupation thereof, no security shall be demanded, either from the respondent or appellant, for the performance of the judgment to be pronounced or made upon such appeal; but if such judgment shall change, affect, or relate to the occupation of any such property, then such security shall not be of greater amount than may be necessary to secure the restitution free from all damage or loss of such property or of the intermediate profit which, pending any such appeal, may probably accrue from the intermediate occupation thereof.

Security in case of movable property.

10. In any case where the subject of litigation shall consist of money or other chattels, or of any personal debt or demand, the security to be demanded, either from the respondent or appellant, for the performance of the judgment to be pronounced or made upon such appeal shall be either a bond to be entered into in the amount or value of such subject of litigation by one or more sufficient surety or sureties, or such security shall be given by way of mortgage or voluntary condemnation of or upon some immovable property situate and lying within Ceylon, and being of the full value of such subject of litigation over and above the amount of all mortgages and charges of whatever nature upon or affecting the same.

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11. The preparation of the record shall be subject to the supervision of the court, and the parties may submit any disputed question arising in connection therewith to the decision of the court, and the court shall give such directions thereon as the justice of the case may require.

Preparation of record subject to supervision of court.

12. The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the appeal, and generally to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the record.

Exclusion of documents from record.

13. Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record as finally printed (whether in Ceylon or in England) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

Objection to inclusion of any document.

14. The record shall be printed in accordance with the rules set forth in the Appendix hereto. It may be so printed either in Ceylon or in England.

Printing of record.

15. Where the record is printed in Ceylon, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council forty copies of such record, one of which copies he shall certify to be correct by signing his name on or initialling every eighth page thereof, and by affixing thereto the seal of the court.

Procedure when record is printed in Ceylon.

16. Where the record is to be printed in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

Procedure when record is to be printed in England.

17. Where part of the record is printed in Ceylon and part is to be printed in England, rules 15 and 16 shall, as far as practicable, apply to such parts as are printed in Ceylon and such as are to be printed in England respectively.

Procedure where part of record is printed in Ceylon and part is to be printed in England.

18. The reasons given by the Judge, or any of the Judges, for or against any judgment pronounced in the course of the proceedings out of which the appeal arises shall by such Judge or Judges be communicated in writing to the Registrar, and shall by him be transmitted to the Registrar of the Privy Council at the same time when the record is transmitted.

Reasons for judgment of court to be dispatched.

19. Where there are two or more applications for leave to appeal arising out of the same matter, and the court is of opinion that it would be for the convenience of the Lords

Consolidation of appeals.

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of the Judicial Committee and all parties concerned that the appeals should be consolidated, the court may direct the appeals to be consolidated, and grant leave to appeal by a single order.

Withdrawal of appeal before final leave to appeal is allowed.

20. An appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his appeal on such terms as to costs and otherwise as the court may direct.

When may appeal be dismissed for non-prosecution before final leave is granted.

21. Where an appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such order, fails thereafter to apply, within one week from the date of his having so complied, to the court for an order granting him final leave to appeal, the court may, on an application in that behalf made by the respondent, or of its own motion, on such notice to the parties as it shall think reasonable in the circumstances, rescind the order granting conditional leave to appeal, and declare the appeal to stand dismissed for non-prosecution, notwithstanding the appellant's compliance with the conditions imposed by such order, and may give such directions as to the costs of the appeal and the security entered into by the appellant as the court shall think fit, or make such further or other order in the premises as, in the opinion of the court, the justice of the case requires.

Application for final leave to appeal.

22. On an application for final leave to appeal, the court may inquire whether notice or sufficient notice of the application has been given by the appellant to all parties concerned, and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the court, the justice of the case requires.

Prosecution of appeal after final leave to appeal has been granted.

23. An appellant who has obtained final leave to appeal shall prosecute his appeal in accordance with the rules for the time being regulating the general practice and procedure in appeals to Her Majesty in Council.

Withdrawal of appeal after final leave to appeal has been granted.

24. Where an appellant, having obtained final leave to appeal, desires, prior to the dispatch of the record to England, to withdraw his appeal, the court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the court may think fit to direct.

When may appeal be dismissed for non-prosecution after final leave is granted.

25. Where an appellant having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the dispatch of the record to England, the court may, on an application in that behalf made by the respondent, or of its own motion, on such notice to the parties as it shall think reasonable in the circumstances, declare the appeal to stand dismissed for non-prosecution without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the court may think fit to direct.

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Death or change of status of a party to the appeal before the dispatch of the record to England.

26. Where at any time between the order granting final leave to appeal and the dispatch of the record to England the record becomes defective by reason of the death, or change of status, of a party to the appeal, the court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the court, is the proper person to be substituted or entered on the record in place of, or in addition to, the party who has died, or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express Order of Her Majesty in Council.

Death or change of status of a party to the appeal after dispatch of the record to England.

27. Where the record subsequently to its dispatch to England becomes defective by reason of the death, or change of status, of a party to the appeal, the court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the court, is the proper person to be substituted, or entered on the record in place of, or in addition to, the party who has died, or undergone a change of status.

Printing of case.

28. The case of each party to the appeal may be printed either in Ceylon or in England, and shall, in either event, be printed in accordance with the rules set forth in the Appendix hereto, every tenth line thereof being numbered in the margin, and shall be signed by at least one of the counsel who attends at the hearing of the appeal, or by the party himself if he conducts his appeal in person.

Further provisions.

29. The case shall consist of paragraphs numbered consecutively, and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. References by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed in the margin, and care shall be taken to avoid, as far as possible, the reprinting in the case of long extracts from the record. The taxing officer, in taxing the costs of the appeal, shall, either of his own motion or at the instance of the opposite party, inquire into any unnecessary prolixity in the case, and shall disallow the costs occasioned thereby.

Taxation of costs.

30. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in Ceylon, such costs shall be taxed by the proper officer of the court in accordance with the rules for the time being regulating taxation in the court.

Execution of Order of Her Majesty in Council.

31. Any Order which Her Majesty in Council may think fit to make on an appeal from a judgment of the court may be enforced and executed in manner hereinafter appearing :—

(*a*) whoever desires to enforce or to obtain execution of any Order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or Order made in appeal and sought to be enforced or executed, to the court ;

(*b*) such court shall, when the court which made the first decree appealed from is the Supreme Court, enforce and execute such Order in the manner and according

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to the rules applicable to the enforcement and execution of its original decrees ; but when the court which made the first decree appealed from is a court other than the Supreme Court, shall transmit the Order of Her Majesty to the court which made such decree, or to such other court as Her Majesty by Her said Order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same ; and the court to which the said Order is so transmitted shall enforce and execute it accordingly, in the manner and according to the rules applicable to the enforcement and execution of its original decrees.

Right to admit appeal without reference to these rules.

32. Nothing in these rules contained shall be deemed to interfere with the right of Her Majesty upon the humble petition of any person aggrieved by any judgment of the court, to admit his appeal therefrom upon such conditions as Her Majesty in Council shall think fit to impose.

[Rules 14 and 28.]

APPENDIX

1. Records and cases in appeals to Her Majesty in Council shall be printed in the form known as demy quarto (i.e., 54 ems in length and 42 ems in width).

2. The size of the paper used shall be such that the sheet when folded and trimmed will be 11 inches in height and 8½ inches in width.

3. The type to be used in the text shall be pica type, but long primer shall be used in printing accounts, tabular matter, and notes.

4. The number of lines in each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

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CHAPTER 101

CIVIL PROCEDURE CODE

AN ORDINANCE TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE PROCEDURE OF THE CIVIL COURTS.

Ordinances
Nos. 2 of 1889,
12 of 1895,
23 of 1901,
12 of 1904,
14 of 1907,
31 of 1909,
9 of 1917,
39 of 1921,
42 of 1921,
21 of 1927,
23 of 1927,
25 of 1927,
15 of 1930,
26 of 1930,
4 of 1940,
18 of 1944,
39 of 1945,
Acts
Nos. 7 of 1949,
43 of 1949,
20 of 1954,
48 of 1954.

[*1st August, 1890.*]

CHAPTER I

PRELIMINARY

Short title.

1. This Ordinance may be cited as the Civil Procedure Code.

Where no provision is made special directions to be given by Supreme Court.

4.* In every case in which no provision is made by this Ordinance, the procedure and practice hitherto in force shall be followed, and if any matter of procedure or practice for which no provision is made by this Ordinance or by any law for the time being in force shall after this Ordinance comes into operation arise before any court, such court shall thereupon make application to the Supreme Court for, and the Supreme Court shall and is hereby required to give, such special orders and directions thereupon as the justice of the case shall require :

Provided always that nothing in this Ordinance contained shall be held in any way to affect or modify

* Sections 2 and 3 omitted.

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any special rules of procedure which, under or by virtue of the provisions of any Statute of the United Kingdom or of any enactment now in force, may have from time to time been laid down or prescribed to be followed by any civil court in Ceylon in the conduct of any action, matter, or thing of which any such court can lawfully take cognizance, except in so far as any such provisions are by this Ordinance expressly repealed or modified.

Interpretation.

5. The following words and expressions in this Ordinance shall have the meanings hereby assigned to them, unless there is something in the subject or context repugnant thereto :—

" action " is a proceeding for the prevention or redress of a wrong ;

" Attorney-General " includes also the Solicitor-General and any Crown Counsel specially authorized by the Attorney-General to represent the Attorney-General ;

" cause of action " is the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury ;

[§ 2, 39 of 1945.] " chief clerk " or " clerk ", in relation to a Court of Requests, includes an additional or deputy chief clerk or clerk ;

" civil court " means a court in which civil actions may be brought ;

" court " means a Judge empowered by law to act judicially alone, or a body of Judges empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially ;

" decree " means the formal expression of an adjudication upon any right claimed or defence set up in a civil court, when such adjudication, so far as regards the court expressing it, decides the action or appeal ;

(An order rejecting a plaint is a decree within this definition.)

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" foreign court " means a court situate beyond the limits of, and not having authority in, Ceylon ;

" foreign judgment " means the judgment of a foreign court ;

" Her Majesty " or " the Queen " means the Sovereign for the time being of Ceylon ;

" Judge " means the presiding officer of a court, and includes Judges of the Supreme Court, District Judges, and Commissioners of Requests ;

" judgment " means the statement given by the Judge of the grounds of a decree or order ;

" judgment-creditor " and " decree-holder " mean any person in whose favour a decree or order capable of execution has been made, and include any transferee of such decree or order ;

" judgment-debtor " means any person against whom a decree or order capable of execution has been made ;

" order " means the formal expression of any decision of a civil court which is not a decree ;

" original court " includes District Courts and Courts of Requests ;

" public officer " includes all officers or servants employed in Ceylon by or under the Government of the United Kingdom or the Government of Ceylon ;

" recognized agent " includes the persons designated under that name in section 25 and no others ;

" secretary ", in relation to a District Court, includes an additional, deputy or assistant secretary ; [§ 2, 39 of 1945.]

" signed " includes " marked " when the person making the mark is unable to write ;

" the Governor-General " [3] means the Governor-General and Commander-in-Chief of the Island, and includes the Officer for the time being Administering the Government of the Island and, to the extent to which a Deputy for the Governor-General is authorized to act, that Deputy ;

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"the Island" and "this Island" mean respectively the Island of Ceylon and its dependencies;

"written" and "writing" include "printed" and "print" and "lithographed" and "lithograph" respectively.

PART I

OF ACTIONS IN GENERAL

CHAPTER II

General Provisions

Action.

6. Every application to a court for relief or remedy obtainable through the exercise of the court's power or authority, or otherwise to invite its interference, constitutes an action.

Procedure of an action.

7. The procedure of an action may be either "regular" or "summary".

Illustrations

In actions of which the procedure is regular, the person against whom the application is made is called upon to formally state his answer to the case which is alleged against him in the application before any question of fact is entertained by the court, or its discretion thereon is in any degree exercised.

In actions of which the procedure is summary, the applicant simultaneously with preferring his application supports with proper evidence the statement of fact made therein; and if the court in its discretion considers that a prima facie case is thus made out—

(*a*) either the order sought is immediately passed against the defendant before he has been afforded an opportunity of opposing it, but subject to the expressed qualification that it will only take effect in the event of his not showing any good cause against it on a day appointed therein for the purpose;

(*b*) or a day is appointed by the court for entertaining the matter of the application on the evidence furnished, and notice is given to the defendant that he will be heard in opposition to it on that day if he thinks proper to come before the court for that purpose.

Procedure of action to be ordinarily regular.

8. Save and except actions in which it is by this Ordinance specially provided that proceedings may be taken by way of summary procedure, every action shall commence and proceed by a course of regular procedure, as hereinafter prescribed.

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CHAPTER III

Of The Court Of Institution Of Action

Institution of actions : In what court.

9. Subject to the pecuniary or other limitations prescribed by any law, action shall be instituted in the court within the local limits of whose jurisdiction—

(*a*) a party defendant resides ; or

(*b*) the land in respect of which the action is brought lies or is situate in whole or in part ; or

(*c*) the cause of action arises ; or

(*d*) the contract sought to be enforced was made.

When one of two or more courts may entertain an action.

When it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any immovable property is situate, 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 action relating to that property ; and its decree in the action shall have the same effect as if the property were situate within the local limits of its jurisdiction :

Provided that the action is one with respect to which the court is competent as regards the nature and value of the action to exercise jurisdiction.

Of application for withdrawal and transfer of action.

10. Any of the parties to an action which is pending in any original court may, before trial, and after notice in writing to the other parties of his intention so to do, apply to the Supreme Court in manner in section 42 of the Courts Ordinance prescribed, for the withdrawal of such action from the court in which it is pending, and for the transfer of it for trial to any other court competent to try the same in respect of its nature and the amount or value of its subject-matter. And the Supreme Court may, on any such application, after hearing such of the parties as desire to be heard, and on being satisfied that such withdrawal and transfer are desirable for any of the reasons given in that section, withdraw any such action pending in any such court, and transfer it for trial to any other such court as aforesaid, upon any terms that the said Supreme Court shall think fit. When the action might have been

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instituted in any one of several courts, the balance of convenience only shall be deemed sufficient cause for such withdrawal and transfer to one of the alternative courts.

Stamp duty.

In no case in which any action is so transferred as aforesaid from one court to another shall any stamp fee be leviable in the court to which the action is transferred on any pleading or exhibit on which the proper stamp fee has been paid in the court from which the action is so transferred.

CHAPTER IV

Of Parties And Their Appearances, Applications, And Acts

Plaintiffs.

11. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief for such relief as he or they may be entitled to, without any amendment of the plaint for that purpose. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the court in disposing of the costs of the action otherwise directs.

Where joint tenants or tenants in common.

12. Where two or more persons are entitled to the possession of immovable property as joint tenants or tenants in common, one or more of them may maintain an action in respect of his or their undivided shares in the property in any case where such an action might be maintained by all.

Substituted and added plaintiffs.

13. Where an action has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the action, if satisfied that the action has been so commenced through a bona fide mistake, and that it is necessary

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for the determination of the real matter in dispute so to do, order any other person or persons, with his or their consent, to be substituted or added as plaintiff or plaintiffs, upon such terms as the court thinks just.

Defendants.

14. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Who may be joined as parties defendant.

15. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Where numerous parties, one may sue or defend for all.

Notice.

16. Where there are numerous parties having a common interest in bringing or defending an action, one or more of such parties may, with the permission of the court, sue or be sued, or may defend in such an action on behalf of all parties so interested. But the court shall in such case give, at the expense of the party applying so to sue or defend, notice of the institution of the action to all such parties, either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable, then) by public advertisement, as the court in each case may direct.

Misjoinder not to defeat action.

17. No action shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this Ordinance shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

If the consent of anyone who ought to be joined as a plaintiff cannot be obtained, he may be made a defendant, the reasons therefor being stated in the plaint.

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Parties improperly joined may be struck out.

18. (1) The court may on or before the hearing, upon the application of either party, and on such terms as the court thinks just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out ; and the court may at any time, either upon or without such application, and on such terms as the court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added.

Addition of parties.

(2) Every order for such amendment or for alteration of parties shall state the facts and reasons which together form the ground on which the order is made. And in the case of a party being added, the added party or parties shall be named, with the designation " added party ", in all pleadings or processes or papers entitled in the action and made after the date of the order.

Intervention not otherwise allowed.

19. No person shall be allowed to intervene in a pending action otherwise than in pursuance of, and in conformity with, the provisions of the last preceding section. And no person shall be added as plaintiff, or as the next friend of a plaintiff, without his own consent thereto :

Except in cases under section 16.

Provided however that any person on whose behalf an action is instituted or defended under section 16 may apply to the court to be made a party, and all parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons.

Conduct of the action.

20. The court may give the conduct of the action to such plaintiff as it deems proper.

Amendment of plaint.

21. Where a defendant is added, the plaint shall, unless the court direct otherwise, be amended in such manner as may be necessary, and a copy of the amended plaint shall be served on the new defendant and on the original defendants.

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Objections for non-joinder or misjoinder to be taken before hearing.

22. All objections for want of parties, or for joinder of parties who have no interest in the action, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the hearing. And any such objection not so taken shall be deemed to have been waived by the defendant.

Plaintiffs (or defendants) may authorize one of them to act for them.

23. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any proceeding under this Ordinance ; and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any such proceeding. The authority shall be in writing signed by the party giving it, and shall be filed in court.

CHAPTER V

Of Recognized Agents And Proctors

Appearances may be by party in person, his recognized agent, or proctor.

24. Any appearance, application, or act in or to any court, required or authorized by law to be made or done by a party to an action or appeal in such court, except only such appearances, applications, or acts as by any law for the time being in force only advocates or proctors are authorized to make or do, and except when by any such law otherwise expressly provided, may be made or done by the party in person, or by his recognized agent, or by a proctor duly appointed by the party or such agent to act on behalf of such party :

Provided that any such appearance shall be made by the party in person, if the court so directs. An advocate, instructed by a proctor for this purpose, represents the proctor in court.

Recognized agents.

25. The recognized agents of parties by whom such appearances and applications may be made or acts may be done are—

(*a*) the Attorney-General, on behalf of the Crown in respect of any court ; who is also authorized to

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depute his power of appointing a proctor on behalf of the Crown in respect to any court to any person by a written document to be signed by the Attorney-General, and to be filed in that court ;

(*b*) persons holding general powers of attorney from parties not resident within the local limits of the jurisdiction of the court within which limits the appearance or application is made or act done, authorizing them to make such appearances and applications, and do such acts on behalf of such parties ; which power, or a copy thereof certified by a proctor or notary, shall in each case be filed in the court ;

(*c*) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance or application is made or act done, in matters connected with such trade or business only, where no other agent is expressly authorized to make such appearances and applications and do such acts ;

(*d*) in Courts of Requests, any person appointed in writing in that behalf by the Attorney-General or by any Crown Counsel empowered to act within the province or district in which the court is situate, or by the Government Agent or Collector of Customs of such district to represent the Crown as a party plaintiff ;

(*e*) in Courts of Requests, any person specially allowed by the Commissioner on sufficient cause to represent any party.

Processes served on recognized agent, effectual.

26. (1) Processes served on the recognized agent of a party to an action or appeal shall be as effectual as if the same had been served on the party in person, unless the court otherwise directs.

(2) The provisions of this Ordinance for the service of process on a party to an action shall apply to the service of process on his recognized agent.

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Appointment of proctor.

27. (1) The appointment of a proctor to make any appearance or application, or do any act as aforesaid, shall be in writing signed by the client, and shall be filed in court ; and every such appointment shall contain an address at which service of any process which under the provisions of this Chapter may be served on a proctor, instead of the party whom he represents, may be made.

(2) When so filed, it shall be in force until revoked with the leave of the court and after notice to the proctor by a writing signed by the client and filed in court, or until the client dies, or until the proctor dies, is removed, or suspended, or otherwise becomes incapable to act, or until all proceedings in the action are ended and judgment satisfied so far as regards the client.

(3) No advocate of the Supreme Court shall be required to present any document empowering him to act. The Attorney-General may appoint a proctor to act specially in any particular case or to act generally on behalf of the Crown.

Death or incapacity of proctor.

28. If any such proctor as in the last preceding section is mentioned shall die, or be removed or suspended, or otherwise become incapable to act as aforesaid, at any time before judgment, no further proceeding shall be taken in the action against the party for whom he appeared until thirty days after notice to appoint another proctor has been given to that party either personally or in such other manner as the court directs.

Service on proctor.

29. Any process served on the proctor of any party or left at the office or ordinary residence of such proctor, relative to an action or appeal, except where the same is for the personal appearance of the party, shall be presumed to be duly communicated and made known to the party whom the proctor represents ; and, unless the court otherwise directs, shall be as effectual for all purposes in relation to the action or appeal as if the same had been given to, or served on, the party in person.

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Agent to accept service.

30. Besides the recognized agents described in section 25, any person residing within the jurisdiction of the court may be appointed an agent to accept service of process. Such appointment may be special or general, and shall be made by an instrument in writing signed by the principal, which shall contain an address at which such service may be made, and which, or, if the appointment be general, a duly attested copy thereof, shall be filed in court.

[§ 2, 7 of 1949.]

No appointment under this section shall be of any force or effect for the purpose of enabling or authorizing process to be served on an agent so appointed in any action to recover money due upon the mortgage of immovable property.

Agent to accept service in action upon mortgage of immovable property. [§ 3, 7 of 1949.]

30A. (1) The mortgagor of any immovable property may make application for the registration of the address of any proctor or any person for the service of process in any action upon the mortgage. The application shall be made substantially in the prescribed form.

(2) The address for service shall be registered in or in continuation of the folio in which is registered the mortgage of the immovable property.

(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 the address for service or for a change of such address shall be fifty cents, with an addition of ten cents for each folio after the first in which the address is to be registered.

Warrant or power of attorney to confess judgment, requisites of.

31. A warrant or power of attorney to confess judgment in any action may be given by any person to a proctor in the form No. 12 in the First Schedule, but no such warrant or power of attorney shall be of any force unless there is present at the execution thereof some proctor of the Supreme or District Court on behalf of such person expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or power before the same is executed, which proctor shall subscribe his name as a witness

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to the due execution thereof, and thereby declare himself to be proctor for the person executing the same, and state that he subscribes as such proctor. Every such proctor so subscribing shall state in such declaration that he read and explained the contents of such warrant or power to the person executing the same, and that such person appeared to understand the nature and effect thereof; and no such warrant or power not executed in manner aforesaid shall be rendered valid by proof that the person who executed the same did in fact understand the nature and effect thereof, or was fully informed of the same.

Warrant to confess judgment to be filed with the secretary of the District Court.

32. Every such warrant or power to confess judgment, or a true copy thereof, shall be filed with the secretary of the District Court having jurisdiction in the action within twenty-one days after the execution thereof. Every such warrant or power which, or a copy of which as aforesaid, shall not be so filed, shall be deemed fraudulent, and shall be void; and if any such warrant or power so filed was given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper with the warrant or power before the filing thereof, otherwise the warrant or power shall be void.

CHAPTER VI

Of The Scope And Subject Of Action

Regular action, how to be framed.

33. Every regular action shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Every action shall include whole claim.

34. (1) Every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of any court.

(2) If a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of, his claim, he shall

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not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies ; but if he omits (except with the leave of the court obtained before the hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

(3) For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration

A lets a house to B at a yearly rent of Rs. 1,000. The rent for the whole of the two years 1886 and 1887 is due and unpaid. A sues B only for the rent due for one of those years. A shall not afterwards sue B for the rent due for the other year.

Joinder of claims in actions for immovable property.

35. (1) In an action for the recovery of immovable property, or to obtain a declaration of title to immovable property, no other claim, or any cause of action, shall be made unless with the leave of the court, except—

(*a*) claims in respect of mesne profits or arrears of rent in respect of the property claimed ;

(*b*) damages for breach of any contract under which the property or any part thereof is held; or consequential on the trespass which constitutes the cause of action ; and

(*c*) claims by a mortgagee to enforce any of his remedies under the mortgage.

Example.—A sues B to recover land upon the allegation that the land belongs to C, and that he, A, has bought it of C. A makes C a party defendant ; but he cannot, without leave of the court, join with this claim an alternative claim for damages against C for non-performance of his contract of sale.

In actions against executors, &c.

(2) No claim by or against an executor, administrator, or heir, as such, shall in any action be joined with claims by or against him personally unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator, or heir, or are such as he was entitled to or liable for jointly with the deceased person whom he represents.

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In other cases.

36. (1) Subject to the rules contained in the last section, the plaintiff may unite in the same action several causes of action against the same defendant or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant or defendants may unite such causes of action in the same action.

Exception : court may order separation.

But if it appears to the court that any such causes of action cannot be conveniently tried or disposed of together, the court may, at any time before the hearing, of its own motion or on the application of any defendant, in both cases either in the presence of, or upon notice to, the plaintiff, or at any subsequent stage of the action if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

(2) When causes of action are united, the jurisdiction of the court as regards the action shall depend on the amount or value of the aggregate subject-matters at the date of instituting the action, whether or not an order has been made under the second paragraph of subsection (1).

Application by defendant in such cases.

37. Any defendant alleging that the plaintiff has united in the same action several causes of action, which cannot be conveniently disposed of in one action, may at any time before the hearing apply to the court for an order confining the action to such of the causes of action as may be conveniently disposed of in one action.

Order of court thereon.

38. (1) If, on the hearing of such application, it appears to the court that the causes of action are such as cannot all be conveniently disposed of in one action, the court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

(2) Every amendment made under this section shall be attested by the signature of the Judge.

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CHAPTER VII

Of The Mode Of Institution Of Action

Regular action to commence by plaint.

39. Every action of regular procedure shall be instituted by presenting a duly stamped written plaint to the court or to such officer as the court shall appoint in this behalf ; or, in the Court of Requests, the plaintiff may personally state his case viva voce in open court to the Commissioner, who shall reduce the same into writing upon a stamp being supplied by the plaintiff such as would be required for a written plaint in respect of the same cause of action, and the said stamp shall be affixed to the writing so made of the said statement, and the statement so taken down in writing and stamped shall in such case be the plaint.

Requisites of plaint.

40. The plaint shall be distinctly written in the English language upon good and suitable paper, and shall contain the following particulars :—

(*a*) the name of the court and date of filing the plaint ;

(*b*) the name, description, and place of residence of the plaintiff ;

(*c*) the name, description, and the place of residence of the defendant so far as the same can be ascertained ;

(*d*) a plain and concise statement of the circumstances constituting each cause of action, and where and when it arose. Such statement shall be set forth in duly numbered paragraphs ; and where two or more causes of action are set out, the statement of the circumstances constituting each cause of action must be separate, and numbered ;

(*e*) a demand of the relief which the plaintiff claims ; and

(*f*) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

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In an action for a specific chattel, or to establish, recover, or enforce any right, status, or privilege, or for mesne profits, or for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the value of the chattel, right, status, or privilege, or the amount sued for.

Land sued for to be described by metes and bounds or sketch.

41. When the claim made in the action is for some specific portion of land, or for some share or interest in a specific portion of land, then the portion of land must be described in the plaint so far as possible by reference to physical metes and bounds, or by reference to a sufficient sketch, map, or plan to be appended to the plaint, and not by name only.

Plaintiff suing in a representative character must show that the character has accrued to him.

42. When the plaintiff sues in a representative character, the plaint should show, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute an action concerning it.

Illustrations

(*a*) A sues as B's executor. The plaint must state that A has proved B's will.

(*b*) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.

Plaint must show defendant's interest and liability to be sued.

43. The plaint must show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Exemption from bar from lapse of time to be shown.

44. If the cause of action arose beyond the period ordinarily allowed by any law for instituting the action, the plaint must show the ground upon which exemption from such law is claimed.

Jurisdiction of court to be averred.

45. Every plaint shall contain a statement of facts setting out the jurisdiction of the court to try and determine the claim in respect of which the action is brought.

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Subscription of plaint.

46. (1) Every plaint presented by a proctor on behalf of a plaintiff shall be subscribed by such proctor. In every other case in which a plaint is presented, it shall be subscribed by the plaintiff ; and his signature shall be verified by the signature of some officer authorized by the court in that behalf.

Court may refuse to entertain plaint.

(2) Before the plaint (whether presented by the plaintiff or by a proctor in his behalf) is allowed to be filed, the court may, if in its discretion it shall think fit, refuse to entertain the same for any of the following reasons, namely :—

(*a*) if it does not state correctly, and without prolixity, the several particulars herein before required to be specified therein ;

(*b*) if it contains any particulars other than those so required ;

(*c*) if it is not subscribed, or subscribed and verified, as the case may be, as herein before required ;

(*d*) if it does not disclose a cause of action ;

(*e*) if it is not framed in accordance with section 33 ;

(*f*) if it is wrongly framed by reason of non-joinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same action ;

and may return the same for amendment then and there, or within such time as may be fixed by the court, upon such terms as to the payment of costs occasioned by the amendment as the court thinks fit :

Provided that no amendment shall be allowed which would have the effect of converting an action of one character into an action of another and inconsistent character ;

And may reject.

And provided further, that in each of the following cases, namely :—

(*g*) where the relief sought is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so ;

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(*h*) where the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamps within a time to be fixed by the court fails to do so ;

(*i*) when the action appears from the statement in the plaint to be barred by any positive rule of law ;

(*j*) when the plaint having been returned for amendment within a time fixed by the court is not amended within such time,

the plaint shall be rejected ; but such rejection shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Where plaint presented to wrong court.

47. In every case where an action has been instituted in a court not having jurisdiction by reason of the amount or value involved, or by reason of the conditions made necessary to the institution of an action in any particular court by section 9 not being present, the plaint shall be returned to be presented to the proper court.

Order on rejection of plaint.

48. Every order returning or rejecting a plaint shall specify the date when the plaint was presented and so returned or rejected, the name of the person by whom it was presented and whether such person was plaintiff or proctor, and the fault or defect constituting the ground of return or rejection ; and every such order shall be in writing signed by the Judge, and filed of record.

Memorandum of documents to be endorsed on plaint.

49. (1) The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents, if any, which he has produced along with it ; and if the plaint is admitted, shall present as many copies on unstamped paper of the plaint as there are defendants, each, in the case of Sinhalese, Tamil, or Muslim defendants, translated into the language of the defendant for whom it is destined ; unless the court, by reason of the length of

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the plaint or the number of the defendants or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the action, in which case he shall present such statements.

(2) If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, such statement shall show in what capacity such plaintiff or defendant sues or is sued ; and the plaintiff may by leave of the court amend such statements so as to make them correspond with the plaint.

Such memorandum and copies or statements shall be examined by the secretary or clerk of the court, as the case may be, and signed by him if he finds them correct.

Plaintiff to produce with plaint document sued on.

50. If a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

To annex list of other documents.

51. If he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

And to state where document not in his possession is.

52. In the case of any such document not being in his possession or power, he shall, if possible, state in whose possession or power it is.

Action on lost negotiable instrument.

53. In the case of any action founded upon a bill of exchange, promissory note, cheque, or any negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon such instrument, the court may make such decree as it would have made if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

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Document not produced with plaint inadmissible afterwards without leave.

54. (1) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the action.

(2) Nothing in subsection (1) applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

CHAPTER VIII

Of The Issue And Service Of Summons

Summons.

55. Upon the plaint being filed, and the copies or concise statements required by section 49 presented, the court shall order a summons in the form No. 16 in the First Schedule to issue, signed by the secretary or clerk of the court, requiring the defendant to appear and to answer the plaint on a day to be specified in the summons, and to be fixed with reasonable regard to the distance of the defendant's usual place of abode from the court-house and the current business of the court. The summons, together with such copy or concise statement, each translated into the language of the defendant, attached thereto, shall be delivered under a precept from the court in the form No. 17 in the said Schedule, or to the like effect, to the Fiscal of the district in which the defendant resides, who shall cause the same to be duly served on the defendant, or on each defendant if more than one, and shall, as hereinafter provided, return the same and the execution thereof to the court, duly verified by the officer to whom the actual service thereof has been entrusted.

Court may order defendant to appear in person.

56. If the court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified.

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Court may order plaintiff to appear in person.

57. If the court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

Summons to order production of documents required by plaintiff or relied on by defendant.

58. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

SERVICE

Personal service of summons, what is.

59. Subject to the several provisions as to service hereinafter in Chapter XXIII contained, service of the summons shall be made by delivering or tendering to the defendant personally a duplicate thereof.

Service to be personal if practicable; otherwise as court may direct.

60. Whenever it may be practicable, the service of summons shall be made on the defendant in person; but if, after reasonable exertion, the Fiscal is unable to effect personal service, he shall report such inability to the court in a fair-written return to the precept, having the summons attached thereto as an exhibit, and it shall be competent for the court, on being satisfied by evidence adduced before it that the defendant is within Ceylon, to prescribe any other mode of service as an equivalent for personal service:

[§ 4, 7 of 1949.] Provided, however, that where such a return is made by the Fiscal in an action for the recovery of money due on the mortgage of immovable property, the court shall not under the preceding provisions of this section have the power to prescribe any other mode of service as an equivalent for personal service, but the following provisions shall apply whether or not the court is satisfied that the defendant is within Ceylon:—

(*a*) if the court is satisfied upon a certificate filed in that behalf by the proctor for the plaintiff that the mortgagor has not registered an address for service under section 30A, or if such an address having been registered the court is satisfied that the Fiscal was unable to effect service on such agent under section 64A, the court shall upon application made by the plaintiff, order

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that copies of the summons in such language as the court may consider appropriate shall be affixed by the Fiscal in at least three conspicuous places upon the mortgaged property and at the court-house, and may in its discretion direct such other acts or things to be done as the court may consider appropriate (including in a case where an address has been registered under section 30A, the sending of a copy of the summons by registered post to that address) ;

(*b*) service effected in the manner specified in paragraph (*a*) shall be deemed to be service on the defendant.

Substituted service to be as effectual as personal.

61. The service substituted by order of the court shall be as effectual as if it had been made on the defendant personally.

Court to fix time for appearance.

62. Whenever service is substituted by order of the court the court shall fix such time for the appearance of the defendant as the case may require.

When more defendants than one, service on each.

63. When there are more defendants than one, service of the summons shall be made on each defendant.

Agents and proctors holding powers of attorney to confess judgment to accept service ;

partners, and manager.

64. When a defendant has an agent appointed under section 30 or a proctor holding a warrant or power of attorney under section 31 empowered to accept service, service of summons on such agent or proctor shall be sufficient. And in the case of an action against partners relative to a partnership transaction, or to an actionable wrong in respect of which relief is claimable from the partners, as a firm, each partner is an agent so empowered of each other partner, as is also the person (if any) not being a partner, who has the management of the business of the partnership at the principal place of such business within the local limits of the court's ordinary jurisdiction.

[§ 5, 7 of 1949.]

Nothing in the preceding provisions of this section shall be deemed to authorize summons in an action to recover moneys due on a mortgage of

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immovable property to be served on any agent appointed under section 30 or on any proctor holding a warrant or a power of attorney under section 31.

Service on agent in mortgage action. [§ 6, 7 of 1949.]

64A. Where the mortgagor has registered the address of an agent under section 30A, service of summons may be made on such agent and shall be sufficient.

When defendant out of jurisdiction has manager within it.

65. In an action relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court from which the summons issued, service on any manager or agent who at the time of the service personally carries on such business or work for such person within such limits shall be deemed good service ; and for the purpose of this section the master of a ship is the agent of his owner or charterer.

Service on agent in charge of immovable property. [§ 7, 7 of 1949.]

66. In an action to obtain relief respecting or compensation for wrong to immovable property, if the service cannot be made on the defendant in person, and the defendant has no agent empowered to accept service, it may be made on any agent of the defendant in charge of the property.

Misdescription not to vitiate summons, &c.

67. No misnomer or misdescription of any person or place in any such summons, order, or process shall vitiate the same, provided that the person or place be therein described as he or it is commonly known, and provided that such misnomer or misdescription be not such as to mislead the party served therewith.

Service on defendant in jail.

68. If the defendant be in jail, the summons shall be delivered by the Fiscal to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

The summons shall be returned through the Fiscal to the court from which it is issued, with a statement of the service endorsed thereon, and signed by the officer in charge of the jail.

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Service out of Ceylon: Application for, how made.

69. Service of a summons out of Ceylon may be allowed by the court in all cases in which the court has jurisdiction. Every application for an order for leave to serve such summons on a defendant out of Ceylon shall be by motion and shall be supported by evidence (by affidavit or otherwise) showing in what place or country such defendant is or may probably be found, and the grounds on which the application is made.

Order for, to prescribe mode of.

70. Every order giving leave to effect such service shall prescribe the mode of service, and shall direct that the defendant is to enter appearance within such time after service as the court directs.

Form of summons.

71. A summons under sections 69 and 70 shall be in the form No. 18 in the First Schedule.

CHAPTER IX

Of The Appearance And Answer

Defendant to answer on day for appearance.

72. On the day fixed in the summons for the defendant to appear and answer, if the parties appear in court, the defendant shall be called upon to answer the plaint. If the defendant shall then admit the claim of the plaintiff, the court shall give judgment against the defendant according to the admission so made.

Explanation.—A party appears in court when he is there present in person to conduct his case, or is represented there by a proctor or other duly authorized person.

Answer to be in writing; or in Court of Requests may be given by parol and reduced to writing.

73. If the defendant does not admit the plaintiff's claim, he shall himself, or his proctor shall on his behalf, deliver to the court a duly stamped written answer; or in the Court of Requests the defendant may state his answer viva voce in open court to the Commissioner, who shall reduce the same into writing upon a stamp being supplied by the defendant such as would be required for a written answer; and the said stamp shall be affixed to the record of the said statement, and the statement so taken down and stamped shall in such case be the defendant's answer.

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Extension of time to answer.

74. In the event of the defendant or his proctor on his behalf not being prepared on the day fixed for appearance and answer to file or state his answer as aforesaid, the court may then, or at any subsequent time, if the action is not sooner determined, upon notice to the plaintiff, and provided cause therefor is shown to the satisfaction of the court, or upon the plaintiff's consent, extend the time for that purpose to a day to be fixed by the court.

Requisites of answer.

75. Every such answer shall be distinctly written in the English language upon good and suitable paper, shall be duly stamped, shall be subscribed by the defendant or his duly constituted representative as in the case of a plaint is provided for the plaintiff's subscription, or if he is represented by a proctor, by such proctor, and shall contain the following particulars :—

(*a*) the name of the court, the number of the case, and the date of filing the answer ;

(*b*) the name of the plaintiff ;

(*c*) the name, description, and residence of the defendant ;

(*d*) a statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence ; this statement shall be drawn in duly numbered paragraphs, referring by number, where necessary, to the paragraphs of the plaint ;

(*e*) when the defendant sets up a claim in reconvention the answer must contain a plain and concise statement of the facts constituting the ground of such claim which the defendant makes in reconvention. A claim in reconvention duly set up in the answer shall have the same effect as a plaint in a cross action so as to enable the court to pronounce a final judgment in the same action both on the original and on the cross claim ; but it shall not

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affect the lien upon the amount decreed of any proctor in respect of the costs payable to him under the decree.

Jurisdiction of court to be specially traversed.

76. If the defendant intends to dispute the averment in the plaint as to the jurisdiction of the court, he must do so by a separate and distinct plea, expressly traversing such averment.

Rejection and amendment of answer.

77. If any answer is substantially defective in any of the particulars herein before defined, or is argumentative or prolix, or contains matter irrelevant to the action, the court may, by an order to be endorsed thereon, reject the same or return it to the party by whom it was made, for amendment within a time to be fixed by the court, imposing such terms as to costs or otherwise as the court thinks fit.

If the answer is rejected or left unamended as ordered, the defendant shall be regarded as having failed to file answer.

The order so endorsed shall specify the ground of the rejection.

Copy of answer to be delivered to plaintiff.

78. A copy of the answer shall be served on the proctor (if any) of the plaintiff, or left with the secretary or clerk of the court for delivery to the plaintiff, or each of the plaintiffs if more than one.

CHAPTER X

Of The Replication And Further Pleadings

Replication may be allowed when :

79. Except in the case of a claim by a defendant in reconvention, no pleading after answer shall be filed except by order of court on special motion to be made after due notice to the other side, and before the day appointed for the hearing of the action, upon such terms as to costs and the postponement of the hearing of the action as the court shall think fit. Such order shall not be made (except in the case of a claim in reconvention on the part of the defendant) unless the court is satisfied on such motion that the real issues

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and further pleadings.

between the parties cannot be conveniently raised without such further pleading. All pleadings after answer shall be subject to the rules prescribed by section 75 relative to the form and substance of the answer, so far as the same can be made applicable, and copies of such pleadings shall be served on the proctor of, or left with the secretary or clerk of the court for delivery to, the opposite party.

CHAPTER XI

Of Fixing Day Of Trial

Day of trial.

80. Forthwith on the expiration of the time allowed for the filing of the defendant's answer, or, where a replication is permitted, on the last day of the time allowed for filing such replication, and whether the same is filed or not, the court shall appoint a day for the hearing and determination of the action, and shall give notice thereof to the parties :

Provided that the court may subsequently, on application made by either party, and after hearing both parties, or after proof of notice of motion to the absent party, direct that the day for the hearing of any case shall be advanced or deferred.

A reasonable number of cases to be fixed for each day.

81. The court shall, in fixing the day of hearing, be careful not to appoint more cases for one day than there is a probability of the court getting through on that day.

Postponement.

82. When any case is in its turn called on for hearing upon the day appointed therefor, the court may, for sufficient cause to be specified in its written order, direct that the hearing be postponed to a day which shall be fixed in the order, upon such terms as to costs or otherwise as the court shall think fit :

Provided that the court may in its discretion take and deal with a case out of its order in the cause list on any day for good reason to be adjudicated upon and recorded by the court before entering upon the case.

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Undisposed of cases to be placed at the head of the roll.

83. (1) The cases in any day's cause list not disposed of on that day, by reason of want of time, will be placed at the head of the next court-day's cause list, unless the Judge directs otherwise.

(2) As soon as the cause list for any day is prepared, legibly-written copies of it in English and the language or languages of the parties shall be placed in some fit and conspicuous place outside the court-house, so that the suitors and all others interested may be enabled readily to be informed of the contents of the same.

CHAPTER XII

Of The Consequences And Cure (When Permissible) Of Default In Appearing Or Pleading

Non-appearance of plaintiff.

84.* (1) If the plaintiff fails to appear on the day fixed for the appearance and answer of the defendant, or on the day appointed for the filing of the answer, or for the filing of the replication, or for the hearing of the action, and if the defendant on the occasion of such default of the plaintiff to appear is present in person or by proctor, and does not admit the plaintiff's claim, and does not consent to postponement of the day for the hearing of the action, the court shall pass a decree *nisi* in the form No. 21 in the First Schedule, or to the like effect, dismissing the plaintiff's action, which said decree shall, at the expiration of fourteen days from the date thereof, become absolute, unless the plaintiff shall have previously, on some day of which the defendant shall have notice, shown to the court good cause, by affidavit or otherwise, for his non-appearance.

(2) In case of such cause being shown, the court shall set aside the decree, and shall fix a day for proceeding with the action on such terms as to costs or otherwise as the court shall think fit, and shall cause notice to be issued to the defendant to be ready on that day to proceed with his defence as if it were the

* Sections 84 to 88, both inclusive, do not apply to Courts of Requests.—*Vide post* section 823 (7).

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day originally appointed for appearance and answer, or for subsequently filing the answer or filing the replication, or for hearing, as the case may be.

(3) If the defendant consents to an adjournment for the purpose either of his answer being filed or of the action being heard, the court shall appoint a day for that purpose and issue notice thereof to the plaintiff.

(4) If notwithstanding that the plaintiff fails to appear, the defendant admits the plaintiff's claim, judgment shall be given accordingly.

Non-appearance of defendant.

85.* If the defendant fails to appear on the day fixed for his appearance and answer, or if he fails to appear on the day fixed for the subsequent filing of his answer, or for the filing of the replication, or on the day fixed for the hearing of the action, and if the court is satisfied by affidavit of the process server, stating the facts and circumstances of the service, or otherwise, that the defendant has been duly served with summons, or has received due notice of the day fixed for subsequent filing of answer, or of replication, or of the day fixed for the hearing of the action, as the case may be, or if the defendant shall fail to file his answer on the day fixed therefor, and if on the occasion of such default of the defendant the plaintiff appears, then the court shall proceed to hear the case *ex parte* and to pass a decree *nisi* in favour of plaintiff in the form No. 22 in the First Schedule or to the like effect, or, in the case of a hypothecary action, a decree absolute in the form No. 22A in the First Schedule or to the like effect, and shall issue to the defendant a notice of every such decree *nisi*. Such notice shall be served personally unless the court, for sufficient cause to be assigned by it, direct some other mode of service.

If defendant fail to excuse his default, decree *nisi* to be made absolute;

86.* (1) If the defendant does not appear on the day appointed in the decree *nisi* for showing cause, and if the court is satisfied that notice of the decree has been duly served, or if having appeared to the notice the defendant shall fail to satisfy the court that he had

* Sections 84 to 88, both inclusive, do not apply to Courts of Requests.—*Vide post* section 823 (7).

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reasonable grounds for the default in appearing or in filing answer, as the case may be, by reason of which the decree *nisi* was passed, then the court shall make the decree absolute, and the order of the court to that effect may be endorsed on the decree *nisi*, or otherwise duly recorded in the proceedings, as in this Ordinance hereinafter provided.

otherwise to be discharged.

(2) If, however, the defendant shall satisfy the court that there were reasonable grounds for the default upon which the decree *nisi* was passed, then the court shall set aside the decree and shall order the case to be proceeded with as from the stage at which the default was committed, upon such terms as to costs, notices, or otherwise as the court shall deem fit.

No appeal lies against decree for default, but

87.* (1) No appeal shall lie against any decree *nisi* or absolute for default; but if any defendant, against whom a decree absolute for default shall have been passed, shall within a reasonable time after such decree appear and satisfy the court upon notice to the plaintiff, by good and sufficient evidence that he was prevented from appearing to show cause against the notice for making the decree absolute by reason of accident or misfortune, or by not having received due information of the proceedings, or, in the case of a hypothecary action, that there were reasonable grounds for the default upon which the decree absolute was passed, and shall, if the court shall in its discretion so require, give good and sufficient security to satisfy the plaintiff's claim and costs of action, the court may, upon such terms and conditions as such court shall think it just and right to impose, set aside the decree and direct that the action be proceeded with as from the stage at which the decree was for default of the defendant made.

court may set aside the decree for cause shown.

Such order appealable.

(2) The order setting aside or refusing to set aside the decree shall be accompanied by a judgment adjudicating upon the facts and specifying the grounds upon which it is made, and shall be liable to an appeal to the Supreme Court.

* Sections 84 to 88, both inclusive, do not apply to Courts of Requests.—*Vide post* section 823 (7).

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(3) The mere consent of the plaintiff's proctor will not be reason sufficient to justify the court in setting aside the decree.

Neither party appearing, case to be struck off file.

88.* (1) If either on the day appointed for the defendant to appear and answer or for the subsequent filing of answer, or for filing the replication, neither party appears when the case is called on, the action shall be struck off the file of cases pending in the court. But the court shall have power, upon the application of either party, if made within a period of time which, under the circumstances, appears to the court reasonable, and upon notice to the other side, to restore the action to the file, upon such terms and conditions as it shall think fit and to give the requisite direction for the action to be regularly proceeded with.

(2) The order made on any application for the restoration of an action to the file, whether it grants or refuses the application, shall state the ground upon which it is based.

(3) An order directing the action to be struck off the file will not operate as a bar to the institution of a fresh action upon the same cause of action.

Where two or more defendants severally liable.

89. In the case of an action against two or more defendants alleged to be severally liable, where a summons is served upon any of them, the plaintiff may proceed against the person or persons served as if no other defendant were named in the summons. Where it is served upon all of them, the plaintiff may take judgment against one or more of them, where he would be entitled to judgment if the action was against him or them alone. Where judgment is so taken the plaintiff may proceed in the same action against the other defendants.

One of many defendants appearing, no decree for default need be passed against others.

90. In the case of an action where there are more defendants than one, the court shall not be obliged to pass a decree for default against a defendant for failing to appear at a stage of the action, provided that one defendant at least appears at that stage against whom the action must proceed.

* Sections 84 to 88, both inclusive, do not apply to Courts of Requests.—*Vide post* section 823 (7).

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CHAPTER XIII

Of Motions

Motions.

91. (1) Every application made to the court in the course of an action, incidental thereto, and not a step in the regular procedure, shall be made by motion by the applicant in person or his advocate or proctor, and a memorandum in writing of such motion shall be at the same time delivered to the court.

(2) In the Court of Requests such application may be made orally by the applicant in person and then reduced into writing by the court, in accordance with the rules of summary procedure hereinafter prescribed.

CHAPTER XIV

Of The Journal

Journal.

92. With the institution of the action the court shall commence a journal entitled as of the action, in which shall be minuted, as they occur, all the events in the course of the action, i.e., the original application, and every subsequent step, proceeding, and order; each minute shall be signed and dated by the Judge, and the journal so kept shall be the principal record of the action.

CHAPTER XV

Of Amendment

Amendments of pleadings.

93. At any hearing of the action, or any time in the presence of, or after reasonable notice to, all the parties to the action before final judgment, the court shall have full power of amending in its discretion, and upon such terms as to costs and postponement of day for filing answer or replication, or for hearing of cause, or otherwise, as it may think fit, all pleadings and processes in the action, by way of addition, or of alteration,

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or of omission. And the amendments or additions shall be clearly written on the face of the pleading or process affected by the order ; or if this cannot conveniently be done, a fair draft of the document as altered shall be appended to the document intended to be amended, and every such amendment or alteration shall be initialled by the Judge.

CHAPTER XVI

Of Discovery, Inspection, Production, Impounding, And Return Of Documents

Interrogatories.

94.* (1) Any party may at any time before hearing, by leave of the court to be obtained on motion *ex parte*, deliver through the court interrogatories in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer :

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered his answer, and such answer has been received and placed on the record.

(2) For the purposes of this Chapter, "opposite party", means a party between whom and the party interrogating an issue has been raised.

Service of interrogatories.

95.* Interrogatories delivered under the last section shall be served on the proctor (if any) of the party interrogated, or in the manner herein before provided for the service of summons, and the provisions herein contained with regard to service of summons shall, in the latter case, apply, so far as may be practicable.

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* Sections 94 to 100, both inclusive, do not apply to Courts of Requests.—*Vide post* section 824.

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Cost of unreasonable interrogatories to be borne by party in fault.

96.* The court, in adjusting the costs of the action, shall at the instance of any party, inquire, or cause inquiry to be made, into the propriety of delivering such interrogatories ; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories, and the answers thereto, shall be borne by the party in fault.

Interrogatories to company, &c.

97.* If any party to an action is a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

When party may refuse to answer.

98.* Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is scandalous or irrelevant, or is not put bona fide for the purposes of the action, or that the answer will tend to criminate himself, or that the matter inquired after is not sufficiently material at that stage of the action, or on any other like ground.

To be answered by affidavit.

99.* Interrogatories shall be answered by affidavit to be filed in court within ten days from the service thereof, or within such further time as the court may allow.

Application for further answer.

100.* If any person interrogated omits or refuses to answer or answers insufficiently any interrogatory, the party interrogating may apply to the court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further, either by an affidavit or by viva voce examination, as the court may direct :

* Sections 94 to 100, both inclusive, do not apply to Courts of Requests.—*Vide post* section 824.

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Provided that the court shall not require an answer to an interrogatory which in its opinion need not have been answered under section 98.

Notice to admit genuineness of documents.

101. (1) Either party may, by a notice issued by order of court, to be obtained on motion *ex parte* within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the action.

(2) The admission shall also be made in writing, signed by the other party or his proctor, and filed in court.

(3) If such notice be not given, no costs of proving such document shall be allowed, unless the court otherwise orders.

(4) If such notice is not complied with within four days after its being served, and the court thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the action.

Order for discovery of documents.

102. (1) The court may, at any time during the pendency therein of any action, order any party to the action to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the action, and any party to the action may, at any time before the hearing, apply to the court for a like order.

(2) Every affidavit made under this section shall specify which, if any, of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection.

Order for production of documents.

103. The court may, at any time during the pendency therein of any action, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such action or proceeding as the court thinks right; and the court may deal with such documents when produced in such manner as appears just.

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Notice to produce documents for inspection.

104. (1) Any party to an action may, at any time before or at the hearing thereof, by motion *ex parte*, obtain an order of court for notice to issue to any other party in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his proctor, and to permit such party or proctor to take copies thereof.

(2) No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such action, unless he satisfies the court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

Time and place of such production to be specified by party receiving notice.

105. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his proctor's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds.

Otherwise, order for inspection to be made by court.

106. If any party served with notice under section 104 omits to give notice under section 105 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the court for an order of inspection.

Application for order to be supported by affidavit.

107. Except in the case of documents referred to in any pleading or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing—

(*a*) of what documents inspection is sought,

(*b*) that the party applying is entitled to inspect them, and

(*c*) that they are in the possession or power of the party against whom the application is made.

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Court may reserve question as to discovery or inspection.

108. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the court is satisfied that the right of such discovery or inspection depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the court may order that the issue or question be determined first, and reserve the question as to the discovery or inspection.

Consequence of not complying with order under this Chapter.

109. (1) If any party fails to comply with any order under this Chapter to answer interrogatories, or for discovery, production, or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not appeared and answered.

And the party interrogating or seeking discovery, production, or inspection may apply to the court for an order to this effect, and the court may make such order accordingly.

(2) Any party failing to comply with any order under this Chapter to answer interrogatories, or for discovery, production, or inspection which has been served personally upon him, shall also be deemed guilty of the offence of contempt of court.

Court may inspect records of other courts.

110. (1) The court may of its own accord, or in its discretion upon the application of any of the parties to an action, send for, either from its own records or from any other court, the record of any other action or proceeding, and inspect the same.

(2) Every application made under this section shall (unless the court otherwise directs) be supported by an affidavit of the applicant or his proctor, showing how the record is material to the action in which the application is made, and that the applicant cannot, without unreasonable delay or expense, obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

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(3) Nothing in this section shall be deemed to enable the court to use in evidence any document which by the law of evidence in force in Ceylon would be inadmissible in the action.

Parties to be ready with all documents at trial.

111. The parties or their proctors shall bring with them and have in readiness at the hearing of the action, to be produced when called for by the court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in court, and all documents which the court at any time before such hearing has ordered to be produced.

Document called for and not produced shall not be received afterwards.

112. No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of section 111, shall be received at any subsequent stage of the proceedings, unless good cause be shown to the satisfaction of the court for the non-production thereof. And the court on receiving any such evidence shall record its reason for so doing.

Documents to be received by court.

113. (1) The court shall receive the documents respectively produced by the parties at the hearing, provided that the documents produced by each party be accompanied by an accurate list thereof.

Rejection of irrelevant or inadmissible documents.

(2) The court may at any stage of the action reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

No documents to be placed on record unless proved.

114. (1) No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force.

Proved documents to be marked and filed.

(2) Every document so proved or admitted shall be endorsed with some number or letter sufficient to identify it. The Judge shall then make an entry on the record to the effect that such document was proved against or admitted by (as the case may be) the person against whom it is used, and shall in such entry refer to such document by such number or letter in

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such a way as to identify it with the document so proved or admitted. The document shall then be filed as part of the record.

Documents which are not proved to be returned to parties.

(3) All documents produced at the hearing and not so proved or admitted shall be returned to the parties respectively producing them.

Court may order any document to be impounded.

115. Notwithstanding anything contained in section 114, the court may, if it sees sufficient cause, direct any document or book produced before it in any action to be impounded and kept in the custody of an officer of the court for such period and subject to such conditions as the court thinks fit.

When document admitted in evidence may be returned.

116. (1) When an action has been disposed of, or when the time for preferring an appeal from the decree has elapsed, or if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the action or not, desirous of receiving back any document produced by him in the action, and placed on the record, shall, unless the document is impounded under section 115, be entitled to receive back the same :

Provided that a document may be returned at any time if the person applying for such return deliver to the proper officer a certified copy of such document to be substituted for the original ;

Certain documents not to be returned.

And provided further, that no document shall be returned which by force of the decree has become void or useless.

Receipt for returned documents.

(2) On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt book to be kept for the purpose.

Provisions as to documents apply to other material objects.

117. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

TRANSLATIONS OF DOCUMENTS

Translations of documents.

118. No translation of any document tendered in evidence in any court shall be permitted to be read as a translation of such document, unless the same shall be signed by an interpreter of the Supreme Court, or

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by a Government sworn translator, or by a sworn translator or interpreter of some District Court or Court of Requests.

Who shall be deemed a translator.

119. No person other than an interpreter of the Supreme Court, or a Government sworn translator, or an interpreter of a District Court or Court of Requests, shall be deemed to be a translator of any court unless he shall have received a certificate from the Judge or Commissioner of such court that he is competent to fulfil the duties of a translator, and shall have taken an oath before such Judge or Commissioner faithfully to perform the duties of his office.

Fees of translators.

120. No such translator as aforesaid shall be entitled to have or recover in respect of fees for any translation any sum of money in excess of the following rates, namely :—

For every folio of 120 words	..	33 cents
For every fractional part of a folio	..	33 cents

CHAPTER XVII

Of Witnesses

Summonses to witnesses.

121.* (1) The parties may, after the summons has been delivered for service on the defendant, obtain, on application to the court or to such officer as the court appoints in that behalf, before the day fixed for the hearing, summonses to persons whose attendance is required either to give evidence or to produce documents.

List of witnesses.

(2) A list of witnesses shall be filed in court by the party applying for such summonses, after notice to the other side, and within such time before the trial as the Judge shall consider reasonable, or at any time before the trial with the consent of the other side appearing on the face of such list.

* This section does not apply to Courts of Requests.—*Vide post* section 826.

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Payment of witness's expenses.

122. The party applying for a summons shall, before the summons is granted, and within a period to be fixed by the court, pay into court, or give security for payment of, such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend, and for one day's attendance :

Provided that in the case of a witness residing within four miles of the court at which his attendance is required, no such payment shall be made nor security given ;

And provided further that the making of any such payment and the giving of any such security shall in no case be a condition precedent to the issue of a summons, but in every case (except the case of a witness residing within four miles from the court) where summons issues without such payment having been made or security given, the witness shall be informed on the face of the summons that such is the case, and that it is not obligatory on him to attend.

Witness's expenses to be paid before he gives evidence.

123. The sum so paid into court, or so secured, shall at latest be paid or tendered to the person summoned at the time when he is called on to give his evidence, if he demands the same.

Court may order a sufficient sum to be paid.

124. If it appears to the court or to such officer as it appoints in this behalf that the sum paid into court is not sufficient to cover such expenses, the court may direct such further sum to be paid to the person summoned as appears to be necessary on that account ; and in case of default in payment, may, by writ issued to the Fiscal, order such sum to be levied by sequestration and sale of the movable property of the party obtaining the summons as is hereinafter provided ; or the court may discharge the person summoned without requiring him to give evidence ; or may both order such levy and discharge such person as aforesaid.

Expenses of detention.

125. If it is necessary to detain the person summoned for a longer period than one day, the court may from time to time order the party at whose instance he was summoned to pay into court such sum as is sufficient

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to defray the expenses of his detention for such further period ; and in default of such deposit being made, may, by writ issued to the Fiscal, order such sum to be levied by sequestration and sale of the movable property of the party at whose instance he was summoned ; or the court may discharge the person summoned without requiring him to give evidence ; or may both order such levy and discharge such person as aforesaid.

Summons to specify time, place, and purpose of attendance.

126. (1) Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes ; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

(2) If money has been deposited or security given for his expenses under the provisions of section 122, the summons shall contain a statement to that effect.

Summons to produce document.

127. Any person may be summoned to produce a document without being summoned to give evidence ; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he cause such document to be produced, instead of attending personally to produce the same.

Person in court may be required to produce a document.

128. Any person present in court may be required by the court to give evidence, or to produce any document then and there in his actual possession or power.

Service of summons.

129. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in the manner herein before prescribed for the service of summons on the defendant ; and the rules contained in this Ordinance as to proof of service of summons on the defendant shall apply in case of all summonses served under this section.

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Service must afford reasonable time for attendance.

130. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Procedure to be followed when summons cannot be served.

131. (1) If the Fiscal returns to the court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the court may take evidence touching the non-service.

And upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding, or keeping out of the way for the purpose of avoiding the service of summons, the court may in its discretion either issue a warrant for the apprehension of such witness or may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein ; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

Proclaimed witness how dealt with.

(2) If he does not attend at the time and place named in such proclamation, the court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the sequestration of the property of the person whose attendance is required, to such amount as the court thinks fit, not exceeding the amount of the costs of sequestration and of the fine which may be imposed under section 133.

If witness appears, sequestration may be withdrawn.

132. If, on the sequestration of his property, such person appears and satisfies the court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the court shall direct that the property be released from sequestration, and shall make such order as to the costs of the sequestration as it thinks fit.

Procedure when witness fails to appear.

133. If such person does not appear, or, appearing, fails to satisfy the court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the

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court may impose upon him such fine, in the case of the Court of Requests not exceeding fifty rupees, and in the case of the District Court not exceeding two hundred rupees, as the court thinks fit, having regard to his condition in life and all the circumstances of the case ; and may order the property sequestered, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such sequestration, together with the amount of the said fine, if any :

Provided that if the person whose attendance is required pays into court the costs and the fine as aforesaid, the court shall order the property to be released from sequestration.

Court may summon and examine any person as witness.

134. Subject to the rules of this Ordinance as to attendance and appearance, if the court at any time thinks it necessary to examine any person other than a party to the action, and not named as a witness by a party to the action, the court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed ; and may examine him as a witness, or require him to produce such document.

Person summoned must attend at time and place named in the summons.

135. Subject as last aforesaid, whoever is summoned to appear and give evidence in an action must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

When witness may depart.

136. No person so summoned and attending shall depart unless and until—

(*a*) he has been examined or has produced the document and the court has risen ; or

(*b*) he has obtained the court's leave to depart.

Witness may be arrested for non-compliance with summons.

137. (1) If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 136, the court may order him to be arrested and brought before the court :

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Provided that no such order shall be made when the court has reason to believe that the person so failing had a lawful excuse for such failure.

Non-compliance with summons without lawful excuse deemed to be contempt of court.

(2) When any person so brought before the court fails to satisfy it that he had a lawful excuse for not complying with the summons, he shall be deemed to be guilty of the offence of contempt of court, and punishable therefor.

Court may release arrested witness on bail.

138. If any person so apprehended and brought before the court cannot, owing to the absence of the parties or any of them give the evidence or produce the document which he has been summoned to give or produce, the court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given may release him.

Procedure when witness absconds.

139. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the court, the provisions of sections 131, 132, and 133 shall, *mutatis mutandis*, apply.

Court may pass decree against party refusing to give evidence.

140. If any party to an action being present in court refuses, without lawful excuse, when required by the court, to give evidence, or to produce any document then and there in his actual possession or power, the court may in its discretion either pass a decree against him, or make such other order in relation to the action as the court thinks fit, or may punish him as for a contempt of court.

Rules as to witnesses to apply to a party summoned to give evidence.

141. (1) Whenever any party to an action is required to give evidence or produce a document, the rules as to witnesses contained in this Ordinance shall apply to him, so far as they are applicable.

(2) Nothing in this Chapter contained shall be deemed in any way to contravene or affect the provisions of the Proof of Public Documents Ordinance except in so far as the same may be hereby expressly repealed or modified.

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Privilege from arrest of witness.

142. Any person duly and in good faith summoned or ordered to attend for the purpose of being examined in a case is privileged from arrest in a civil action or special proceeding while going to, remaining at, and returning from the place where he is required to attend.

CHAPTER XVIII

Of Adjournments

Adjournments.

143. (1) The court may, if sufficient cause be shown, at any stage of the action grant time to the parties, or to any of them, and may from time to time adjourn the hearing of the action.

(2) In all such cases the court shall fix a day for the further hearing of the action, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment :

Provided that, when the hearing of evidence has once begun, the hearing of the action shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the hearing to be necessary for reasons to be recorded and signed by the Judge.

Non-appearance of a party on the adjourned day.

144. If on any day to which the hearing of the action is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the action in one of the modes directed in that behalf by Chapter XII, or make such other order as it thinks fit.

Default of party to carry out purpose of adjournment.

145. If any party to an action, to whom time has been granted, fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the action, for which time has been allowed, the court may, notwithstanding such default, proceed to decide the action forthwith.

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CHAPTER XIX

Of The Trial

Determining of issues.

146. (1) On the day fixed for the hearing of the action, or on any other day to which the hearing is adjourned, if the parties are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and the court shall proceed to determine the same.

(2) If the parties, however, are not so agreed, the court shall, upon the allegations made in the plaint, or in answer to interrogatories delivered in the action, or upon the contents of documents produced by either party, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to record the issues on which the right decision of the case appears to the court to depend.

(3) Nothing in this section requires the court to frame and record issues when the defendant makes no defence.

Trial of issues of law first.

147. When issues both of law and of fact arise in the same action, and the court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Adjournment for evidence.

148. If the court is of opinion that the issues cannot be correctly framed without the examination of some person not before the court, or without the inspection of some document not produced in the action, it may adjourn the framing of the issues to a future day to be fixed by the court, and may compel the attendance of such person or the production of such document by summons or other process.

Amendment of issues.

149. The court may, at any time before passing a decree, amend the issues or frame additional issues on such terms as it thinks fit.

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Party having right to begin to state his case.

150. The party having the right to begin shall state his case, giving the substance of the facts which he proposes to establish by his evidence.

Rules as to right to begin.

Explanation 1.—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff, and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Explanation 2.—The case enunciated must reasonably accord with the party's pleading, i.e., plaint or answer, as the case may be. And no party can be allowed to make at the trial a case materially different from that which he has placed on record, and which his opponent is prepared to meet. And the facts proposed to be established must in the whole amount to so much of the material part of his case as is not admitted in his opponent's pleadings.

Party having right to begin to produce his evidence.

151. After stating his case in person, or by his proctor or counsel, the same party shall produce his evidence, calling his witnesses and by questions eliciting from each of them the relevant and material facts to which such witness can speak of his own observation.

Explanation.—The questions should be simple, and so framed as to obtain from the witnesses, as nearly as may be in a chronological order, a narrative of all the facts relevant to the matter in issue between the parties which he has witnessed—i.e., which he has in any manner directly observed or perceived, and no others. And on any disputed point the questions should not be such as to lead, or suggest, the answer; nor such as to induce a witness, other than an expert, to state a conclusion of his reasoning, an inference of fact, or a matter of belief, in the place of describing what he actually observed.

Also, a general request to a witness to tell what he knows, or to state the facts of the case, is, as a rule, not to be permitted, because it gives an opening for a prepared story.

Nothing in this explanation operates to prevent a witness from stating hearsay, or giving any opinion, where the hearsay or opinion is a relevant fact in the case.

Cross-examination.

152. After the examination-in-chief by the party who called the witness, the cross-examination of the same witness, if required, shall in like manner be effected by the opposite side, only that in this case leading questions may be put.

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Re-examination.

153. Then shall follow re-examination by the first side if required, for the purpose of enabling the witness to explain such answers given by him on cross-examination as may have left facts imperfectly stated by him, and to add such further facts as may have been suggested and made admissible by the cross-examination.

Explanation.—During the course of the examination, cross-examination, and re-examination, the court ought not, as a general rule, to interfere, except when necessary for the purpose of causing questions to be put in a clear and proper shape, of checking improper questions, and of making the witness give precise answers. At the end of it, however, if it has been reasonably well conducted, the court ought to know fairly the position of the witness with regard to the material facts of the case, and it should then put such questions to the witness as it may consider necessary to possess itself of all the detailed relevant facts to which the witness can speak from personal observation, or which bear upon his trustworthiness.

Tender of documents in evidence.

154. (1) Every document or writing which a party intends to use as evidence against his opponent must be formally tendered by him in the course of proving his case at the time when its contents or purport are first immediately spoken to by a witness. If it is an original document already filed in the record of some action, or the deposition of a witness made therein, it must previously be procured from that record by means of, and under an order from, the court. If it is a portion of the pleadings, or a decree or order of court made in another action, it shall not generally be removed therefrom, but a certified copy thereof shall be used in evidence instead.

Records of other actions not to be admitted in bulk.

(2) It shall not be competent to the court to admit in evidence the entire body of proceedings and papers of another action indiscriminately. Each of the constituent documents, pleadings, or processes of the former action, which may be required in the pending action, must be dealt with separately as above directed.

Documents admitted to be read aloud in court.

(3) The document or writing being admitted in evidence, the court, after marking it with a distinguishing mark or letter by which it should, when

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necessary, be ever after referred to throughout the trial, shall cause it, or so much of it as the parties may desire, to be read aloud.

Explanation.—If the opposing party does not, on the document being tendered in evidence, object to its being received, and if the document is not such as is forbidden by law to be received in evidence, the court should admit it.

If, however, on the document being tendered the opposing party objects to its being admitted in evidence, then commonly two questions arise for the court :—

Firstly, whether the document is authentic—in other words, is what the party tendering it represents it to be ; and

Secondly, whether, supposing it to be authentic, it constitutes legally admissible evidence as against the party who is sought to be affected by it.

The latter question in general is matter of argument only, but the first must be supported by such testimony as the party can adduce. If the court is of opinion that the testimony adduced for this purpose, developed and tested by cross-examination, makes out a prima facie case of authenticity, and is further of opinion that the authentic document is evidence admissible against the opposing party, then it should admit the document as before.

If, however, the court is satisfied that either of those questions must be answered in the negative, then it should refuse to admit the document.

Whether the document is admitted or not, it should be marked as soon as any witness makes a statement with regard to it ; and if not earlier marked on this account, it must, at latest, be marked when the court decides upon admitting it.

Procedure to be followed before witness is asked to identify document.

155. Before a witness is allowed to, in any way, identify a document, he should generally be made, by proper questioning, to state the grounds of his knowledge with regard to it.

Illustration

If the witness is about to speak to the act, or factum, of signature he should first be made to explain concisely the occurrences which led to his being present on the occasion of the signing ; and if he is about to recognize a signature on the strength of his knowledge of the supposed signer's handwriting, he should first be made to state the mode in which this knowledge was acquired.

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Cross-examination as to knowledge.

156. The questioning for this purpose should be effected by the party who is seeking to prove the document ; and the opposing party, if he desires to do so, should be allowed to interpose with cross-examination on this point before the document is shown to the witness.

Court to see witness thus tested.

157. It is the duty of the court, in the event of a witness professing to be able to recognize or identify writing, always to take care that his capacity to do so is thus tested, unless the opposite party admits it.

And to decide on his competency.

158. If on the examination effected for this purpose it appears to the court that the witness was not in fact present at the time of signing, or is not reasonably competent to identify the handwriting, then the court shall not permit him to give his testimony on the matter of the signature.

Signature by a mark how proved.

159. (1) The signature of a person, which purports or which appears by the evidence to have been written by the pen of another, is not proved until both the fact of the writing and the authority of the writer to write the name on the document as a signature is proved.

(2) Subsection (1) applies to the case where the signature is a mark explained by the name written adjacent thereto.

Proof in the case of an illiterate person.

160. In the case of an illiterate person, who cannot read, it must also be proved that at the time when his name was written on, or his mark put to, the document, he understood the contents of it :

Provided that where the name of such illiterate person shall have been written on, or his mark put to, any document for the purpose merely of attesting the signature of another, it shall not be necessary to prove that he understood the contents of such document, but it shall be sufficient to prove that he was aware of the purpose for which his name was so written or his mark so put, and that the person whose signature he purports to attest was known to him.

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Case of documents whose execution need not be proved.

161. When the document purports on the face of it to be so old that proof of the actual execution is not required by law, it is not proved until sufficient evidence has been given to prove both that it comes into court from the proper custody, and that it has continued to be in proper custody throughout the period during which it can be reasonably accounted for.

Copy of absent original how proved.

162. When the document, the admission of which is objected to, is put forward as the copy of an absent original, it is not proved until both such evidence as is sufficient to prove the correctness of the copy, and also such evidence as would be sufficient to prove the original, had it been tendered instead of the copy, has been given.

Note.—The question whether a copy document is admissible in evidence between the parties in the place of the original is quite distinct from the question whether the document (original or copy) is admissible as evidence relevant to the issue under trial.

On termination of beginning party's case the opposing party to state and prove his in like manner.

163. When the party beginning has stated his case and adduced his evidence in accordance with the foregoing rules, then the opposing party or parties (if there are more than one, who have distinct cases) shall in person, or by proctor or counsel, state his or their case or cases (and in the latter event in succession), and when the case of each opposing party has been so stated each such party shall adduce in order his evidence, oral and documentary, and the same shall be received and dealt with precisely as in the case of the party beginning, who shall then be entitled to reply. But where there are several issues, the burden of proving some of which lies on the other party or parties, the party beginning may at his option either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the opposing party or parties; and in the latter case the party beginning may produce evidence on those issues after the other party or parties has or have produced all his or their evidence, and such other party or parties may then reply specially on the evidence so produced by the party beginning, but the party beginning will in that case be entitled to reply generally on the whole case.

Reply.

When rebutting evidence is admissible.

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Court may question witness at any time.

164. The court may at any time, whether before or after the examination of a witness by the respective parties or during such examination, put and interpose such questions as it may consider conducive to the attainment of truth and justice. And the answers to such questions shall be made to appear on the face of the record as having been given to the court.

Court may recall witness.

165. The court may also in its discretion recall any witness, whose testimony has been taken, for further examination or cross-examination, whenever in the course of the trial it thinks it necessary for the ends of justice to do so.

When may court permit departure from above rules.

166. The court may for grave cause, to be recorded by it at the time, permit a departure from the course of trial prescribed in the foregoing rules.

Evidence of witness to be given orally in open court.

167. The evidence of the witnesses shall be given orally, as above prescribed, in open court in the presence and under the personal direction and superintendence of the Judge.

Witness to be examined on oath or affirmation.

168. Witnesses professing to be Christians or Jews, who have discretion to understand the nature of an oath, shall be examined upon oath, unless they state that, according to their religious tenets or on other grounds they object to the taking of an oath, in which case they shall be examined on affirmation. Witnesses not professing to be Christians or Jews shall be examined on affirmation. The same rule shall apply to affidavits. And except when hereinafter otherwise expressly provided, the oath or affirmation shall be administered in open court.

Evidence of witness how taken down.
[§ 3, 39 of 1945.]

169. The evidence of each witness shall be taken down in writing in English by the Judge, or in his presence and hearing and under his personal direction and superintendence. The evidence shall be taken down ordinarily in the form of a narrative

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Any particular question and answer may be taken down.

170. The court may of its own motion or on the application of any party take down or cause to be taken down any particular question and answer, or any objection to any question, if there appear to the court any special reason for so doing.

The objection to question which is allowed and the decision of court thereon may be taken down.

171. If any question put to a witness be objected to, and the court allows the same to be put, the Judge may in his discretion take down in writing the question, the answer, the objection, and the name of the party making it, together with the decision of the court thereon.

The objection to question disallowed and the decision of court thereon to be taken down.

172. If on objection made the court refuses to allow the question to be put, the Judge shall, on the request of the questioner, take down in writing the question, the objection, and the name of the party making it, together with the decision of the court thereon.

Court may record remarks on demeanour of witness.

173. The court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Witnesses may be kept out of court.

174. The witnesses on either side or on both or all sides shall, on motion of any of the parties, be kept out of court and of hearing, except the witness immediately under examination ; nor shall any witness, who shall remain in court or within hearing after order made to that effect, be permitted to give evidence, unless in the case of a witness called to prove some fact which has incidentally become essential in the course of the trial, and the necessity of which could not reasonably have been anticipated. And every witness who has been examined shall be kept separate from, and shall be allowed no communication with, those who still remain to be examined :

Provided that it shall be lawful for the court in its discretion to allow any witness to be examined, if it shall think such examination conducive to the attainment of truth or justice, notwithstanding that such witness shall have remained in court or within hearing contrary to such order aforesaid.

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No witness to be called unless name included in list of witnesses except with leave of court.

175. No witness shall be called on behalf of any party unless such witness shall have been included in the list of witnesses previously filed in court by such party as provided by section 121 :

Provided, however, that the court may in its discretion, if special circumstances appear to it to render such a course advisable in the interests of justice, permit a witness to be examined, although such witness may not have been included in such list aforesaid ;

Provided also that any party to an action may be called as a witness without his name having been included in any such list.

Court may forbid indecent or scandalous questions.

176. The court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Court shall forbid insulting questions.

177. The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

Evidence *de bene esse*.

178. (1) If a witness is about to leave the jurisdiction of the court, or if other sufficient cause is shown to the satisfaction of the court why his evidence should be taken immediately, the court may upon the application of either party or of the witness, at any time after the institution of the action and before trial, take the evidence of such witness in manner herein before provided.

(2) Where such evidence is not taken forthwith, and in the presence of the parties, such notice as the court thinks sufficient of the day fixed for the examination shall be given to the parties.

(3) The evidence so taken may be read at any hearing of the action, provided that the witness cannot then be produced.

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Evidence taken on affidavit or on commission.

179. The court may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or by depositions taken on commission, instead of by the testimony of witnesses given viva voce before it, or that the affidavit, or deposition taken on commission, of any witness may be read at the hearing of the action on such conditions as the court shall think reasonable :

Provided that when it appears to the court that either party bona fide desires the production of a witness before the court for cross-examination viva voce, and that such witness can be so produced, an order shall not be made authorizing the evidence of such witness to be given otherwise than viva voce.

Court may examine witness viva voce notwithstanding affidavit or commission.

180. In the event of an order having been made for the proof of facts by affidavit, or by deposition taken on commission, the court may, nevertheless, at the instance of either party order the attendance of the declarant or deponent at the hearing of the action for viva voce cross-examination, if he is in Ceylon and can be produced.

What statements may affidavit contain.

181. Affidavits shall be confined to the statement of such facts as the declarant is able of his own knowledge and observation to testify to, except on interlocutory applications, in which statement of his belief may be admitted, provided that reasonable grounds for such belief be set forth in the affidavit.

Petitions cannot be converted to affidavits.

182. A petition stating facts of observation and belief is not converted into an affidavit by the addition of a verifying clause, on affirmation or oath, to the effect that the statements in the petition are true.

Who may administer oaths.

183. In the case of any affidavit under this Chapter—

(*a*) any court, or Magistrate, or Justice of the Peace ; or

(*b*) any officer whom the Supreme Court may appoint for the purpose (and who shall be styled " Commissioner to administer Oaths ")

may administer the oath to the declarant.

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CHAPTER XX

Judgment And Decree

Judgment when pronounced.

184. (1) The court, upon the evidence which has been duly taken or upon the facts admitted in the pleadings or otherwise, and after the parties have been heard either in person or by their respective advocates or proctors (or recognized agents), shall, after consultation with the assessors (if any), pronounce judgment in open court, either at once or on some future day, of which notice shall be given to the parties or their proctors at the termination of the trial.

(2) On the day so fixed, if the court is not prepared to give its judgment, a yet future day may be appointed and announced for the purpose.

Judge may pronounce judgment written by predecessor.

185. A Judge may pronounce a judgment written by his predecessor, but not pronounced.

Judgment to be written in English and to be dated and signed in open court.

186. The judgment shall be written in English, and shall be dated and signed by the Judge in open court at the time of pronouncing it.

Requisites of judgment.

187. The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively.

Decree.

188. As soon as may be after the judgment is pronounced, a formal decree bearing the same date as the judgment shall be drawn up by the court in the form No. 41 in the First Schedule or to the like effect, specifying in precise words the order which is made by the judgment in regard to the relief granted or other determination of the action. The decree shall also state by what parties and in what proportions costs are to be paid, and in cases in the Courts of Requests shall state the amount of such costs. The decree shall be signed by the Judge.

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Amendment of judgments, decrees and orders.

189. (1) The court may at any time, either on its own motion or on that of any of the parties, correct any clerical or arithmetical mistake in any judgment or order or any error arising therein from any accidental slip or omission, or may make any amendment which is necessary to bring a decree into conformity with the judgment.

(2) Reasonable notice of any proposed amendment under this section shall in all cases be given to the parties or their proctors.

Requisites of decree relating to immovable property.

190. When the decree relates to immovable property, the property affected thereby shall be described therein by the boundaries and in such other manner by reference to Government surveys or otherwise as may secure, as far as possible, correctness of identification.

Requisites of decree relating to movable property.

191. When the action is for movable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative, if delivery cannot be had.

At what rate may interest on money be decreed.

[§ 2, 18 of 1944.]

192. (1) When the action is for a sum of money due to the plaintiff, the court may in the decree order interest according to the rate agreed on between the parties by the instrument sued on, or in the absence of any such agreement at the rate of five *per centum* per annum to be paid on the principal sum adjudged from the date of the action to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the action, with further interest at such rate on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

(2) When such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate action therefor shall not lie.

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When may court decree specific performance.

193. When the action is for damages for breach of contract, if it appear that the defendant is able to perform the contract, the court, with the consent of the plaintiff, may decree the specific performance of the contract within a time to be fixed by the court, and in such case shall award an amount of damages to be paid as an alternative if the contract is not performed.

When may court decree payment by instalments.

194. In all decrees for the payment of money, except money due on mortgage of movable or immovable property, the court may order that the amount decreed to be due shall be paid by instalments, with or without interest, and the court may in its discretion impose such terms as it may think fit as to giving security for the payments so to be made :

Provided always that on failure to pay the first or any other instalment, the whole amount or any balance then due shall on such failure become immediately payable ;

Provided also, that if the party ordered to pay by instalments shall appeal against the decree, and the appeal shall be decided against him, his right to pay by instalments shall cease, and the whole amount shall be immediately payable, unless the Supreme Court give express direction to the contrary ;

Provided also, that no appeal shall lie against the refusal of the court to make an order for payment by instalments.

Decree when set-off or claim in reconvention is allowed.

195. If the defendant shall have been allowed to set off any demand against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and the mandatory part of the decree shall be for the recovery of any balance which shall on that statement appear to be due to either party. The decree of the court with respect to anything awarded to the defendant on any matter on which the defendant obtains judgment by set-off or in reconvention, shall be to the same effect, and be subject to the same rules, as if such thing had been claimed by the defendant in a separate action against the plaintiff.

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Decree when claim in respect of mesne profits from date of action is allowed.

196. When the action is for the recovery of the possession of immovable property, yielding rent or other profit, the court may, whenever the prayer of the plaint asks for damages in respect of mesne profits or rent, provide in the decree for the payment of money in lieu of mesne profits or rent in respect of such property from the date of the institution of the action until the delivery of possession to the party in whose favour the decree is made, with interest thereon at such rate not exceeding five *per centum* as the court thinks fit.

Interest on mesne profits. [§ 2, 18 of 1944.]

Explanation.—"Mesne profits" of property mean those profits which the person in wrongful possession of such property actually received, or might, with ordinary diligence, have received therefrom.

Mesne profits prior to date of action.

197. When the action is for the recovery of possession of immovable property and for mesne profits which have accrued thereon during a period prior to the institution of the action, the court may either determine the amount and make an order for the payment thereof additional to and embodied in the decree itself, or may pass a decree for the property and reserve the inquiry into the amount of mesne profits to be entered upon after the execution of the decree for the property, as may appear most convenient.

Interlocutory order for accounts.

198. When the action is for an account of any property and for its due administration under the decree of the court, the court, before making the final decree between the parties, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

Administration by the court.

199. In the administration by the court of the property of any person who dies after this Ordinance comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively as may be in force for the time being with respect to the estates of persons adjudged insolvent.

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And all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration and make such claims against the same as they may respectively be entitled to by virtue of this Ordinance.

Decree in action for pre-emption, &c.

200. When the action is to enforce a right of pre-emption in respect of a particular sale of property, and the court finds for the plaintiff, if the amount of purchase money has not been paid into court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid on or before such day or any extension thereof which shall have been allowed for good cause shown, the action shall stand dismissed with costs.

Interlocutory order in action for dissolution of partnership.

202.* When the action is for the dissolution of a partnership, the court before making its decree may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

Suit for account between principal and agent.

203. When the action is for an account of pecuniary transactions between principal and agent, and in all other actions not herein before provided for, where it is necessary in order to ascertain the amount of money due to or from any party that an account should be taken, the court shall before making its decree pass an order directing such account to be taken as it thinks fit.

Decree or order postponing hearing.

204. When a decree or order made at the hearing of the action is such as to have the effect of postponing the further hearing and the final determination of the action, as for instance a decree for the taking of accounts, or an order for the issue of a commission to take evidence, or of a commission to divide by metes and bounds, it shall specify the time at which the further hearing of the action shall be proceeded with.

*Section 201 repealed by Ordinance No. 21 of 1927.

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Any person entitled to certified copies of decree and judgment.

205. Upon being paid such fee as the court shall from time to time determine, the secretary or chief clerk of the court shall at all times furnish to any person applying for the same, and supplying the necessary stamp, copies of the proceedings in any action, or any part thereof, or upon such application and production of such stamp shall examine and certify to the correctness of any such copies made by such person.

Decree or copy to be primary evidence of decision.

206. The decree or such certified copy thereof shall constitute the sole primary evidence of the decision or order passed by the court.

Decrees must be decisive, and must not direct non-suit.

207. All decrees passed by the court shall, subject to appeal, when an appeal is allowed, be final between the parties ; and no plaintiff shall hereafter be non-suited.

Explanation.—Every right of property, or to money, or to damages, or to relief of any kind which can be claimed, set up, or put in issue between the parties to an action upon the cause of action for which the action is brought, whether it be actually so claimed, set up, or put in issue or not in the action, becomes, on the passing of the final decree in the action, a *res adjudicata*, which cannot afterwards be made the subject of action for the same cause between the same parties.

CHAPTER XXI

Of Costs

Costs.

208. Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the action and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes, or of procuring copies of documents, fees and charges of advocates and proctors, such just and reasonable charges as appear to have been properly incurred in procuring evidence and the attendance of witnesses, and expenses of commissioners either in taking evidence or in local investigations, or in investigations into accounts ; and all other expenses of procuring and adducing necessary evidence :

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Provided that no costs shall be recoverable for or on account of the appearance of any person (not being an advocate or proctor) on behalf of any party in cases in the Courts of Requests.

Court always to have power to give or reserve costs.

209. When disposing of any application or action under this Ordinance, whether of regular or of summary procedure, the court may, unless elsewhere in this Ordinance otherwise directed, give to either party the costs of such application or action, or may reserve the consideration of such costs for any future stage of the proceedings ; any order for the payment of costs only is a decree for money within the provisions of section 194 as to payment by instalments.

Court shall direct by whom costs to be paid.

210. The decree or order shall direct by whom the costs of each party are to be paid, and whether in whole or in what part or proportion.

Court may apportion costs.

211. The court shall have full power to give and apportion costs of every application and action in any manner it thinks fit, and the fact that the court has no jurisdiction to try the case is no bar to the exercise of such power :

Provided that if the court directs that the costs of any application or action shall not follow the event, the court shall state its reasons in writing.

Set-off of costs.

212. The court may direct that the costs payable to one party by another shall be set off against a sum which is admitted or is found in the action to be due from the former to the latter.

But such direction shall not affect the lien upon the amount decreed of any proctor in respect of the costs payable to him under the decree.

Court may give interest on costs.
[§ 2, 18 of 1944.]

213. The court may give interest on costs at any rate not exceeding five *per centum* per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the action.

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Costs to be taxed.

214. All bills of costs, whether between party and party or between proctor and client, shall be taxed by the Registrar or secretary or chief clerk of the court, as the case may be, according to the rates specified in the Second Schedule ; and if either party is dissatisfied with this taxation, the matter in dispute shall be referred to the court for its decision, and the decision of the court in review of taxation of costs shall (except when it is the decision of the Supreme Court) be liable to an appeal to the Supreme Court.

Action for costs by proctor.

215. No proctor shall commence or maintain any action for the recovery of any fees, charges, or disbursements at law until the expiration of one month or more after he shall have delivered unto the party charged therewith, or left with him at his dwelling house or last known place of abode, a bill of such fees, charges and disbursements subscribed by such proctor. And after such delivery or service thereof, either the proctor or party charged therewith may obtain an appointment from the taxing officer for the taxation thereof ; and if either party shall fail to attend, and the taxing officer is satisfied that such party has received due notice of the appointment, the taxation shall proceed in his absence.

Proctor to bear costs of taxation in what case.

216. If more than one-sixth of the amount of any bill of costs is disallowed by the taxing officer, the proctor shall bear the expense of taxation.

CHAPTER XXII

Of Executions

Classification of decrees.

217. A decree or order of court may command the person against whom it operates—

(*A*) to pay money ;

(*B*) to deliver movable property ;

(*C*) to yield up possession of immovable property ;

(*D*) to grant, convey, or otherwise pass from himself any right to, or interest in, any property ;

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(*E*) to do any act not falling under any one of the foregoing heads ;

or it may enjoin that person—

(*F*) not to do a specified act, or to abstain from specified conduct or behaviour ;

or it may, without affording any substantive relief or remedy—

(*G*) declare a right or status.

And the method of procedure to be followed, when necessary, by the person party to the action in whose favour the decree or order is made, hereinafter called the "decree-holder" or "judgment-creditor", in order to enforce satisfaction or execution of the decree in each case respectively by the person party to the action against whom the decree is made, hereinafter called "the judgment-debtor", is that which is next hereinafter specified according to the above distinguishing heads.

(*A*)

EXECUTION OF DECREE TO PAY MONEY

Power of creditor to seize and sell debtor's property in satisfaction of decree for payment of money.

218. When the decree falls under head (*A*) and is unsatisfied, the judgment-creditor has the power to seize, and to sell or realize in money by the hands of the Fiscal, except as hereinafter mentioned, all saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which the judgment-debtor has a disposing power, which he may exercise for his own benefit, and whether the same be held by or in the name of the judgment-debtor or by another person in trust for him or on his behalf :

Provided that the following shall not be liable to such seizure or sale, namely—

Excepted property.

(*a*) the necessary wearing apparel, beds, and bedding of the judgment-debtor, or of his wife and children ;

(*b*) tools, utensils, and implements of trade or business, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may in the opinion of the court be necessary to enable him to earn his livelihood as such ;

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(c) professional instruments and library necessary for the carrying on of the judgment-debtor's profession or business to the value of five hundred rupees ;

(d) books of accounts ;

(e) mere rights to sue for damages ;

(f) any right of personal service ;

(g) the stipend and the cost of living allowance of a naval, military, air force, civil or political pensioner of the Government ; [§ 2, 43 of 1949.]

(h) the salary and the cost of living allowance of a public officer or servant ; [§ 2, 43 of 1949.]

(i) the pay and allowances of persons to whom the articles of war apply ;

(j) the wages of labourers and domestic servants ;

(k) an expectancy of succession by survivorship or other merely contingent or possible right of interest ;

(l) a right to future maintenance ;

(m) the salary and allowances of an employee in a shop or office, if such salary and allowances in the aggregate do not exceed five hundred rupees per mensem ; [§ 2, 20 of 1954.]

Provided also that nothing in this section shall be deemed to affect the Army Act of the United Kingdom, or any similar law for the time being in force. [44 & 45 Vict. c. 58.]

Explanation.—The particulars mentioned in clauses (g), (h), (i), (j) and (m) are exempt from sequestration or sale, whether before or after they are actually payable. [§ 2, 20 of 1954.]

In paragraph (m) of the first proviso to this section, "shop" and "office" shall have the same meanings as in the Shop and Office Employees (Regulation of Employment and Remuneration) Act. [§ 2, 20 of 1954.]

Examination of judgment-debtor as to debts owing to him.

219. (1) The party entitled to enforce any decree for the recovery or payment of money may apply to the court for an order that the debtor (or, in the case of a corporation, that any officer thereof) be orally examined before the court on oath or affirmation, as to

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whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the decree ; and the court may thereon make an order for the attendance and examination on oath or affirmation of such debtor or of any other person whom it thinks necessary, and for the production by such debtor or person of any books or documents.

(2) If a debtor for whose attendance an order has been made under this section fails to comply with such order, the court may, on its own motion or on the application of the party entitled to enforce the decree, issue a warrant for the arrest of such debtor :

Provided the court may make it a condition of the issue of such warrant that the person applying for it shall deposit such sum as the court may deem reasonable for the subsistence of the debtor from the time of his arrest until he can be brought before the court, and for the purpose of defraying any other expenditure that may be incurred in executing such warrant.

Application need not be supported by affidavit.

220. It shall not be necessary to support any such application by affidavits of the applicant's belief that any debts are owing to the debtor, or that he has any other property or means of satisfying the decree.

Costs.

221. The costs of any such application and of any proceedings arising thereout or incidental thereto shall be in the discretion of the court.

Execution of decree against legal representative of a deceased person.

222. (1) If the decree is against a party as the legal representative of a deceased person, and is for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property in the hands or under the control of the party against whom the decree is made.

(2) If no such property can be found, and the judgment-debtor fails to satisfy the court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of

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the property not duly applied by him, in the same manner as if the decree had been against him personally.

Seizure and sale to be effected under order of court.

223. For the purpose of effecting the required seizure and sale in any case the Fiscal must be put in motion by application for execution of decree to the court which made the decree sought to be enforced.

Application therefor.

224. The application for execution of the decree shall be in writing, signed by the applicant or his proctor, and shall contain the following particulars:—

(*a*) the number of the action ;

(*b*) the names of the parties ;

(*c*) the date of the decree ;

(*d*) whether any appeal has been preferred from the decree ;

(*e*) whether any, and what, adjustment of the matter in dispute has been made between the parties subsequently to the decree ;

(*f*) whether any, and what previous applications have been made for execution of the decree, and with what result, including the dates and amounts of previous levies, if any ;

(*g*) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby ;

(*h*) the amount of costs, if any, awarded ;

(*i*) the name of the person against whom the enforcement of the decree is sought ;

(*j*) the mode in which the assistance of the court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

Court to satisfy itself as to conformity of application.

225. (1) Upon the application for execution of the decree being made, the court shall satisfy itself by reference, if necessary, to the record of the action in which the decree or order sought to be executed was

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When application should be refused by the court.

passed, that the application is substantially in conformity with the foregoing directions, and that the applicant is entitled to obtain execution of the decree or order which is the subject of the application. If the court is not satisfied in these respects it shall refuse to entertain the application, unless and until amended in the particulars in which the court considers it faulty and defective, and with the view to its being so amended the court shall point out these particulars to the applicant :

Provided that the court may make the requisite amendment then and there, if it is consented to by the applicant and is such as to admit of being conveniently so effected ; and

Provided further that every such amendment shall be attested by the signature of the Judge making it.

(2) In the event of the court refusing to entertain the application, the order of refusal, stating the date both of the application and of the order, and the name of the applicant, and specifying the grounds of refusal, shall be endorsed on the application, and the same shall be filed of record in the action.

Writ of execution.

(3) If the court is satisfied in the respects above indicated, it shall direct a writ of execution to issue to the Fiscal in the form No. 43 in the First Schedule.

Duties of Fiscal on receiving writ.

226. (1) Upon receiving the writ, the Fiscal or his deputy, or other officer, shall within forty-eight hours after delivery to him of the same, if the debtor shall be a person residing within five miles of the office of the Fiscal or Deputy Fiscal—or if residing beyond five miles, within an additional forty-eight hours for every five miles or part thereof—repair to his dwelling house or place of residence and there require him, if present, to pay the amount of the writ.

(2) If by reason of the debtor's absence no demand for the payment is made, or, in the event of any such demand, when made not being complied with, the Fiscal shall forthwith proceed to seize and sell, or otherwise realize in money, such unclaimed property of

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the judgment-debtor as may be pointed out and surrendered to him for the purpose by the judgment-debtor, or in default thereof such property of the judgment-debtor as may be pointed out by the judgment-creditor, or such property as is specified in the writ according to the rules next hereinafter contained :

Provided that when the debtor is out of Ceylon it shall not be necessary to require him to pay the amount of the writ before the execution is carried into effect.

Mode of Seizure

Seizure of movable property in possession of debtor to be manual.

227. If the property sought to be seized and sold, or otherwise realized in satisfaction of the decree to be executed is movable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 218, the seizure shall be manual.

Disposal of property seized until sale.

The Fiscal, Deputy Fiscal, or other officer may at his discretion permit the owner or possessor of the property or the writ-holder to take charge of the property until the time of sale, on giving security to the satisfaction of such officer that he will in the meantime safely and securely keep the same ; or such officer may upon the necessary expenses therefor being advanced or secured to him by the debtor or the writ-holder, keep the property in his own custody or in the custody of one of his subordinates, or cause the same to be removed to some fit place of security.

If such security is not given or such expenses are not advanced or secured, the Fiscal, Deputy Fiscal, or other officer shall make a special return thereof to the court, and shall not be responsible for the due custody of the property so seized.

The expenses of keeping the property in such custody or of removing the same when certified by the Fiscal shall, if not paid by the debtor, be a first charge on the proceeds of the property seized or sequestered, provided that the court may, if it thinks fit, reduce the amount of expenses so certified as aforesaid :

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Proviso as to perishable property.

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the Fiscal may sell it at once.

As to attachment of negotiable instrument.

228. If the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the instrument shall be seized and brought into court and held subject to the further orders of the court.

Seizure of debts, shares, and movable property not in possession of debtor and not deposited in court to be by written notice of prohibition.

229. In the case of—

(i) a debt not secured by a negotiable instrument,

(ii) a share in the capital of any public company or corporation,

(iii) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any court, or in the custody of a public officer,

the sequestration or seizure shall be made by a written notice signed by the Fiscal, prohibiting—

(*a*) in the case of the debt, the creditor from recovering the debt, and the debtor from making payment thereof until the further order of the court from which the writ of execution authorizing the seizure issues ;

(*b*) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;

(*c*) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be affixed to some conspicuous part of the court-house, and another copy of the same shall be delivered or sent by post, in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other movable property (except as aforesaid) to the person in possession of the same.

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Judgment-debtor's debtor may be summoned, or execution may issue against him.

230. (1) A debtor prohibited under clause (*a*) of the last preceding section may, upon the *ex parte* application of the judgment-creditor, be summoned by the court to show cause, on a day fixed in the summons, why he should not pay to the judgment-creditor the debt due from him to the judgment-debtor, or so much thereof as may be sufficient to satisfy the judgment. If such debtor does not dispute the debt due or claimed to be due from him, and fails within such time as may be allowed him by the court to pay into court the amount due from him to the judgment-debtor, or an amount equal to the judgment, or if he does not appear upon summons, then the court may order execution to issue, and it may issue accordingly, to levy the amount due from such debtor, or so much thereof as may be sufficient to satisfy the judgment.

(2) The costs of any application and of any proceedings arising from, or incidental to, any such application as aforesaid shall be in the discretion of the court.

Payment by him to be a discharge as against judgment-debtor.

231. Payment made by, or execution levied upon, such debtor in manner provided in the last preceding section shall be a valid discharge to him as against the judgment-debtor to the amount paid or levied, although such proceeding may be set aside or the judgment in respect of which any payment or levy is made may be reversed.

Seizure of property deposited in any court.

232. (1) If the property is deposited in, or is in the custody of, any court or public officer, the seizure shall be made by a notice to such court or officer, requesting that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the court from which the writ of execution authorizing the seizure issues :

Question of title or priority

Provided that, if such property is deposited in, or is in the custody of, a court, any question of title or priority arising between the judgment-creditor and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such court.

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(2) Upon such notice being received by any court a memorandum thereof shall be made in the journal of the action in which, or to the credit of any party to which, the money is deposited, or is in the custody of the court.

Explanation.—Money in the hands of the Government Agent to the credit of an action, or to the credit of any party to an action, is, within the meaning of this section, money deposited in, or in the custody of, the court in which the action is.

Notice by Fiscal.

233. The notice necessary to effect seizure under sections 229 and 232 may be signed and served by the Fiscal under the authority of the writ of execution alone.

Seizure of a money decree in favour of judgment-debtor.

234. (1) If the property is a decree for money passed in favour of the judgment-debtor by the court which passed the decree sought to be executed, the seizure shall be made by an order of the court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

(2) If the property is a decree for money passed by any other court, the seizure shall be made by a notice in writing to such court signed by the secretary or clerk of the court which passed the decree sought to be executed, requesting the former court to stay the execution of its decree until such notice is cancelled by the court from which it was sent. The court receiving such notice shall stay execution accordingly, unless and until—

(*a*) the court which passed the decree sought to be executed cancels the notice ; or

(*b*) the holder of the decree sought to be executed applies to the court receiving such notice to execute its own decree.

On receiving such application the court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

Seizure of any other decrees.

235. In the case of all other decrees the seizure shall be made by an order of the court which passed the decree sought to be executed to the holder of the decree

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sought to be seized, prohibiting him from transferring or charging the same in any way, and when such decree has been passed by any other court, also by sending to such court a like notice in writing to abstain from executing the decree sought to be seized until such notice is cancelled by the court from which it was sent. Every court receiving such notice shall give effect to the same until it is so cancelled.

Alienation by debtor subsequent to seizure void as against claims enforceable under seizure.

236. When a seizure of any negotiable instrument, debt, share, money, decree or any other movable property has been effected and made known in manner herein before provided, any private alienation of the property seized, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend or delivery of the share to the judgment-debtor during the continuance of the seizure, shall be void as against all claims enforceable under the seizure.

Seizure of immovable property to be by written notice of prohibition.

237. (1) If the property is immovable, the seizure shall be made by a notice signed by the Fiscal prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift, or otherwise.

Publication of such notice.

(2) The notice shall specify the parties to the action, the judgment-debtor, the dates of judgment and seizure, and the name, situation, and boundaries of the land seized, and shall be proclaimed at some place on or adjacent to such property by beat of tom-tom or other customary mode, and a copy of the notice shall be affixed by the Fiscal to a conspicuous part of the property and of the court-house and of the Fiscal's office. But in no case shall the Fiscal enter upon actual possession of the immovable property so seized, or receive the rents and profits thereof, unless expressly directed so to do by order made under Chapter L.

Effect of publication of seizure and registration of notice of seizure.

238. When a seizure of immovable property is effected under a writ of execution and made known as provided by section 237 and notice of the seizure is registered before the 1st day of January, 1928, in the book formerly kept under section 237 or is registered on or after the 1st day of January, 1928, under the

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Registration of Documents Ordinance, any sale, conveyance, mortgage, lease, or disposition of the property seized, made after the seizure and registration of the notice of seizure and while such registration remains in force is void as against a purchaser from the Fiscal selling under the writ of execution and as against all persons deriving title under or through the purchaser.

When seizure must be ordered to be withdrawn.

239. If the amount decreed with costs and all charges and expenses resulting from the seizure of any property is paid into court, or if satisfaction of the decree is otherwise made through the court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the seizure.

List to be made of property seized.

240. As soon as any property shall be seized by the Fiscal, Deputy Fiscal, or other officer, a list of such property shall forthwith be made and signed by himself or the person seizing the same, and shall be given to the judgment-debtor and to any person claiming to be in possession of the property seized, and copies thereof shall be also deposited in the Fiscal's office and annexed to the return to the writ.

Claims to Property seized

Claims to property seized to be reported by Fiscal and investigated by court.

241. In the event of any claim being preferred to, or objection offered against the seizure or sale of, any immovable or movable property which may have been seized in execution of a decree or under any order passed before decree, as not liable to be sold, the Fiscal or Deputy Fiscal shall, as soon as the same is preferred or offered, as the case may be, report the same to the court which passed such decree or order ; and the court shall thereupon proceed in a summary manner to investigate such claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he were a party to the action :

Provided always that when any such claim or objection is preferred or offered in the case of any property so seized outside the local limits of the jurisdiction of

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the court which passed the decree or order under which such seizure is made, such report shall be made to, and such investigation shall thereupon be held by, the court of the district or division within the local limits of which such seizure was made, and the proceedings on such report and investigation with the order thereon shall, at the expiry of the appealable time, if no appeal has been within that time taken therefrom, but if an appeal has been taken, immediately upon the receipt by such court of the judgment or order in appeal, be forwarded by such court to the court which passed the decree or order, and shall be and become part of the record in the action ;

Provided, further, that in every such case the court to which such report is made shall be nearer to the place of seizure than, and of co-ordinate jurisdiction with, the court which passed the decree or order.

Claim to be made at earliest opportunity.

242. The claim or objection shall be made at the earliest opportunity, and if the property to which the claim or objection applies shall have been advertised for sale, the sale may (if it appears to the court necessary) be postponed for the purpose of making the investigation mentioned in section 241 :

Provided that no such investigation shall be made if it appears to the court that the making of the claim or objection was designedly and unnecessarily delayed with a view to obstruct the ends of justice.

Claimant to adduce evidence.

243. The claimant or objector must on such investigation adduce evidence to show that at the date of the seizure he had some interest in, or was possessed of, the property seized.

Discretion of court to release the property claimed.

244. If upon the said investigation the court is satisfied that, for the reason stated in the claim or objection, such property was not, when seized, in the possession of the judgment-debtor, or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his

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own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the court shall release the property wholly, or to such extent as it thinks fit, from seizure and make such order as to payment of fees and charges already incurred by the Fiscal as it may deem fit.

When may court disallow the claim.

245. If the court is satisfied that the property was, at the time it was seized, in possession of the judgment-debtor as his own property, and not on account of any other person, or was in the possession of some other person, in trust for him, or in the occupancy of a tenant or other person paying rent to him, the court shall disallow the claim.

Court may continue seizure subject to mortgage or lien.

246. If the court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the sequestration or seizure, it may do so subject to such mortgage or lien.

Action by party claiming right.

247. The party against whom an order under section 244, 245, or 246 is passed may institute an action within fourteen days from the date of such order to establish the right which he claims to the property in dispute, or to have the said property declared liable to be sold in execution of the decree in his favour ; subject to the result of such action, if any, the order shall be conclusive.

Punishment as well as damages may be awarded for groundless claim.

248. Whenever it shall appear to a competent court, and be so found and declared in any judgment pronounced by it in any action instituted by or against any person claiming any property pointed out or seized in execution, that such claim is altogether groundless, and wilfully preferred only to defeat or delay the execution, every such claimant shall, in addition to his liability to pay costs and damages, be liable to a fine not exceeding fifty rupees, and such fine shall be recovered as a fine imposed by a court in a criminal case.

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Seizure of partnership property for debt of partner, other partner may apply for release.

249. When a Fiscal has seized property of a partnership before or after its dissolution, upon a writ of execution against the interest therein of any partner made by virtue of an execution against his individual property, any other partner or former partner having an interest in the property may, at any time before the sale, apply to the court from which the writ of execution issued, upon an affidavit showing the facts, for an order directing the Fiscal to release the property and to deliver it to the applicant.

Undertaking to be given by applicant.

250. Upon such an application the applicant must give an undertaking, with at least two sureties, approved by the Judge, to the effect that he will account to the purchaser upon the sale to be made by virtue of the execution of the interest of the judgment-debtor in the property seized, in like manner as he would be bound to account to an assignee of such an interest ; and that he will pay to the purchaser the balance which may be found due upon the accounting, not exceeding a sum specified in the undertaking, which must be not less than the value of the interest of the judgment-debtor in the property seized by the Fiscal as fixed by the Judge.

Undertaking, to whose benefit it enures.

251. Where property of a partnership has been released upon an undertaking as prescribed in the last two sections, if the execution by virtue of which the levy was made is set aside or is satisfied without a sale of the interest levied upon, the undertaking enures to the benefit of each judgment-creditor of the same judgment-debtor then having an execution in the hands of the Fiscal having authority to levy upon that interest, as if it had been given to obtain a release from a seizure made by virtue of such an execution.

Interest of judgment-debtor may be sold.

252. Where property of a partnership has been so released, the interest of the judgment-debtor therein may be sold by the Fiscal, and the purchaser upon the sale acquires all that interest as if he was an assignee thereof.

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Of the Sale and Disposition of the Property seized:
(1) Of Sales Generally

Coin or currency notes seized how dealt with.

253. If the property seized is coin or currency notes the Fiscal shall deal with it in the manner hereinafter directed in respect of money received by the Fiscal on the sale of property sold at the execution sale.

How may decree of court, seized be realized.

254. When the property seized is a decree of court the judgment-creditor at whose instance the seizure is made shall be deemed the assignee thereof under assignment as of the date of the seizure, made by the person against whom he is executing the writ of execution, so far as that person's interest extends, and he may realize the decree in the manner hereinafter provided for the execution of a decree by an assignee thereof.

Procedure in case of other property seized by Fiscal.

255. In the case of all other property seized by the Fiscal he shall proceed to the sale thereof in the manner following :—

Notice of sale : I.—For movable property.

I.—In all cases of movable property the Fiscal or Deputy Fiscal shall cause notice of sale thereof to be given by beat of tom-tom or in such other manner as to secure publicity thereto, both at the place of sale and also where the seizure shall have been made, and such notice shall not be less than three days and not exceeding fourteen days before the day of sale, unless the time be enlarged by any order of court, and shall specify, as fairly and accurately as under the circumstances is reasonably practicable—

(*a*) the property to be sold ;
(*b*) the action in which, and
(*c*) the place, and
(*d*) day, and
(*e*) hour at which the sale is to take place ;
(*f*) the amount of money for the levy of which the writ issued.

II.—For immovable property.

II.—In all cases of immovable property the like notice of sale shall be given as is herein before required in sales of movable property, and the Fiscal, Deputy Fiscal, or other officer shall also cause to be made four

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copies of the notice of sale in English and four in the vernacular language prevailing within the district, one of each of which he shall cause to be posted at his office, at the court-house whence the execution issued, in some conspicuous part of the town or village in which the land is situate, and on some conspicuous spot on the property for sale, each of which publications shall be made ten days at the least before such sale takes place.

Advertisement where property exceeds one thousand rupees in value.

256. Whenever the property seized under one writ shall exceed the value of one thousand rupees, the Fiscal, Deputy Fiscal, or other officer shall, in addition to the notice herein before required, advertise the sale thereof, enumerating briefly the goods for sale, the nature and situation of the land, and the time and place of the sale, in the Gazette; and no such sale shall take place until it shall have been so advertised once at least twenty days prior to the sale. It shall be lawful to the execution-creditor or debtor to require the publication of such sale to be made in any newspaper to be named by him; and all costs and charges attending such advertisements, particulars of which shall be always given by the Fiscal with his return, shall be paid in advance by the party requiring such publication.

Advertisement in other cases.

257. The Fiscal, Deputy Fiscal, or other officer shall be also at liberty, at the request of both parties, or either of them, on payment to him by the applicant of all costs or expenses attending the publication, to advertise any sale of movable or immovable property in manner herein before mentioned, although it does not exceed the value of one thousand rupees.

Proceedings at the sale.

258. Every sale shall be held by an officer of the Fiscal, or some other person duly authorized by the Fiscal or Deputy Fiscal by writing under his hand.

When the proceeds do not exceed the sum of seven thousand five hundred rupees, the Fiscal or Deputy Fiscal shall recover a fee of three *per centum* on the proceeds actually recovered on return thereof made to the court in respect of every sale and resale of movable property, and two *per centum* on the proceeds of sale of immovable property belonging to the debtor.

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When the proceeds, whether of movable or immovable property, exceed that sum, the Fiscal or Deputy Fiscal shall recover a fee of one hundred and fifty rupees and of five rupees for every thousand rupees of the proceeds over and above the said sum of seven thousand five hundred rupees.

And in every case after the seizure of property and publication of sale thereof, in which the sale shall be postponed or stayed at the request or with the concurrence of the party suing out the writ, the Fiscal or Deputy Fiscal shall recover half of the above fees on the estimated value of such property from the party at whose instance the writ shall be stayed, and in default of immediate payment thereof the Fiscal shall certify the amount of such fees to the court whence the execution issued :

Provided, however, that such fee shall never exceed fifty rupees or the actual expenditure already incurred by the Fiscal towards carrying out the sale, whichever sum shall be the larger. The fees recovered under this section shall be brought to account and appropriated in such manner as the Secretary to the Treasury [1] shall from time to time direct.

Court may in certain cases postpone sale.

259. (1) If at any time prior to the sale of immovable property seized in execution the judgment-debtor can satisfy the court that there is reason to believe that the amount of the decree and of any unsatisfied judgment then in force against him may be raised by mortgage, or lease, or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the court may on his application postpone the sale of such property for such period as it thinks proper to enable him to raise the amount, and shall make such order as to the payment of fees and charges due to the Fiscal as it may deem fit.

(2) In such case the court shall grant a certificate to the judgment-debtor, authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 238, to make the proposed mortgage, lease, or sale :

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Provided that all moneys payable under such mortgage, lease, or sale shall be paid into court and not to the judgment-debtor ;

Provided also that no mortgage, lease, or sale under this section shall become absolute until it has been confirmed by the court.

Deposit by purchaser.

260. On every sale of immovable property under this Chapter the person declared to be the purchaser shall pay immediately after such declaration, in every case where the price does not exceed one hundred rupees, the full amount of, but in every other case a deposit of twenty-five *per centum* on the amount of his purchase money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again for sale.

Payment in full.

261. Where the price exceeds one hundred rupees the balance amount of the purchase money shall be paid by the purchaser on or before the thirtieth day after the sale of the property, or if the thirtieth day be a Sunday or public holiday, then on the first office day after the thirtieth day.

Default in payment, consequence of.

262. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to, and shall go in reduction of the claim of, the judgment-creditor, and the property shall be resold, and the defaulting purchaser shall forfeit all claim to the property and to any part of the sum for which it may subsequently be sold.

Fresh notification on resale.

263. Every resale of immovable property in default of payment of the purchase money within the period allowed for such payment shall be made after the issue of a fresh notification in the manner and for the period herein before prescribed for the sale.

Bid by a co-sharer.

264. When the property sold in execution of a decree is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respec-

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tively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of such co-sharer.

Fiscal to satisfy himself as to bona fides of bidder.

265. The Fiscal or other officer conducting any sale of immovable property under this Chapter may, before accepting any bid at such sale, satisfy himself as to the bona fides of the bidder, and his ability to pay down the amount of deposit required; and in the event of his not being so satisfied may refuse to accept any such bid, and shall continue the sale as if no such bid had been made.

Deficiency on resale to be paid by first purchaser on Fiscal's certificate.

266. The second sale, taking place in consequence of such non-payment of balance of purchase money, shall be made in the manner herein before prescribed for the first sale, and if the amount of the purchase money for which the property is sold at such second sale shall fall short of the amount for which the first sale was concluded, then the first purchaser and his sureties, if any, shall be held liable to pay the Fiscal the amount of this difference, and the Fiscal on non-payment thereof by such purchaser and his sureties within one week after demand made by him upon them respectively in writing, shall certify the amount of the said difference to the court whence the execution issued. And the like course shall be observed in respect of any subsequent sale rendered necessary by failure in payment of the purchase amount.

On highest bidder not making deposit, next highest may be declared purchaser; difference to be paid by highest bidder on Fiscal's certificate.

267. If at the sale of immovable property the highest bidder on being declared the purchaser shall not forthwith pay down the amount of deposit required, and give good and sufficient security to the satisfaction of the Fiscal, Deputy Fiscal, or other officer for the payment of the residue, the next highest bidder may be thereupon declared the purchaser, and required to make such deposit and security as aforesaid; and in the same manner the other bidders in rotation; and each person failing to make such deposit and to give security as aforesaid may be held liable to pay the difference between the amount of his offer and the sum finally settled at the sale, and the Fiscal, on

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non-payment thereof by such persons respectively within one week after demand made by him upon them in writing, shall certify the amount of the said difference in each case to the court whence the execution issued :

Provided, however, that in case of default of the highest bidder, instead of declaring the next highest bidder purchaser, the officer holding the sale may forthwith put up the property for sale anew, or adjourn the sale, in which latter case the property shall again be advertised as before.

Forfeiture of deposit.

268. If the price for which the property is finally sold at the second or any subsequent sale is not less than that of the first sale, then the money deposited by the purchaser at the first and other sales which preceded the final sale shall be paid to the execution-creditor in satisfaction *pro tanto* of the judgment ; and in the event of such judgment being so satisfied, and any surplus remaining, such surplus shall, after deducting any expenses consequent on the sale, be paid to the judgment-debtor.

Differences realized to augment the purchase money.

269. The differences between the biddings of any person failing to make the deposit and give the security required by section 267 and the sum finally settled at any such sale and between the amount of the final sale and those of previous sales shall, when realized, be paid by the Fiscal into the Government Agent's office in augmentation of the purchase money of the final sale.

The amount certified by Fiscal to be recovered as by execution of decree.

270. The amount certified by the Fiscal to be payable to him for half fees under the provisions of section 258 and the amounts of the differences certified by the Fiscal and directed to be reported to the court by sections 266 and 267 shall, in the case of such half fees at the instance of the Fiscal and in the case of such differences respectively at the instance either of the Fiscal, or of the judgment-creditor, or of the judgment-debtor, be recoverable from the persons declared in those sections to be liable to pay the same, in the same way as if the certificate were a decree for

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Cost of notice, publication, or proclamation.

money passed by the court to which it is returned against those persons ; and the cost (to be fixed by the court) of any notice, publication, or proclamation required under any of the provisions of this Ordinance to be given or made by the Fiscal by beat of tom-tom or in any other manner whatsoever, shall in every instance, where provision for the payment thereof is not otherwise specially made, be prepaid by the person at whose instance or in whose interest the same is required.

No officer conducting sale to bid.

271. No officer having any duty to perform in connection with any sale under this Chapter shall either by himself or another bid for, acquire, or attempt to acquire any interest in any property sold at such sale.

Holder of decree may bid or purchase.

272. (1) A holder of a decree in execution of which property is sold may, with the previous sanction of and subject to such terms as to credit being given him by the Fiscal and otherwise as may be imposed by the court, bid for or purchase the property.

And purchase money may be set off against decree.

(2) When a decree-holder purchases, the purchase money and the amount due on the decree may, if the court thinks fit, be set off against one another, and the court in execution of whose decree the sale is made may enter up satisfaction of the decree in whole or in part accordingly.

Place of sale of immovable property.

273. In all cases the sale of immovable property shall be conducted on the spot, unless the court shall otherwise direct, or unless on application in writing to the Fiscal or his deputy the parties shall consent to its being conducted elsewhere.

(2) Of Sales of Movable Property

Sale of a negotiable instrument or a share in any public company.

274. If the property to be sold is a negotiable instrument or a share in any public company or corporation, the court may direct the Fiscal, instead of selling it by public auction, to make the sale of such instrument or share through a broker at the market rate of the day.

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Sale of other movable property.

275. (1) In the case of other movable property, the price shall be paid at the time of sale, and in default of payment the property shall forthwith be again put up for sale.

(2) On payment of the purchase money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

What may vitiate sale.

276. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale unless substantial damage has been caused to the person impeaching the sale thereby.

Delivery to purchaser.

277. When the property sold is a negotiable instrument or other movable property of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery where third party is in possession.

278. When the property sold is any movable property to which the judgment-debtor is entitled, subject to a right of possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of unsecured debt or share.

279. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public company or corporation, the assignment thereof shall be made by a certificate of sale in favour of the purchaser signed by the Fiscal, who shall forthwith, by a written notice, prohibit the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary, or other proper officer of the company from permitting any such transfer or making any such payment to any person except the purchaser.

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Endorsement of negotiable instrument or share certificate.

280. (1) If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company or corporation is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect :

"*A. B.* by *C. D.*, Judge of the District Court of —— (*or as the case may be*), in an action by *E. F.* against *A. B.*"

(2) Until the transfer of such instrument or share the court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same ; and any endorsement made, or document executed, or receipt signed as aforesaid, shall be as valid and effectual for all purposes as if the same had been made, or executed, or signed by the party himself.

In case of other movable property court may make vesting order.

281. In the case of any movable property not herein before provided for, the court may make an order and execute such document as may be necessary vesting such property in the purchaser, or as he may direct ; and such property shall vest accordingly.

(3) *Of Sales of Immovable Property*

Sale not absolute until after thirty days and confirmation by court ;

282. (1) The Fiscal shall report to the court every sale of immovable property made by him or under his direction within ten days after the same shall have been made. And no sale of immovable property shall become absolute until thirty days have elapsed subsequent to the receipt of such report, and until such sale has been confirmed by the court.

and may be set aside for material irregularity.

(2) The decree-holder, or any person whose immovable property has been sold under this Chapter, or any person establishing to the satisfaction of the court an interest in such property, may apply by petition to the

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court to set aside the sale on the ground of a material irregularity in publishing or conducting it ; but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the court that he has sustained substantial injury by reason of such irregularity, and unless the grounds of the irregularity shall have been notified to the court within thirty days of the receipt of the Fiscal's report.

(3) In every such application the purchaser shall be made respondent to the petition.

Order confirming the sale.

283. (1) If no such application as is mentioned in the last preceding section is made within the thirty days, or if such application is made and the objection disallowed, the court shall at any time after the expiration of the thirty days, on the application of the decree-holder or of the purchaser, pass an order confirming the sale as regards the parties to the suit and the purchaser :

Provided that no order confirming the sale shall be made if it appear to the court that the judgment-debt was satisfied at the time that the writ of execution issued.

Order setting aside the sale.

(2) If such application is made, and if the objection is allowed, the court shall pass an order setting aside the sale.

When purchaser may apply to set aside sale.

284. The purchaser at any such sale may apply to the court by petition on summary procedure to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the court may, on such application, make such order as it thinks fit :

Provided that both the judgment-debtor and the decree-holder are made respondents to the petition.

When purchaser may get back his purchase money.

285. (1) When a sale of immovable property is set aside under sections 282, 283, or 284, when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is for that reason deprived of it, the purchaser

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shall be entitled to receive back his purchase money from any person to whom the purchase money has been paid.

(2) An order for the repayment of the said purchase money may be made by the court on any application under sections 282, 283, or 284, provided that the person against whom the order is directed is party thereto, and such order may be enforced against such person under the rules provided by this Ordinance for the execution of a decree for money.

Conveyance to purchaser.

286. If the court shall have confirmed the sale, and the purchaser shall have paid the full amount of the purchase money according to the conditions of sale, and shall have supplied the Fiscal or Deputy Fiscal with stamps of the proper amount required by law for the conveyance of the land sold to him (which stamps he shall be bound to supply when he pays the purchase money in full), and if the sale was not effected in execution of a decree specifically directing the sale, then the Fiscal or Deputy Fiscal shall forthwith make out and execute a conveyance in duplicate of the property according to the form No. 56 in the First Schedule, or such other form, or expressed in such terms, as the court may deem expedient, which conveyance shall be binding and of force, though not executed before a notary public.

The Fiscal or Deputy Fiscal shall deliver the original to the purchaser and transmit the duplicate to the Registrar of Lands for the district in which the land is situate, in like manner as now is or shall be required to be done by notaries in respect of deeds executed before them ; and the Fiscal or Deputy Fiscal shall be entitled to recover for such conveyance—

(*a*) when the amount of purchase shall be under thirty rupees, a fee of fifty cents ;

(*b*) when it shall exceed thirty rupees, a fee of one rupee ;

(*c*) when it shall exceed one hundred rupees, a fee of one rupee and fifty cents ;

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(*d*) when it shall exceed two hundred rupees, a fee of two rupees and fifty cents ; and

(*e*) when it shall exceed five hundred rupees, a fee of three rupees and seventy-five cents, and no more ;

and such fee shall be brought to account and appropriated in such manner as the Secretary to the Treasury [1] shall direct.

But if the sale was effected in execution of a decree specifically directing the sale, then the conveyance shall be made in conformity with the directions of the court contained in the decree :

Conveyance to contain sufficient map of the premises.

Provided, however, that to all conveyances made by the Fiscal to complete a sale effected in execution of a decree of court, in the event of there being no diagram or map of the premises which are the subject of the conveyance already appended to a title deed thereof delivered to the purchaser, there shall be annexed a sufficient map exhibiting, when possible, some permanent physical feature of the ground ; and the purchaser shall pay in advance the expense of preparing it in addition to the fee prescribed for the conveyance. Such diagram or map shall be prepared by a competent surveyor licensed by the Fiscal or Deputy Fiscal for that purpose, and such surveyor shall be an officer of the Fiscal within the meaning of section 325, and shall for the purposes of the Penal Code be deemed to be a public servant.

Court may order delivery of possession to purchaser.

287. (1) When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the seizure of such property, and a conveyance in respect thereof has been made to the purchaser under section 286, the court shall on application 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 property, and, if need be, by removing any person bound by the decree who refuses to vacate the same.

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Order how to be enforced.

(2) An order for delivery of possession made under this section may be enforced as an order falling under head (*C*) section 217, the purchaser being considered as judgment-creditor.

Mode of delivery where property is in occupancy of person entitled to occupy.

288. When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a conveyance in respect thereof has been made to the purchaser under section 286, the court shall order delivery thereof to be made by affixing a notice of the sale having taken place, both in English and in the vernacular language or languages prevailing within the district, in some conspicuous place on the property, and proclaiming to the occupant by beat of tom-tom, or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser, and the cost (to be fixed by the court) of such proclamation shall in every case be prepaid by the purchaser.

Right and title of judgment-debtor not divested by sale till confirmation and execution of Fiscal's conveyance.

289. The right and title of the judgment-debtor or of any person holding under him or deriving title through him to immovable property sold by virtue of an execution is not divested by the sale until the confirmation of the sale by the court and the execution of the Fiscal's conveyance. But if the sale is confirmed by the court and the conveyance is executed in pursuance of the sale, the grantee in the conveyance is deemed to have been vested with the legal estate from the time of the sale.

Fiscal may enter property sold.

290. The Fiscal, on the day of the sale, or at any time thereafter until the confirmation of the sale by the court and the execution of the Fiscal's conveyance, may at his discretion, and if provided with the necessary funds therefor by the purchaser or by the judgment-creditor, or debtor, himself or by his agent duly authorized in writing enter into possession of the immovable property sold by virtue of the execution, and retain possession of the same until the confirmation of the sale by the court and the execution of the conveyance in pursuance thereof.

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Person in possession may use and enjoy until confirmation of sale.

291. The person in possession of immovable property sold by virtue of an execution may, until the confirmation of the sale by the court and the execution of the Fiscal's conveyance, use and enjoy the same as follows, without being chargeable with committing waste :—

(1) He may use it and enjoy it in like manner and for the like purposes as it was used and enjoyed before the sale, doing no permanent injury to the property.

(2) He may make the necessary repairs to a building or other erection thereupon. But this provision does not permit an alteration in the form or structure of the building or other erection.

(3) He may use and improve the land in the ordinary course of husbandry, and may collect, gather, harvest, and store the crops and produce thereof, but shall not be entitled to them.

(4) He may apply any wood or timber on the land to the necessary reparation of a fence, building, or other erection which was thereupon at the time of the sale.

On confirmation and execution of conveyance, Fiscal to deliver possession to grantee.

292. On the sale being confirmed by the court and the conveyance executed in pursuance of the sale, the Fiscal or person in possession of the immovable property sold shall forthwith give possession of the same, together with all the crops and produce (if any) collected, gathered, harvested, and stored subsequent to the sale, to the grantee in the conveyance ; and if the sale is not confirmed, the Fiscal or his agent shall forthwith, if in possession, restore the judgment-debtor or any person holding under him to possession of the immovable property together with all the crops and produce (if any) collected, gathered, harvested, and stored whilst the Fiscal or his agent was in possession.

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Judgment-debtor may be restrained from waste.

293. If at any time before the execution of the Fiscal's conveyance the judgment-debtor, or any other person in possession of the property sold, commits, or threatens to commit, or makes preparations for committing waste thereupon, the court from which execution issued may, upon the application of the purchaser or his agent or attorney, and proof by affidavit of the facts, grant, without notice, an order restraining the wrongdoer from committing waste upon the property.

Punishment for committing waste.

294. If the person against whom such an order is granted commits waste in violation thereof after the service upon him of the order, the court, upon proof by affidavit of the facts, may grant an order requiring him to show cause at a time and place therein specified why he should not be punished for a contempt.

And for disobeying order.

295. If upon the return of the order to show cause it satisfactorily appears that the person required to show cause has violated the former order, the court may punish him in manner provided by law for the punishment of contempts of court.

Moneys paid to, and realized by, the Fiscal

Payments to Fiscals, and by Fiscals' officers, how to be made.

296. Payments to Fiscals, and by Fiscals' officers, shall be made in manner and subject to the rules following, and not otherwise :—

(1) Whenever any person, whether the original debtor or a purchaser of property sold in execution, shall (except as in subsection (3) hereinafter provided) have occasion to pay money to the Fiscal or Deputy Fiscal, he shall signify the same to such Fiscal or Deputy Fiscal, who shall give him a note addressed to the Government Agent of the form No. 58 in the First Schedule which the person who is to pay the money shall carry to the office of such Government Agent and deliver to the shroff or receiver of the office and pay to him the amount stated in such note.

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(2) The receipt shall then be acknowledged by the signature of the Government Agent on that part of the note reserved for that purpose, which shall be cut off and delivered to the person who shall have made the payment, the remaining part being reserved as the authority for receiving the money.

(3) In cases of payment of ready money, whether under the provisions of section 275 or otherwise or a partial payment for immovable property under the provisions of section 260, the Fiscal or Deputy Fiscal shall give a receipt accordingly, the stamps for such receipt to be furnished by the purchaser.

(4) The Fiscal's officers shall make payment of all deposits and ready money received by them, within such time after the receipt thereof as the Fiscal shall prescribe, to the office of the Government Agent, being furnished for that purpose with a note of the said form in the First Schedule.

(5) A register of such notes in the form No. 59 in the said Schedule, or in any other form as the Secretary to the Treasury[1] may from time to time prescribe, shall be kept by the Fiscal, liable to the call of Government at any period.

(6) In every case in which a payment shall have been made under subsection (1) or (4) the Government Agent shall within forty-eight hours forward a receipt for such payment to the Fiscal or Deputy Fiscal.

Moneys paid into Government Agent's office to be subject to order of court.

297. All moneys which may be paid into the office of any Government Agent shall be retained until disposed of by order of the court whence the process of execution shall have issued:

Provided always that nothing herein contained shall be construed to affect the powers vested by law in the Commissioners of the Loan Board.

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Arrest and Imprisonment

Issue of warrant for arrest of debtor in execution of decree for money.
[§ 2, 4 of 1940.]

298. (1) Where, after the issue of a writ for the execution of a decree for the payment of money, the court is satisfied on the application of the judgment-creditor, after such inquiry as the court may deem necessary, that the judgment-debtor—

(*a*) is about to abscond or leave the jurisdiction of the court with intent to defraud the judgment-creditor or with intent to obstruct or delay the execution of the decree ; or

(*b*) is about to leave Ceylon under circumstances affording reasonable probability that the judgment-creditor will thereby be obstructed or delayed in the execution of the decree ; or

(*c*) has, on or after the date of the institution of the action in which the writ of execution was issued, concealed, transferred or removed his property or any part thereof with intent to defraud the judgment-creditor or with intent to obstruct or delay the execution of the decree, or has, on or after such date, committed with the like intent any act of bad faith in relation to his property ; or

(*d*) has been guilty of any act whereby any creditor, other than the judgment-creditor at whose instance the writ of execution was issued, has been given any undue, unreasonable or fraudulent preference ; or

(*e*) has, at any time since the date of the decree, had sufficient means to pay the amount of the decree, or any part of that amount, and has refused or neglected to pay such amount or part thereof ; or

(*f*) being a trustee or person acting in any other fiduciary capacity, has, when ordered to pay by a court, made default in the payment of any sum in his possession or under his control,

the court may, subject to the other provisions of this Chapter, issue a warrant for the arrest of the judgment-debtor and for his production in court with a view to his committal to jail in execution of the decree.

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(2) A decree for the payment of costs only shall, for the purposes of the application of the provisions of subsection (1), be deemed to be a decree for the payment of money.

Issue of notice on debtor as alternative to warrant. [§ 2, 4 of 1940.]

299. The court may, in its discretion, instead of issuing a warrant under section 298, issue a notice on the judgment-debtor calling upon him to show cause, on a date to be specified in the notice, why he should not be committed to jail in execution of the decree referred to in that section.

Application for warrant to be made by petition and affidavit. [§ 2, 4 of 1940.]

300. Every application under section 298 shall be made by petition supported by affidavit; and it shall not be necessary to name the judgment-debtor as respondent to any such application.

No arrest for sum under Rs. 200. [§ 2, 4 of 1940.]

301. No warrant under section 298 or notice under section 299 shall be issued in any case in which the sum awarded in the decree inclusive of interest, if any, up to the date of the decree but exclusive of any further interest and of costs, is less than two hundred rupees.

Woman not liable to arrest in execution. [§ 2, 4 of 1940.]

302. No warrant under section 298 or notice under section 299 shall be issued where the judgment-debtor is a woman; and no woman shall be arrested or committed to jail in execution of any decree for the payment of money or of costs.

Warrant to issue where debtor fails to appear on notice. [§ 2, 4 of 1940.]

303. Where a judgment-debtor to whom a notice under section 299 has been issued fails to appear on the day specified in the notice, the court may issue a warrant for his arrest.

Execution of warrant of arrest. [§ 2, 4 of 1940.]

304. Subject to the provisions of Chapter XXIII, a judgment-debtor for whose arrest a warrant has been issued under section 298 or section 303 may be arrested at any hour, and on any day, and in any place, and shall thereupon, as soon as practicable, be brought before the court.

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Officer effecting arrest to release debtor on payment of amount of decree and costs of arrest.
[§ 2, 4 of 1940.]

305. Where a judgment-debtor who has been arrested on a warrant pays the amount of the decree in execution of which he is arrested, and the costs of the arrest, to the officer arresting him, such officer shall at once release him from custody.

Discharge of debtor where amount of decree and costs of arrest paid into court.
[§ 2, 4 of 1940.]

306. Where a judgment-debtor is brought before the court after arrest on a warrant or appears in court in pursuance of a notice issued under section 299, and either—

(*a*) pays into court the amount of the decree and, if he has been brought before the court under a warrant, the costs of the arrest, or

(*b*) gives security for the payment of the same to the satisfaction of the judgment-creditor,

the court shall release him from arrest or discharge him from such notice, as the case may be. If such payment is not made or if such security is not given, the court shall call upon the judgment-debtor to show cause why he should not be committed to jail.

Debtor who has no cause to show to be committed to jail.
[§ 2, 4 of 1940.]

307. Where the judgment-debtor, on being called upon to show cause under section 306, has no cause to show, the court shall commit him to jail.

Debtor who has cause to show to be discharged or committed to jail after inquiry.
[§ 2, 4 of 1940.]

308. Where the judgment-debtor, on being called upon to show cause under section 306, proves to the satisfaction of the court—

(*a*) that any material allegation of fact, made in the affidavit of the judgment-creditor or given in evidence before the court prior to the issue of the warrant or notice, in consequence of which such warrant or notice was issued, was untrue or incorrect ; or

(*b*) that for any other reason the warrant or notice should not have been issued, or was irregularly issued in the first instance ;

he shall, if under arrest, be released or, if he has appeared on notice, be discharged from such notice ; but if he fails or is unable to furnish such proof the court shall commit him to jail :

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Provided that if, on the date on which the judgment-debtor is brought or appears before the court, the court is satisfied that a warrant for the arrest of the judgment-debtor may be issued on any ground other than that on which the warrant or notice was issued in the first instance, the court may commit the judgment-debtor to jail.

Written statement to be filed by debtor who desires to show cause. [§ 2, 4 of 1940.]

309. Where a judgment-debtor contends that any material allegation of fact, made in the affidavit of the judgment-creditor or given in evidence before the court prior to the issue of the warrant or notice, is untrue or incorrect, he shall file in court a written statement specifying which of the allegations in such affidavit or in such evidence is impugned as untrue or incorrect; and where a judgment-debtor contends that the warrant or notice should not have been issued or was irregularly issued, he shall file in court a written statement of the grounds on which such contention is based.

Debtor to be committed to jail or to give security for appearance, pending inquiry. [§ 2, 4 of 1940.]

310. (1) Where the judgment-debtor desires to show cause why he should not be committed to jail, the court may appoint a date for an inquiry and may, pending such inquiry, order the judgment-debtor to be detained in prison or take sufficient security from him that he will appear in court when called upon.

(2) A judgment-debtor who is not detained in prison pending the inquiry may be arrested on a warrant issued by the court at any time for the purposes of such inquiry or with a view to his committal to jail.

(3) The inquiry referred to in subsection (1) may be adjourned from time to time by order of the court.

Issue of warrant of committal to jail. [§ 2, 4 of 1940.]

311. Where a judgment-debtor is committed to jail, the court shall issue a warrant substantially in the form No. 61 in the First Schedule.

Debtor discharged under section 306 or section 308 not to be rearrested. [§ 2, 4 of 1940.]

312. Where a judgment-debtor has been released after arrest on a warrant or discharged from a notice under section 306 or section 308, no further proceedings shall be taken as herein before provided with a view to the committal to jail of that judgment-debtor

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in execution of the decree in respect of which such warrant or notice was issued.

Sufficient *interim* subsistence money to be deposited before arrest.

313. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the court, and, where the writ is to be executed in another district, such further sum as the Judge thinks sufficient to cover the expenses of his transport to the court issuing the writ.

Subsistence allowance during imprisonment to be fixed on commitment.

314. And when a judgment-debtor is committed to jail in execution of a decree, the court shall fix for his subsistence such monthly allowance as he may be entitled to at rates to be fixed by order of Government from time to time, as occasion shall require.

Allowance to be paid monthly in advance.

315. (1) The monthly allowance fixed by the court shall be supplied to the Fiscal by the party on whose application the decree has been executed by monthly payments in advance before the first day of each month.

(2) The first payment shall be made for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail.

Power to vary allowance or order additional payments. [§ 3, 4 of 1940.]

315A. (1) Where a judgment-debtor who has been committed to jail is, with the approval of the Commissioner of Prison and Probation Services, either given any special diet on medical advice or admitted to any hospital for examination or treatment, and the monthly allowance fixed under section 314 for the subsistence of that judgment-debtor is insufficient to meet the cost of such special diet, examination or treatment, the court may by order, on application made by the Fiscal, and after hearing such representations as may be made by the party on whose

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application the decree has been executed and such other evidence as the court may deem necessary—

(*a*) vary the monthly allowance fixed under section 314, and specify the period during which the allowance so varied shall be payable, or

(*b*) fix such additional sum as may, in the opinion of the court, be necessary to meet the cost of such examination or treatment in hospital and all expenses incidental thereto or connected therewith, and may specify in that order the time and manner of payment of such additional sum.

(2) Any order made by the court under subsection (1) may at any time be varied or cancelled by the court by a further order, on application made by the Fiscal or by the party on whose application the decree has been executed, and after such inquiry as the court may deem necessary.

(3) The provisions of section 315 shall apply to the monthly allowance as varied under this section, in like manner as those provisions apply to the monthly allowance originally fixed by the court.

(4) Any additional sum for the payment of which an order is made under this section shall be supplied to the Fiscal by the party on whose application the decree has been executed, in the manner and at the time specified in the order of the court.

Disbursements by decree-holder to be deemed costs.

316. Sums of money disbursed by the decree-holder under section 315 or section 315A shall be deemed to be costs in the action :

[§ 4, 4 of 1940.]

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed ;

[§ 4, 4 of 1940.]

Provided, further, that where at the time of the discharge of the judgment-debtor from jail there remains any unexpended balance out of the sum so disbursed, such balance shall be repaid by the Fiscal to the decree-holder and shall not be deemed to be costs in the action.

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When debtor entitled to be discharged from jail.

317. (1) The judgment-debtor shall be discharged from jail—

(*a*) on the decree being fully satisfied ; or

(*b*) at the request of the person on whose application he has been imprisoned ; or

(*c*) on such person omitting to pay the allowance as herein before directed ; or

(*d*) if the judgment-debtor be declared an insolvent, and an order in insolvency is made by the District Court protecting him from arrest ; or

(*e*) when the term of his imprisonment as limited by section 318 is fulfilled :

Provided that in the first, second, third, and fourth cases mentioned in this subsection, the judgment-debtor shall not be discharged without the order of the court.

(2) A judgment-debtor discharged under this section is not thereby discharged from his debt, but he cannot be rearrested under the decree in execution of which he was imprisoned.

Limit of imprisonment.

318. No person shall be imprisoned in execution of a decree for a longer period than six months.

Endorsement on the warrant.

319. The Fiscal shall endorse upon the warrant of arrest the day on and the manner in which it was executed, and if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay ; or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the court.

(*B*)

DECREES FOR DELIVERY OF MOVABLE PROPERTY

Application for execution of decree for delivery of movable property, how to be made.

320. If the decree is for any specific movable or for any share in a specific movable, application to the court for execution of the decree by seizure and delivery may be made by the judgment-creditor in the manner and according to the rules prescribed for execution of decrees under head (*A*) so far as the

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same are applicable ; and if the court on such application is satisfied that the judgment-creditor is entitled to obtain execution of the decree, it shall direct a writ of execution to issue to the Fiscal in the form No. 62 in the First Schedule.

Form of writ.

321. (1) Upon receiving the writ the Fiscal or his officer shall as soon as reasonably may be repair to the dwelling house or place of residence of the judgment-debtor, and there showing him the writ shall demand delivery of the movable or, if practicable, the share thereof specified therein, and on his failing to comply with his demand, the Fiscal or his officer shall, if possible, seize the said specific movable or share thereof, and deliver the same to the judgment-creditor or to the person authorized by him to receive it.

Fiscal to procure delivery thereunder.

(2) If the judgment-debtor fails to comply with the Fiscal's demand, and if the Fiscal is unable to obtain for the judgment-creditor delivery of the specific movable or share thereof mentioned in the writ, then the court upon being satisfied of these facts may, on application made to it by the judgment-creditor by petition, to which the judgment-debtor is made respondent, direct a writ of execution by seizure and sale of the judgment-debtor's property, or a warrant for the arrest of the judgment-debtor, or both, to issue to the Fiscal.

Procedure on default.

322. The amount of money directed to be levied in the writ of execution by seizure and sale issuing under the preceding section shall be the amount of pecuniary loss, as nearly as the court can estimate it, which is occasioned to the judgment-creditor by reason of the judgment-debtor's default in making delivery of the specific movable or share thereof according to the terms of the decree, and which the court shall award by way of compensation to the judgment-creditor by the order directing the writ to issue ; and the execution of this writ, and of the warrant of arrest issuing under the same section, shall be effected according and subject to the rules prescribed for the writ of execution and warrant of arrest issued for the enforcement of decrees falling under head (*A*).

Amount to be levied and manner of execution.

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(C)

DECREES FOR POSSESSION OF IMMOVABLE PROPERTY

Application for execution of decree for delivery of immovable property, how to be made.

323. If the decree or order is for the recovery of possession of immovable property or any share thereof by the judgment-creditor, or if it directs the judgment-debtor to yield or deliver up possession thereof to the judgment-creditor, application to the court for execution of the decree may be made by the judgment-creditor in the manner, and according to the rules, prescribed for execution of decrees under head (*A*), so far as the same are applicable ; and if the court on such application is satisfied that the judgment-creditor is entitled to obtain execution of the decree, it shall direct a writ of execution to issue to the Fiscal in the form No. 63 in the First Schedule.

Form of writ.

Fiscal how to proceed thereunder.

324. (1) Upon receiving the writ the Fiscal or his officer shall as soon as reasonably may be repair to the ground, and there deliver over possession of the property described in the writ to the judgment-creditor or to some person appointed by him to receive delivery on his behalf, and if need be by removing any person bound by the decree who refuses to vacate the property :

Provided that as to so much of the property, if any, as is in the occupancy of a tenant or other person entitled to occupy the same as against the judgment-debtor, and not bound by the decree to relinquish such occupancy, the Fiscal or his officer shall give delivery by affixing a copy of the writ in some conspicuous place on the property and proclaiming to the occupant by beat of tom-tom, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property ; and

Provided also that if the occupant can be found, a notice in writing containing the substance of such decree shall be served upon him, and in such case no proclamation need be made.

(2) The cost (to be fixed by the court) of such proclamation shall in every case be prepaid by the judgment-creditor.

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Resistance to Execution of Proprietary Decrees

Procedure in event of resistance to execution of writ or delivery of property.

325. If in the execution of a decree for the possession of property under heads (*B*) and (*C*) the officer charged with the execution of the writ is resisted or obstructed by any person, or if after the officer has delivered possession the judgment-creditor is hindered by any person in taking complete and effectual possession, the judgment-creditor may at any time within one month from the time of such resistance or obstruction complain thereof to the court by a petition in which the judgment-debtor and the person resisting and obstructing shall be named respondents, and which shall be dealt with by the court in accordance with the alternative (*b*) of section 377.

Punishment of person obstructing if acting on behalf of judgment-debtor.

326. On the hearing of the matter of the petition of complaint so made, the court, if it is satisfied that the obstruction or resistance complained of was occasioned by the judgment-debtor or by some person at his instigation, may commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct the judgment-creditor to be put into possession of the property.

If resistance be made by bona fide claimant in possession, court to direct action and to try and determine the same.

327. If the resistance or obstruction is found by the court to have been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account, or on account of some person other than the judgment-debtor, the court shall direct the petition of complaint to be numbered and registered as a plaint in an action between the decree-holder as plaintiff and the claimant as defendant; and the court shall, without prejudice to any proceedings to which the claimant may be liable for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if an action for the property had been instituted by the decree-holder against the claimant; and shall pass such order as it thinks fit for executing or staying execution of the decree.

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Power to direct possession where claim of person resisting or obstructing is frivolous or vexatious. [§ 8, 7 of 1949.]

327A. If the resistance or obstruction was occasioned by a person other than the judgment-debtor and the court finds that the claim of such person to be in possession of the property, whether on his own account or on account of some person other than the judgment-debtor is frivolous or vexatious, the court may by order direct the judgment-creditor to be put into possession of the property.

The person against whom such order is passed may within one month institute an action to establish the right which he claims to the possession of the property, but subject to the result of such action, if any, the order shall be final.

Court shall investigate dispute if bona fide claimant be dispossessed in effecting the execution.

328. (1) If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was bona fide in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the action in which the decree was passed, he may apply to the court by petition stating his grounds of dispute.

Procedure.

(2) If, after examining the applicant, it appears to the court that there is probable cause for making the application, the application shall be numbered and registered as a plaint in an action between the applicant as plaintiff and the decree-holder as defendant, and the court shall proceed to investigate the matter in dispute in the same manner and with the like power as if an action for the property had been instituted by the applicant against the decree-holder, and shall pass such order as it thinks fit for executing or staying execution of the decree or restoring the applicant to possession.

In hearing an application under this section the court shall confine itself to the grounds of dispute above specified.

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(3) Nothing in this section or section 327 applies to a person to whom the judgment-debtor has transferred the property after the institution of the action in which the decree is made.

(4) If the property which the judgment-creditor is obstructed or hindered in obtaining possession of is an undivided share of property, the court shall in the actions instituted under section 327 and this section cause all the shareholders to be made parties.

Effect of final order under sections 327 and 328.

329. The final order passed under either of sections 327 and 328 shall be in the nature of, and shall have the same force as, a decree in a regular action, and shall be subject to the same conditions as to appeal or otherwise.

Procedure where party resisting is not judgment-debtor and not in possession.

330. (1) If it appears at the hearing of the judgment-creditor's complaint that the resistance or obstruction was occasioned by any person other than the judgment-debtor, not in occupation of the property sold but claiming a right thereto as proprietor, mortgagee, lessee, or under any other title, the court shall pass such order on the matter of the resistance or obstruction as it thinks fit.

(2) The party against whom such order is passed may within one month institute an action to establish the right which he claims to the present possession of the property, but subject to the result of such action, if any, the order shall be final.

(*D*)

DECREES FOR EXECUTION OF CONVEYANCE OR TRANSFER OF PROPERTY

Application for enforcement of decree for execution of any conveyance, how to be made.

331. If the decree is for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and apply to the court by petition, not naming a respondent, to have the said draft served on the judgment-debtor.

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Service of the draft conveyance on judgment-debtor.

332. (1) The court shall thereupon cause the draft and a copy of the petition to be served on the judgment-debtor in manner herein before provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto, shall be made within such time (mentioning it) as the court fixes in this behalf, and will come on before the court to be considered and determined on a day to be named in the notice for that purpose.

(2) The decree-holder may also tender a duplicate of the draft to the court for execution, supplying a stamp of the proper amount if a stamp is required by law.

(3) On proof of such service the court, or such officer as it appoints in this behalf, shall on the day appointed for the consideration of objections, if no objections are made, proceed to execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree, and execute the decree so altered.

Objections to draft.

But in the event of the judgment-debtor or any other party on that day objecting to the draft so served, provided the objections have been stated in writing and filed within the time fixed therefor, the court shall proceed to hear and determine such objections, and shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

Execution of the conveyance by the court.

333. The execution of a conveyance or the endorsement of a negotiable instrument by the court under the last preceding section may be in the following form: "*C. D.*, Judge of the court of ——— (*as the case may be*), for *A. B.*, in an action by *E. F.* against *A. B.*", or in such other form as the Supreme Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same, and such conveyance shall be binding and of force though not executed before a notary public. And the court shall deliver the original of such conveyance to the decree-holder, and shall transmit the duplicate to the Registrar of Lands for the district in which the land is

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situate, in like manner as now is or shall be required to be done by notaries in respect of deeds executed before them.

333A. In sections 331, 332, and 333 the expression " conveyance " includes " contract or other document ". Meaning of conveyance in sections 331, 332, and 333.

(*E*) & (*F*)

MANDATORY AND RESTRAINING DECREES

334. When a decree or order falling under either of the heads (*E*) or (*F*) has been passed, and the judgment-debtor has had an opportunity of obeying the decree or order, but has wilfully failed to obey it, application to the court for execution or enforcement of the decree or order may be made by the judgment-creditor by petition to which the judgment-debtor shall be made respondent ; and which shall set out the damage, if any, caused to the judgment-creditor by the disobedience of the judgment-debtor to the decree or order. Application for enforcement of mandatory decrees, how to be made.

And if the court on the hearing of such application is satisfied that the judgment-creditor is entitled to obtain execution or enforcement of the decree or order, it shall direct a writ of execution by seizure and sale of the judgment-debtor's property, or a warrant for the arrest of the judgment-debtor, or both, to issue to the Fiscal. Court may issue writ of execution by seizure and sale.

335. The amount of money directed to be levied on the writ of execution issuing under the preceding section shall be the amount of pecuniary loss, if any, as nearly as the court can estimate it, which is occasioned to the judgment-creditor by reason of the judgment-debtor's default in obeying the decree or order, and which the court shall award by way of compensation to the judgment-creditor by the order directing the writ to issue. And the execution of this writ and of the warrant of arrest issuing under the same section shall be effected according, and subject, to the rules prescribed for the writ of execution and warrant of arrest issued for the enforcement of decrees falling under head (*A*). Amount to be levied under writ.

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GENERAL PROVISIONS

Discretion of court to issue execution.

336. The court may in its discretion refuse to issue execution at the same time against the person and property of the judgment-debtor in cases when the judgment-creditor is entitled to apply for both simultaneously.

When subsequent application may be made for execution of decree partly satisfied.

337. (1) Where an application to execute a decree for the payment of money or delivery of other property has been made under this Chapter and granted, no subsequent application to execute the same decree shall be granted unless the court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree, or that execution was stayed by the decree-holder at the request of the judgment-debtor. Also no such subsequent application shall be granted after the expiration of ten years from any of the following dates, namely—

(*a*) the date of the decree sought to be enforced, or of the decree, if any, on appeal affirming the same ; or

(*b*) where the decree or any subsequent order directs the payment of money or the delivery of property to be made at a specified date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

(2) Nothing in this section shall prevent the court from granting an application for execution of a decree after the expiration of the said term of ten years, where the judgment-debtor has by fraud or force prevented the execution of the decree at some time within ten years immediately before the date of the application.

Application by one of several decree-holders for execution of the decree for the benefit of all.

338. (1) If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their legal representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and those claiming

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under the deceased. The application for this purpose shall be made by petition to which the co-decree-holders or their representatives as well as the judgment-debtor shall be respondents.

(2) If the court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

(3) For the purposes of this Chapter the term "legal representative" shall mean an executor or administrator, or in the case of an estate below the value of two thousand five hundred rupees, the next of kin who have adiated the inheritance :

Provided, however, that in the event of any dispute arising as to who is the legal representative, the provisions of section 397 shall, *mutatis mutandis,* apply.

Application by assignee of a decree for execution thereof, how to be made.

339. (1) If a decree is transferred by assignment in writing or by operation of law from the decree-holder to any other person, the transferee may apply for its execution by petition, to which all the parties to the action or their representatives shall be made respondents, to the court which passed it, and if on that application that court thinks fit, the transferee's name may be substituted for that of the transferor in the record of the decree, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that where the decree has been transferred by operation of law, the transferor need not be made respondent to the petition ;

Provided also that where a decree against several persons has been transferred to one of them, it shall not be executed against the others.

(2) In the case where one decree of court is seized in execution of another decree, the judgment-creditor of this second decree is in the situation of assignee of the judgment-creditor of the decree which is seized, provided the latter person is identical with the judgment-debtor of the decree in execution of which the seizure is made.

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Transferee bound by equities.

340. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Legal representative of deceased debtor, how made liable,

341. (1) If the judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the court which passed it, by petition, to which the legal representative of the deceased shall be made respondent, to execute the same against the legal representative of the deceased.

and extent of liability.

(2) Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the court executing the decree may on the application of the decree-holder compel the said representative to produce such accounts as it thinks fit.

Fiscal may adjourn sale.

342. The Fiscal may in his discretion adjourn a sale :

Provided that the date to which the sale is adjourned is published in the same manner as was the original notice of sale ; and

Provided also that he report to the court in his return to the writ of execution, or sooner, the cause for which the adjournment was made.

Stay of proceedings and adjournment of sale by court.

343. (1) The court may for sufficient cause stay execution proceedings at any stage thereof, and make order for adjournment of a sale.

(2) The application to the court to stay proceedings shall be made by petition, to which all persons interested in the matter of the execution shall be made parties, and no such order shall be made until after payment of all Fiscal's fees then due.

All questions arising in execution to be determined by order of court and not by separate action.

344. All questions arising between the parties to the action in which the decree was passed, or their legal representatives, and relating to the execution of the decree, shall be determined by order of the court executing the decree, and not by separate action.

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Procedure where there are cross decrees between the parties.

345. (1) If cross decrees between the same parties for the payment of money be produced to the court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) If the two sums be equal, satisfaction shall be entered up on both decrees.

Explanation 1.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same court.

Explanation 2.—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation 3.—This section does not apply unless—

(*a*) the decree-holder in one of the actions in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both actions, and

(*b*) the sums due under the decrees are definite and unconditional.

Illustrations

(*a*) A holds a decree against B for one thousand rupees. B holds a decree against A for the payment of one thousand rupees in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross decree under this section.

(*b*) A and B, co-plaintiffs, obtain a decree for one thousand rupees against C ; and C obtains a decree for one thousand rupees against B. C cannot treat his decree as a cross decree under this section.

(*c*) A obtains a decree against B for one thousand rupees. C, who is a trustee for B, obtains a decree on behalf of B against A for one thousand rupees. B cannot treat C's decree as a cross decree under this section.

Procedure where parties recover different amounts under same decree.

346. (1) When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party ; but satisfaction for the smaller sum shall be entered on the decree.

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(2) When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

Proceedings where one year has elapsed from date of decree.

347. In cases where there is no respondent named in the petition of application for execution, if more than one year has elapsed between the date of the decree and the application for its execution, the court shall cause the petition to be served on the judgment-debtor, and shall proceed thereon as if he were originally named respondent therein :

Provided that no such service shall be necessary if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed or from the date of the last order against the party, against whom execution is applied for, passed on any previous application for execution.

Execution against surety.

348. Whenever a person has before the passing of a decree in an original action become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable in the same manner as a decree may be executed against a judgment-debtor, upon application made by the judgment-creditor to the court for that purpose by a petition to which the person sought to be made liable as surety shall be named respondent.

Decree-holder to certify payment to the court.

349. (1) If any money payable under a decree is paid out of court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, he shall certify such payment or adjustment to the court whose duty it is to execute the decree.

(2) The judgment-debtor may also by petition inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree-holder to show cause on a day to be fixed by the court why such payment or adjustment should not be recorded as certified. And if after due service of such

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notice the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

(3) No such payment or adjustment shall be recognized by any court unless it has been certified as aforesaid.

How and to whom money paid into court may be paid out.

350. Money which in the course of an action or in satisfaction of a decree or order has been paid into, and received by, the court to the separate account of a specified person, or which by an order of court has after receipt been carried to such separate account, may be paid out to the specified person on his *ex parte* application. But in all other cases money in court, whether realized in execution of a decree or not, shall only be paid out on notice to all the parties to the action, or such of them as are interested in the money. And if, before the proceeds of execution have been paid to the party in whose favour the execution issued, notice shall be given to the court of any claim to such proceeds by any other person or persons, the court shall, before making any order for the payment of such proceeds, cause notice to issue to all persons whose claims shall have been notified to the court, as well as to the parties to the action, that the court will on the day specified in the notice proceed to determine the respective rights of the persons claiming such proceeds or any part thereof (form No. 64, First Schedule). And on such day, or on some other day to which the court may for sufficient cause adjourn the hearing, the court shall proceed to hear and adjudicate upon the claims made, and make such order as the justice of the case may require ; or the court may, if in its opinion any claims cannot be conveniently heard and adjudicated upon in the manner aforesaid, refer the parties to a separate action.

Where the same property is seized in execution of decrees of more courts than one.

351. Where property not in the custody of any court has been seized in execution of decrees of more courts than one, the court which shall receive or realize such property and shall determine any claim thereto and any objection to the seizure thereof shall

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be the court of highest grade, or, where there is no difference in grade between such courts, the court under whose decree the property was first seized.

Where several decree-holders are entitled to share rateably in proceeds of a sale of debtor's property.

352. (1) Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have prior to the realization, applied to the court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Provided that, when any property is sold which is subject to a mortgage or charge, or for any other reason remains subject to a mortgage or charge notwithstanding the sale, the mortgagee or incumbrancer shall not as such be entitled to share in any proceeds arising from such sale.

Share of such proceeds paid to wrong person may be recovered by action by person entitled.

(2) If all or any portion of the money realized in execution of a decree is in the distribution made under the last preceding section paid to a person not entitled to receive the same, any person who is so entitled may sue such person to compel him to refund the money.

Order for payment of money enforced as a decree.

353. Every order made by a court, in any action or proceeding between parties, for payment of money not being a fine, shall have the effect of a decree for the payment of money, and on default of payment according to its terms shall be enforceable upon the application of the party at whose instance it was made in like manner as a decree for money.

Fine imposed by civil court how to be levied.

354. In the event of an order being made by the civil court under the provisions of this Ordinance for the payment of a fine, and in the event of the fine not being paid into court at the time appointed therefor by the order, the amount of the said fine shall be levied by the Fiscal from the property of the person against whom the order was made; and the court shall forthwith, on the occurrence of the default, of its own motion issue its writ or precept to the Fiscal for this purpose.

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CHAPTER XXIII

Of Service Of Process

Writs or warrants to be usually issued to the Fiscal for execution.

355. Writs or warrants to levy money, or to take any person in arrest, or to detain any person in custody, or to deliver possession of property, or for the sequestration of any property, shall usually be directed to the Fiscal of the province or district in which the court issuing the writ or warrant is situate; but any such writ or warrant may be issued to any headman, constable, or officer of police empowered to act within such province or district. And where any such writ or warrant is issued by the Supreme Court, or by any court within the local limits of whose jurisdiction the party against whom it is issued does not actually and voluntarily reside, or carry on business, or personally work for gain, or is not possessed of property sufficient to satisfy the same, such writ or warrant shall be issued to the Fiscal of any province or district within which such party does actually and voluntarily reside or carry on business, or personally work for gain, or is possessed of such property.

To whom may all processes of court not being writs or warrants be directed.

356. All processes of court not being writs, or warrants directed to the Fiscal or other person for execution, and all notices and orders required by this Ordinance to be given to or served upon any person, shall, unless the court otherwise directs, be issued for service to the Fiscal of the province or district in which the court issuing such processes, notices, or orders is situate, under a precept of that court as is herein before provided for the case of the summons to the defendant in an action. And the enactments of the sections of this Ordinance from section 59 to section 70, both inclusive, relative to the service of such summons shall apply, so far as is practicable, to the service of such processes, notices, and orders.

Fiscal to execute and serve processes of court.

357. It shall be the duty of every Fiscal, upon receiving any writ, or warrant, or precept directed to him by any court, by himself or by his officers, to execute such writ or warrant, and to serve every

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process, notice, or order conveyed to him under such precept according to the exigency of the writ, warrant, or precept.

Proceedings against Fiscal for contempt, &c.

358. All proceedings for attachment, contempt, or otherwise against a Fiscal or Deputy Fiscal for neglect or refusal to serve process or to comply with any order or direction of the court in connection therewith shall, where such Fiscal or Deputy Fiscal is the Fiscal or Deputy Fiscal of a district other than that of the court issuing such process, order, or direction, be referred by such court to the court possessing similar jurisdiction within the district of such Fiscal or Deputy Fiscal, and shall be dealt with by the latter court as if such neglect or refusal related to its own process or orders.

Headman or constable to execute or serve processes in his own limits only.

359. It shall be the duty of every headman, constable, or officer of police, upon receiving any writ or warrant or precept directed to him by any court, to execute such writ or warrant and to serve every process, notice, or order conveyed to him under such precept according to the exigency of the writ, warrant, or precept in any place within the district or division in which such headman, constable, or officer is empowered to act.

Endorsement of process by Fiscal.

360. It shall be competent to any Fiscal to whom any writ, warrant, or precept has been directed under the foregoing sections, and to the Fiscal's officer to whom the Fiscal may have entrusted such writ, warrant, or precept for execution, to endorse thereon the name of any headman, constable, or officer of police empowered to act within such Fiscal's province or district, or the name of any other Fiscal ; and such endorsement shall operate—

(*a*) in the case of a headman, constable, or officer of police to constitute the person whose name is endorsed an officer of the Fiscal for the purpose of executing such writ, or warrant, or precept ;

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(b) in the case of the Fiscal, to impose upon the Fiscal whose name is so endorsed the like duty of executing the endorsed writ, warrant, or precept as he would be under, by virtue of section 357, if such writ, warrant, or precept were directed to him immediately by the court from which it issued.

Duty of every Fiscal to assist.

361. Every Fiscal and Fiscal's officer shall within his province or district, and every headman, constable, or officer of police shall, within the local limits in which he is empowered to act, afford his aid and assistance to anyone charged under the foregoing sections with the duty of executing any writ or warrant, or of serving any process, notice, or order of court.

Every writ or process to be valid for the whole of Ceylon.

362. Every mandate, writ, warrant, precept, or other process issuing from the Supreme Court, or from any District Court or Court of Requests shall have full force and validity in every place throughout Ceylon; and every person charged under the foregoing sections with the duty of executing any such process shall be protected thereby from civil liability for loss or damage caused by, or in the course of, or immediately consequential upon, the execution of such process by him, or in the case of the Fiscal by his officers, except when the loss or damage for which the claim is made is attributable to any fraud, gross negligence, or gross irregularity of proceeding, or gross want of ordinary diligence or abuse of authority on the part of the person executing such process:

Protection of officer executing the same.

Provided that no action shall be maintainable against any person charged as aforesaid with the duty of executing any such process in respect to his execution thereof, unless previous notice in writing distinctly setting forth the grounds of such action shall have been given to him by or on behalf of the plaintiff one month at least before the commencement of such action, and unless such action shall be brought within nine months after the cause of action shall have arisen;

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And provided further, that it shall be lawful for the person to whom such notice of action has been given at any time before the commencement of such action to tender amends to the party aggrieved, and if the same be refused to plead such tender, at the same time paying into court for the use of the plaintiff the amount so tendered, and if the court by its judgment in the action shall hold that the amount so tendered and paid into court is sufficient amends for the party aggrieved, the decree shall be passed in favour of the plaintiff for such amount, but he shall be condemned to pay all costs.

What acts not within last section.

363. The seizure or sale of property, which does not belong to the person whose property is authorized by a writ of levy to be seized and sold, shall not be deemed to be an act done by or in the course of, nor an immediate consequence of, the execution of such writ within the meaning of the first paragraph of the last preceding section. But no person charged as aforesaid shall be liable in damages for any such seizure or sale, if the same shall be shown to have been effected under the bona fide belief that the property did belong to the person whose property is authorized to be seized or sold.

Form of precept.

364. Unless otherwise in this Ordinance enacted the precept of the court to the Fiscal directing the service of any process, order, or notice, or other document, not amounting to a writ to levy money, or to take any person in arrest, or to detain any person in custody, or to deliver possession of property, shall be in the form No. 17 in the First Schedule.

When process may not be served.

365. Process in civil cases, whether at the suit of the Crown or individuals, shall not be served or executed between the period of sunset and sunrise, nor on a Sunday, Good Friday, or Christmas Day, nor on any minister of religion while performing his functions in any place of public worship, nor upon any individual of any congregation during the performance of public worship at any such place.

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Outer door not to be forced.

366. The outer door of any dwelling house shall not be forced open in order to seize the person under civil process issued at the suit of a private individual, excepting such person shall have escaped or shall have been rescued after having been duly arrested.

In effecting seizure of movable property inner door may be opened.

367. If the person executing any process under this Ordinance, directing or authorizing seizure of movable property, has obtained entrance into a house or other building, he may unfasten and open the door of any room in which he has reason to believe any such property to be.

Person executing process always to have writ with him or copy.

368. The person employed in carrying into effect any process of execution against either person or property shall always have with him the writ, warrant, or mandate of execution, or a copy of the same authenticated by the Fiscal or Deputy Fiscal, which shall, if required, be produced and shown to the party against whom, or against whose property, it is sought to be put in force.

Body of person to be arrested must be seized or touched.

369. In all civil cases where process of execution may issue against the person of a party, it shall be necessary, in order to constitute an arrest, that the body of the person to be arrested shall be actually seized or touched by the officer executing the process, unless such person express his acquiescence in the arrest without being so seized or touched.

Fiscal's return of writ or precept.

370. (1) Every Fiscal or Deputy Fiscal shall, on the receipt of any process, note thereon the day he received the same, and on the service or execution thereof the date and mode of such service or execution.

(2) When the writ of execution or precept for service has been carried into effect, or on the day appointed in the writ or precept for the return thereof, whichever date shall first occur, the Fiscal or Deputy Fiscal shall return the writ or precept to the court from which it issued with his report of what has been done under it.

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Report to be accompanied by affidavit to be attached as an exhibit.

371. The report of the Fiscal or Deputy Fiscal constituting his return to the writ of execution or to the precept for service of any process shall be fair written and shall state concisely the mode in which the process has been served, or the steps which have been taken to effect service ; and shall be accompanied by an affidavit made by the officer charged with the duty of executing the process, which affidavit shall set out the facts of the service effected, or of the endeavour made by the officer to effect the service. The process and the affidavit shall be attached to the report as exhibits, and shall be referred to therein by means of a distinguishing letter or other mark put upon them, each initialled and dated by the Fiscal.

Power of Fiscal or other person to administer oath therefor.

372. The Fiscal or Deputy Fiscal, or other person specially appointed by the Minister of Justice[1] in that behalf, is hereby authorized to administer the oath or affirmation which is requisite to the making of the affidavit in the last section mentioned. And every officer who makes a false statement of fact in any such affidavit commits (in addition to any offence of which under the provisions of the Penal Code he may by so doing be guilty) an offence which is punishable as contempt of court.

PART II

OF SUMMARY PROCEDURE

CHAPTER XXIV

Of Summary Procedure

Summary procedure by petition.

373. Every application to the court, or action, of summary procedure shall be instituted upon a duly stamped written petition presented in open court by the applicant ; or, in the Court of Requests, may be made orally by the applicant in person, whose statement then being reduced into writing by the court or by some officer specially deputed by the court for that purpose, shall, upon the requisite stamp being furnished and affixed on behalf of the applicant, if a stamp be necessary, be deemed and treated as a written petition.

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Form of petition.

374. The petition shall be distinctly written in the English language, upon good and suitable paper, and shall contain the following particulars :—

(*a*) the name of the court and date of presenting the petition ;

(*b*) the name, description, and place of abode of the petitioner or petitioners ;

(*c*) the name, description, and place of abode of the respondent or respondents ;

(*d*) a plain and concise statement of the facts constituting the ground of the application and its circumstances, and of the petitioner's right to make it. Such statement shall be set forth in duly numbered paragraphs ;

(*e*) a prayer for the relief or order which the petitioner seeks.

If incidental to an action, petition to be entitled therein.

375. If the application is instituted in the course of, or as incidental to, a pending action, whether of regular or summary procedure, the petition shall be headed with a reference to its number in the court, and the names of the parties thereto, and shall be filed as part of the record of such action, and all proceedings taken and orders made on such petition shall be duly entered in the journal required to be kept by section 92.

Affidavits and exhibits to be attached to petition.

376. With the petition, and so far as conveniently can be attached thereto, shall be exhibited such affidavits, authenticated copy records, processes, or other documentary evidence as may be requisite to furnish prima facie proof of the material facts set out or alleged in the petition, or the court may in its discretion permit or direct the petitioner to adduce oral evidence before the court for this purpose, which shall be taken down by the court in writing.

If grounds are sufficient, order may be *nisi*, or interlocutory.

377. If the court is satisfied on the evidence exhibited or adduced that the material facts of the petition are prima facie established, and is of opinion that on the footing of these facts the petitioner is entitled to the remedy, or to the order in his favour,

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for which the petition prays, or any part thereof, then the court shall accordingly make either—

(*a*) an order *nisi*, conditioned to take effect in the event of the respondent not showing cause against it on a day appointed by the order for that purpose ; or

(*b*) an interlocutory order appointing a day for the determination of the matter of the petition, and intimating that the respondent will be heard in opposition to the petition if he appears before the court for that purpose on the day so appointed.

Order as to costs.

378. In the alternative (*a*) of section 377 the order *nisi* may comprise an order against the respondent, or any of the respondents, to pay the costs of the petitioner.

Form of order.

Service on respondent.

379. In either of the alternatives (*a*) and (*b*) of section 377 the order made shall be put into writing, and shall contain a prefatory recital of the petition, and of the exhibits and other evidence adduced in support thereof. And a copy of the order together with a copy of the petition shall be served upon the respondent by the Fiscal in the manner and subject to the rules herein before prescribed for the service of the summons in a regular action.

If grounds are insufficient, petition to be refused.

380. If the court is not satisfied on the evidence exhibited or adduced that the material facts of the petition are prima facie established, or is of opinion that on the footing of those facts the petitioner is not entitled to the relief which he asks, then in either case the court shall refuse the petition.

Petition and order thereon to be filed.

381. The petition, with its exhibits, adduced evidence, and the order made thereon, shall be filed in court whether the order is in the alternative (*a*) or (*b*) of section 377, or is an order refusing the petition.

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Non-appearance of petitioner on day appointed.

382. If on the day appointed in an order made under section 377 for the determination of the matter of the petition, the petitioner does not appear before the court either in person or by proctor to support the petition, the court shall dismiss the petition, and shall have power to make such order for the payment of costs by the petitioner to the respondent as to the court shall seem just.

When court may make order *nisi* absolute.

383. (1) If on such day the petitioner appears, and the respondent does not appear, and if the court is satisfied by the affidavit of the serving officer, stating the fact of the service, or by oral evidence, that the order has been duly served upon the respondent in time reasonably sufficient to enable him to appear, then if the order is an order *nisi* made under (*a*) of section 377, the court shall make it absolute, and shall pass no other order adverse to the respondent ; but otherwise it shall make such order within the prayer of the petition as it shall consider right on the facts proved :

Provided, however, that in the latter case the court shall make no order to pay costs against the respondent, except in cases where the prayer of the petition expressly asks for the costs of the application, and the court thinks it fit that the respondent should pay them.

(2) Nothing in this section shall prevent the court from dismissing the petition at this stage in the absence of the respondent, if it sees reason to think that the order ought not to have issued in the first instance.

Proceedings where both parties appear.

384. If on such day both the petitioner and the respondent appear, the proceedings on the matter of the petition shall commence by the respondent in person, or by his proctor, stating his objections, if any, to the petitioner's application ; and the respondent shall then be entitled to read such affidavits or other documentary evidence as may be admissible, or by leave of the court to adduce oral evidence in support of his objections, or to rebut and refute the evidence of the petitioner :

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Provided that no affidavit or other documentary evidence shall be so read without express leave of court, unless a copy of the document shall have been served on the petitioner or his proctor at least forty-eight hours before the day when the matter of the petition comes on to be heard and determined; and the oral evidence shall be taken down in writing by the Judge.

Right to reply.

385. In the event of the respondent stating objections to the application, and not otherwise, and after the respondent's evidence, if any, shall have been read or given, the petitioner shall be entitled by way of reply to comment upon the respondent's case.

Additional evidence when admitted.

386. When the respondent's evidence has been taken, it shall be competent to the court, on the request of the petitioner, to adjourn the matter to enable the petitioner to adduce additional evidence; or, if it thinks necessary, it may frame issues of fact between the petitioner and respondent, and adjourn the matter for the trial of these issues by oral testimony. And on the day to which the matter is so adjourned, the additional evidence shall be adduced, and the issues tried in conformity with, as nearly as may be, the rules herein before prescribed for the taking of evidence at the trial of a regular action.

Final order.

387. The court, after the evidence has been duly taken and the petitioner and respondent have been heard either in person or by their respective proctors or recognized agents, shall pronounce its final order in the matter of the petition in open court, either at once or on some future day, of which notice shall be given in open court at the termination of the trial.

Endorsement on order *nisi*.

388. (1) The final order so pronounced may be endorsed on the order *nisi* or on the interlocutory order, as the case may be.

(2) In the case of the order *nisi*, the final order, if endorsed, will be *simpliciter* either in the shape of "order discharged" or of "order made absolute":

Provided that an order *nisi*, if it consists of separable parts, may be discharged in part and made absolute in

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part; and nothing herein enacted shall prevent any order being made by consent of the petitioner and respondent on the footing of the order *nisi*.

(3) In the case of the interlocutory order, the court may make such order within the prayer of the petition as it shall consider right on the facts proved, and it may make any such order upon the petitioner and respondent for the payment of costs as to the court shall seem just.

Final order made on non-appearance of respondent, not appealable, but may be set aside.

389. No appeal by a respondent shall lie against any final order which has been made, in the case of the respondent's non-appearance, on the footing of either an order *nisi* or an interlocutory order in the matter of a petition; but it shall be competent to the court, within a reasonable time after the passing of such order, to entertain an application in the way of summary procedure instituted by any respondent against whom such order has been made, to have such final order set aside upon the ground that the applicant had been prevented from appearing after notice of the order *nisi* or interlocutory order by reason of accident or misfortune, or that such order *nisi* or interlocutory order had never been served upon him. And if the ground of such application is duly established to the satisfaction of the court, as against the original petitioner, the court may set aside the final order complained of upon such terms and conditions as the court shall consider it just and right to impose upon the applicant, and upon the final order being so set aside, the court shall proceed with the hearing and determination of the matter of the original petition as from the point at which the final order so set aside was made.

Parties to an action of summary procedure.

390. In an application, or action, of summary procedure the persons, petitioning or respondent, are the parties to the action.

Journal in an action of summary procedure.

391. On the institution of an application of summary procedure which is not made in, or incidental to, any already pending action, the court shall commence and keep a journal entitled as of the matter

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of the application, according to the rules prescribed in section 92, and this journal so kept shall be the record of the matter of the application.

PART III

INCIDENTAL PROCEEDINGS

CHAPTER XXV

Of The Continuation Of Actions After Alteration Of A Party's Status

On death of a party action does not abate if right to sue survives.

392. The death of a plaintiff or defendant shall not cause the action to abate if the right to sue on the cause of action survives.

On death of one out of more plaintiffs or defendants than one, if right to sue survive to or against the rest, action to proceed.

393. If there be more plaintiffs or defendants than one and any of them dies, and if the right to sue on the cause of action survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the court shall, on application in the way of summary procedure, make an order to the effect that the action do proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

If, on death of one of several plaintiffs, the right to sue survives to the rest jointly with legal representative of deceased, legal representative may be made plaintiff.

394. (1) If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the court may cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record and proceed with the action.

(2) For the purposes of this Chapter legal representative shall mean an executor or administrator, or in the case of an estate below the value of two thousand five hundred rupees the next of kin who have adiated the inheritance.

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On death of sole plaintiff, legal representative may be substituted.

395. In case of the death of a sole plaintiff or sole surviving plaintiff the legal representative of the deceased may, where the right to sue survives, apply to the court to have his name entered on the record in place of the deceased plaintiff, and the court shall thereupon enter his name and proceed with the action.

If no application is made by legal representative action may be declared to abate.

396. If no such application be made to the court by any person claiming to be the legal representative of the deceased plaintiff, the court may pass an order that the action shall abate, and award to the defendant the costs which he may have incurred in defending the action, to be recovered from the estate of the deceased plaintiff ; or the court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the action in order to a final determination of the matter in dispute, or for both those purposes.

In case of dispute, court to decide who is legal representative.

397. In the event of any dispute arising as to who is the legal representative of a deceased plaintiff, it is competent to the court either to stay the action until the question has been decided in another action, or to decide at once, as between the parties before it, who shall be admitted to be such legal representative for the purpose of prosecuting the action. And this question shall in such case be dealt with and tried by the court as an issue preliminary to the trial of the merits of the action.

Of substitution of legal representative of deceased defendant.

398. (1) If there be more defendants than one, and any of them die before decree and the right to sue on the cause of action does not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives, the plaintiff may make an application to the court, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead. The court shall thereupon, on being satisfied

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that there are grounds therefor, enter the name of such representative on the record in the place of such defendant, and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the action, and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the action :

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

(2) The legal representative of a deceased defendant may apply to have himself made a defendant in place of a deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon.

Action not abated by marriage of female party.

399. (1) The marriage of a female plaintiff or defendant shall not cause the action to abate, but the action may, notwithstanding, be proceeded with to judgment ; and where the decree is against a female defendant, it may thereupon be executed against her alone.

(2) If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the court, be executed against the husband also ; and in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

Effect of bankruptcy of plaintiff.

400. The bankruptcy or insolvency of a plaintiff in any action which his assignee might maintain for the benefit of his creditors shall not bar the action, unless such assignee declines to continue the action and to give security for the costs thereof, within such time as the court may order.

When assignee does not continue action.

401. If the assignee neglects or refuses to continue the action and to give such security within the time so ordered, the defendant may apply for the dismissal of the action on the ground of the plaintiff's bankruptcy

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or insolvency, and the court may dismiss the action and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

When court itself may order action to abate.

402. If a period exceeding twelve months in the case of a District Court, or six months in a Court of Requests, elapses subsequently to the date of the last entry of an order or proceeding in the record without the plaintiff taking any step to prosecute the action where any such step is necessary, the court may pass an order that the action shall abate.

No fresh action to be brought where action has abated; but court may set aside order.

403. When an action abates or is dismissed under this Chapter, no fresh action shall be brought on the same cause of action.

But the plaintiff or the person claiming to be the legal representative of a deceased or insolvent plaintiff may, within such period of time as may seem to the court under the circumstances of the case to be reasonable, apply for an order to set aside the order for abatement or dismissal ; and if it be proved that he was prevented by any sufficient cause from continuing the action, the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Continuation of action in other cases of assignment of party's interest.

404. In other cases of assignment, creation, or devolution of any interest pending the action, the action may, with the leave of the court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come, either in addition to or in substitution for the person from whom it has passed, as the case may require.

Applications under this Chapter how to be made.

405. The application under section 398 may be made *ex parte*, but in all other applications for the exercise of the discretion of the court under this Chapter all the parties to the action, not being the applicants, or such of them as may be affected by the order sought, must be made respondents on the face of the application.

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CHAPTER XXVI

Of The Withdrawal And Adjustment Of Action

Withdrawal and adjustment of action.

406. (1) If, at any time after the institution of the action, the court is satisfied on the application of the plaintiff—

(*a*) that the action must fail by reason of some formal defect, or

(*b*) that there are sufficient grounds for permitting him to withdraw from the action or to abandon part of his claim with liberty to bring a fresh action for the subject-matter of the action, or in respect of the part so abandoned,

the court may grant such permission on such terms as to costs or otherwise as it thinks fit.

(2) If the plaintiff withdraw from the action, or abandon part of his claim, without such permission, he shall be liable for such costs as the court may award, and shall be precluded from bringing a fresh action for the same matter or in respect of the same part.

(3) Nothing in this section shall be deemed to authorize the court to permit one of several plaintiffs to withdraw without the consent of the others.

Permission to bring fresh action not to affect prescription.

407. In any fresh action instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of prescription or limitation in the same manner as if the first action had not been brought.

Adjustment of actions out of court.

408. If an action be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the action, such agreement, compromise, or satisfaction shall be notified to the court by motion made in presence of, or on notice to, all the parties concerned, and the court shall pass a decree in accordance therewith, so far as it relates to the action, and such decree shall be final, so far as relates to so much of the subject-matter of the action as is dealt with by the agreement, compromise, or satisfaction.

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CHAPTER XXVII

Of Payment Of Money Into Court

Payment of money into court.

409. The defendant in any action brought to recover a debt or damage may, at any stage of the action, deposit in court such sum of money as he considers a satisfaction in full of the plaintiff's claim.

Notice thereof.

410. Notice in writing of the deposit shall be given by the defendant to the plaintiff, and the amount of the deposit shall (unless the court otherwise directs) be paid out of court to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice.

411. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Procedure where plaintiff accepts payment in part satisfaction of his claim.

412. If the plaintiff accepts such amount only as satisfaction in part of his claim, he may prosecute his action for the balance; and if the court eventually decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the action incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where plaintiff accepts payment in full satisfaction of his claim.

413. If the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the court a statement to that effect, embodied in a motion for judgment, and the court shall pass judgment accordingly, and in directing by whom the costs of each party are to be paid the court shall consider which of the parties is most to blame for the litigation.

Illustrations

(*a*) A owes B one hundred rupees. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into court.

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B accepts it in full satisfaction of his claim, but the court should not allow him any costs, the litigation being presumably groundless on his part.

(*b*) B sues A under the circumstances mentioned in illustration (*a*). On the plaint being filed, A disputes the claim. Afterwards A pays the money into court. B accepts it in full satisfaction of his claim. The court should also give B his costs of action, A's conduct having shown that the litigation was necessary.

(c) A owes B one hundred rupees, and is willing to pay him that sum without action. B claims one hundred and fifty rupees, and sues A for that amount. On the plaint being filed, A pays one hundred rupees into court, and disputes only his liability to pay the remaining fifty rupees. B accepts the one hundred rupees in full satisfaction of his claim. The court should order him to pay A's costs.

Money must be actually paid.

414. When a defendant by his answer or any party to an action by petition professes to pay money into court, or when a defendant by his answer sets up a tender of any sum of money before action brought, the answer or the petition shall not be received or filed by the court unless either the sum of money so professed to have been paid into court, or so alleged to have been tendered, is actually paid into court, or the requisite steps for the purpose are taken by the defendant or other party, as the case may be.

This Chapter to apply to any party.

415. The enactments of this Chapter shall apply, *mutatis mutandis,* to the case of payment of money into court made by any party to the action in satisfaction of the claim of any other party.

CHAPTER XXVIII

Of Security For Costs

Security for costs where plaintiff resident out of jurisdiction.

416. If at the institution, or at any subsequent stage, of an action, it appears to the court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of the jurisdiction of the court, the court may in its discretion, and either of its own motion or on the application of any

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defendant, order the plaintiff or plaintiffs within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Security for costs where defendant resident out of jurisdiction.

417. If at the institution, or at any subsequent stage of an action, it appears to the court that the defendant, or (where there are more defendants than one) that any defendant, is residing out of the jurisdiction of the court, the court may in its discretion, and either of its own motion or on the application of such defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by such defendant.

If security not furnished when ordered, action may be dismissed.

418. (1) In the event of such security not being furnished within the time so fixed, the court shall dismiss the action, unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 406, or show good cause why such time should be extended, in which case the court may extend it.

Dismissal may be set aside.

(2) When an action is dismissed under this section the plaintiff may within thirty days, and after due notice in writing to the defendant, apply for an order to set the dismissal aside, and if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs, or otherwise as it thinks fit, and shall appoint a day for proceeding with the action.

What amounts to residing out of jurisdiction.

419. Whoever leaves, or is about to leave, the jurisdiction under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs, shall be deemed to be residing out of the jurisdiction within the meaning of section 416 or 417.

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CHAPTER XXIX

Of Commissions

A.—COMMISSIONS TO EXAMINE WITNESSES

Commission to examine sick person, &c., within jurisdiction.

420. Any court may in any action issue a commission for the examination on interrogatories or otherwise, and on oath or affirmation, of persons resident within the local limits of its jurisdiction who are from sickness or infirmity unable to attend the court, or of women who, according to the customs and manners of the country, ought not to be compelled to appear in public.

To whom may commission issue.

421. The commission for the examination of a person who resides within the local limits of the jurisdiction of the court issuing the same may be issued to any person whom the court thinks fit to execute the same.

Commission to examine in other cases.

422. (1) Any court may in any action issue a commission for the examination of—

(*a*) any person resident beyond the local limits of its jurisdiction ;

(*b*) persons who are about to leave such limits before the date on which they are required to be examined in court ; and

(*c*) civil and military officers of Government who cannot in the opinion of the Judge attend the court without detriment to the public service ; and

(*d*) women who, according to the customs and manners of the country, ought not to be compelled to appear in public.

To whom may commission issue.

(2) Such commission shall ordinarily be issued to any court, except the Supreme Court, within the local limits of whose jurisdiction such person resides, and which can most conveniently execute the same :

Provided that, under special circumstances, the commission may be directed to any person whom the court issuing the commission thinks fit to appoint.

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When may court issue commission to examine person outside Ceylon.

423. When any court to which application is made for the issue of a commission for the examination of a person residing at any place not within Ceylon is satisfied that his evidence is necessary, the court may issue such commission.

Court to execute the commission.

424. Every court receiving a commission for the examination of any person shall examine him pursuant thereto.

Return thereof.

425. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) be recorded in the action.

Evidence taken under commission when admissible.

426. Evidence taken under a commission shall not be read as evidence in the action without the consent of the party against whom the same is offered, unless—

(*a*) the person who gave the evidence is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined; or is a person whom the court, in accordance with the customs and manners of the country, sees reason to exempt from personal appearance in court; or

(*b*) the court in its discretion, for good cause to be assigned by it, dispenses with the proof of any of the circumstances mentioned in the last preceding section and authorizes the evidence of any person being read as evidence in the action, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

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Foreign courts to which provisions apply.

427. The provisions herein before contained as to the execution and return of commissions shall apply to commissions issued by—

(*a*) courts situate within the limits of the Republic of India; or

(*b*) courts situate in any country in the Commonwealth other than the Republic of India; or

(*c*) courts of any foreign country for the time being in alliance with Her Majesty.

B.—COMMISSIONS FOR LOCAL INVESTIGATIONS

Commission to make local investigation.

428. In any action or proceeding in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, and the same cannot be conveniently conducted by the Judge in person, the court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report to the court.

Return thereof.

429. The commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, subscribed with his name, to the court.

C.—COMMISSIONS TO EXAMINE ACCOUNTS

Commission to examine accounts.

430. In any action in which an examination or adjustment of accounts is necessary, the court may issue a commission to such person as it thinks fit, directing him to make such examination.

Court to furnish instructions.

431. The court shall furnish the commissioner with such part of the proceedings of the action and such detailed instructions as appear necessary, and the instructions shall distinctly specify whether the commissioner is merely to transmit the proceedings

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which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

GENERAL PROVISIONS

Evidence taken on commission shall be filed and recorded in the action.

432. (1) The commission in every case within this Chapter shall be entitled as in the action, whether of regular or summary procedure, in which it issued, and on its return shall, with all the proceedings, evidence, and documents, if any, taken therein, be filed and recorded as of that action.

Commissioner may be examined personally.

(2) The report of the commissioner or commissioners in each case within (B) and (C), and the evidence taken by a commissioner (but not the evidence without the report) shall be evidence in the action ; but the court, or, with the permission of the court, any of the parties to the action, may examine the commissioner personally in open court touching any of the matters referred to him, or mentioned in his report, or as to the manner in which he has made the investigation or conducted his proceedings.

Court may order payment into court of expenses.

433. Before issuing any commission under this Chapter the court may order such sum (if any) as it thinks reasonable for the expenses of the commission, to be paid into court by the party at whose instance or for whose benefit the commission is issued.

Powers of commissioners.

434. Any commissioner appointed under this Chapter shall have authority to administer an oath or affirmation, and may, unless otherwise directed by the order of appointment—

(*a*) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the commissioner thinks proper to call upon to give evidence in the matter referred to him ;

(*b*) call for and examine documents and other things relevant to the subject of inquiry ;

(*c*) at any reasonable time enter upon or into any land or building mentioned in the order.

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Provisions of this Ordinance as to witnesses to apply.

435. The provisions of this Ordinance relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Chapter, whether the commission in execution of which they are so required has been issued by a court situate within, or by a court situate beyond, the limits of Ceylon.

Parties should appear before commissioner.

436. Whenever a commission is issued under this Chapter the court shall direct that the parties to the action shall appear before the commissioner in person or by their recognized agents or proctors.

If the parties do not so appear, the commissioner may proceed *ex parte*.

AFFIDAVITS

Evidence on affidavit.

437. Whenever any order has been made by any court for the taking of evidence on affidavit, or whenever evidence on affidavit is required for production in any application or action of summary procedure, whether already instituted or about to be instituted, an affidavit or written statement of facts conforming to the provisions of section 181 may be sworn or affirmed to by the person professing to make the statement embodied in the affidavit before any court or Justice of the Peace or Commissioner to administer oaths within the local limits of whose jurisdiction he is at the time residing, and the fact that the affidavit appears to be entitled in an action in a competent court shall be sufficient authority to such court or Justice of the Peace to administer the oath or affirmation.

Affidavit to be duly entitled and to be signed by the declarant.

438. Every affidavit shall be entitled as in the court and action in which it is to be used, and shall be signed by the declarant in the presence of the court, Justice of the Peace, or Commissioner before whom it is sworn or affirmed.

Case of illiterate person.

439. In the event of the declarant being a blind or illiterate person, or not able to understand writing in the English language, the affidavit shall at the same

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time be read over or interpreted to him in his own language, and the jurat shall express that it was read over or interpreted to him in the presence of the court, Justice of the Peace, or Commissioner, and that he appeared to understand the contents; and also that he made his mark or wrote his signature in the presence of the court, Justice of the Peace, or Commissioner. And when a mark is made instead of a signature, the person who writes the marksman's name against the mark shall also sign his name and address in the presence of the court, Justice of the Peace, or Commissioner.

Alteration of affidavit.

440. Every affidavit must be fairly written, and must exhibit no erasures or blotting or blanks; if any alteration is needed to be made in the original writing before it is sworn or affirmed to, every excision of a word, or letter, or figure shall be made by so drawing a line through it as to leave the word, letter, or figure still legible; and every added word, letter, or figure shall be added by interlineation, not by superposition or alteration; and every excision and interlineation shall be initialled by the Judge, Justice of the Peace, or Commissioner before whom the affidavit is affirmed or sworn.

PART IV

ACTIONS IN PARTICULAR CASES

CHAPTER XXX

Actions By Paupers

Paupers.

441. Subject to the following rules, any action may be brought by a pauper.

Explanation.—A person is a "pauper" when he is not entitled to property worth fifty rupees, other than his necessary wearing apparel and the subject-matter of the action.

When a pauper may not sue.

442. No action shall be brought by a pauper to recover compensation for libel, slander, or abusive language.

Form of application for leave to sue.

443. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 40 in regard to plaints in

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actions ; a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto, and it shall be subscribed in the manner herein before prescribed for the subscription of plaints.

Application to be verified, and particulars of verifications.

444. Attached to every such application shall be an affidavit sworn or affirmed by the applicant and by two headmen or respectable persons of the place at which the applicant resides, to the following effect :—

(*a*) that the applicant is a pauper ;

(*b*) that he has not within the two months next before the presentation of his application disposed of any property fraudulently, or with a view to obtain the benefit of this Chapter ;

(*c*) that he has not entered into any agreement with reference to the subject-matter of the proposed action under which any person has obtained an interest in that subject-matter.

Application must be made in person.

445. Notwithstanding anything contained in section 24, the application shall be presented to the court by the applicant in person.

Application not presented in prescribed manner to be rejected.

446. If the application be not framed or presented in the manner prescribed by sections 443 and 445, the court shall reject it.

Court to direct a proctor to make inquiry of applicant, and to certify his opinion to the court, which will accordingly reject the application, or make order for hearing the question of pauperism.

447. (1) If the application be in proper form, it shall forthwith be referred to one of the proctors of the court, who shall be selected in rotation for this purpose, and shall inquire of the applicant what are the grounds of his proceeding and the evidence by which he proposes to support it, and after examining any documents or other evidence which the applicant may produce to him, the proctor-referee shall certify to the court his opinion whether or not the applicant has a good cause of action against the defendant.

(2) If such proctor shall certify that the applicant has not a good cause of action, the court shall reject the application ; but if he shall certify that the applicant has a good cause of action, the court shall, on

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the footing of the application and of the proctor's certificate, make an interlocutory order under alternative (*b*) of section 377, appointing a day for the determination of the question of pauperism, and intimating that the opposite party or respondent will be heard in opposition to the application on this ground upon the day appointed. And the proceedings thereupon shall be in accordance with the provisions of Chapter XXIV.

On pauperism being found, leave to sue to be granted.

448. If on the day so appointed or on a subsequent day to which the hearing may have been adjourned, the question of pauperism be determined in favour of the applicant, then the application to be allowed to sue as a pauper shall be granted, and an order to that effect shall be made by the court.

Proceedings thereon.

449. And upon the application being granted it shall be numbered and filed, and shall be deemed the plaint in the action, and the action shall proceed in all other respects as an action instituted under Chapter VII, except that the plaintiff shall not be liable to any stamps in respect of any petition, appointment of the proctor, or other proceeding connected with the action.

Recovery of value of stamps.

450. If the plaintiff succeeds in the action, the court shall calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be a first charge on the subject-matter of the action.

When court may order plaintiff to pay stamp fees.

451. If the plaintiff fails in the action, or if he is dispaupered, or if the action is dismissed under section 84, or struck off the file under section 88, the court shall order the plaintiff, or any person added under section 18 as plaintiff in the action, to pay the stamp fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

Refusal of application no bar to pauper's right to sue in the ordinary manner.

452. An order of refusal to allow the applicant to sue as a pauper made under section 447 shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue ; but the applicant shall be at liberty to institute an action in the ordinary manner in respect of such right, on first paying the costs of his unsuccessful application.

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Application to defend as a pauper.

453. A defendant in any action may apply to the court in which such action is pending for leave to defend the action as a pauper. The application shall be made in the same manner as, and shall contain the particulars by this Chapter required to be contained in, applications to sue as a pauper, except that the particulars necessary to be inserted in answers in actions shall be substituted for those necessary in plaints, and shall, *mutatis mutandis,* and so far as the same is practicable, be subject to the same rules and conditions as are in this Chapter prescribed with regard to applications for leave to sue as a pauper.

When court may order plaintiff to be dispaupered.

454. The court may on motion made by the other party, of which one week's notice in writing has been given to the party permitted to sue or defend as a pauper, order such party to be dispaupered—

(*a*) if he is guilty of vexatious or improper conduct in the course of the action;

(*b*) if it appears that his means are such that he ought not to continue to sue or defend as a pauper; or

(*c*) if he has entered into an agreement with reference to the subject-matter of the action under which any other person has obtained an interest in such subject-matter.

Costs of application to be costs in cause.

455. The costs of an application for permission to sue or defend as a pauper, and of an inquiry into pauperism, are costs in the action.

CHAPTER XXXI

[§ 2, 48 of 1954.]

Actions By Or Against The Crown, Or Ministers, Parliamentary Secretaries, Or Public Officers

Actions by or against the Crown.

456. (1) All actions by or against the Crown shall be instituted by or against (as the case may be) the Attorney-General:

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Provided that in Courts of Requests, any person duly appointed under paragraph (*d*) of section 25 may institute an action for and in the name of the Crown as party plaintiff.

(2) In actions by the Crown instituted by the Attorney-General, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words " the Attorney-General ".

(3) Attorney-General does not in this section include the Solicitor-General or any Crown Counsel.

(4) [6] In this Chapter, " the Crown " means the Crown in right of or in respect of Her Majesty's Government in Ceylon.

Service of process.

457. In any action to which the Crown is a party, all processes of court issuing against the Crown shall be served upon the Attorney-General.

Attorney-General to have reasonable time to appear.

458. The court, in fixing the day for the Attorney-General to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and may extend the time at its discretion.

Service on public officer.

459. Where the defendant is a public officer, the court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the court that the summons may be most conveniently so served.

Public officer may apply for time to answer.

460. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel ; and the court upon such application may extend the time for so long as appears to be requisite.

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Attorney-General, Minister, Parliamentary Secretary, and public officer entitled to notice. [§ 3, 48 of 1954.]

461. No action shall be instituted against the Attorney-General as representing the Crown, or against a Minister, Parliamentary Secretary, or public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of one month next after notice in writing has been delivered to such Attorney-General, Minister, Parliamentary Secretary, or officer (as the case may be), or left at his office, stating the cause of action and the name and place of abode of the person intending to institute the action and the relief which he claims ; and the plaint in such action must contain a statement that such notice has been delivered or left.

Writ against person or property in such action. [§ 4, 48 of 1954.]

462. No writ against person or property shall be issued against the Attorney-General in any action brought against the Crown or in any action in which the Attorney-General is substituted as a party defendant under section 463.

When Attorney-General may intervene. [§ 5, 48 of 1954.]

463. If the Attorney-General undertakes the defence of an action against a Minister, Parliamentary Secretary, or public officer, the Attorney-General shall apply to the court, and upon such application the court shall substitute the name of the Attorney-General as a party defendant in the action.

Where Attorney-General does not intervene action to proceed as against private party.

464. If such application is not made by the Attorney-General on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in an action between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Minister, Parliamentary Secretary, or public officer need not appear in person. [§, 48 of 1954.]

465. In an action against a Minister, Parliamentary Secretary, or public officer in respect of such act as aforesaid, the court shall exempt the defendant from appearing in person when he satisfies the court that he cannot absent himself from his duty without detriment to the transaction of any business of the Senate, House of Representatives, or Cabinet of Ministers, or to the public service.

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CHAPTER XXXII

ACTIONS BY ALIENS AND BY OR AGAINST FOREIGN RULERS

Actions by aliens.

466. (1) Alien enemies residing in Ceylon with the permission of the Minister,[1] and alien friends, may sue in the courts of Ceylon as if they were subjects of Her Majesty.

(2) No alien enemy residing in Ceylon without such permission, or residing in a foreign country, shall sue in any of such courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Northern Ireland, and carrying on business in that country without a licence in that behalf under the hand of one of Her Majesty's Secretaries of State, or of a Minister[1] of Ceylon, shall, for the purpose of subsection (2) of this section, be deemed to be an alien enemy residing in a foreign country.

Actions by Foreign States.

467. (1) A Foreign State may sue in the courts of Ceylon :

Provided that—

(*a*) it has been recognized by Her Majesty ; and

(*b*) the object of the action is to enforce the private rights of the head, or of the subjects, of the Foreign State.

(2) The court shall take judicial notice of the fact that a Foreign State has not been recognized by Her Majesty.

Recognized agents of Foreign Powers.

468. (1) Persons specially appointed by order of Government at the request of any sovereign prince or ruling chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without Ceylon, or at the request of any person competent in the opinion of the Government to act on behalf of such prince or chief, to prosecute or defend any action on his behalf, shall be deemed to be the recognized agents by whom appearances and applications may be made or acts may be done under this Ordinance on behalf of such prince or chief.

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(2) A person appointed under this section may authorize or appoint persons to make and do appearances, applications, and acts in any such action, as if he were himself a party to the action.

When Foreign State may be sued.

469. (1) Any such prince or chief, and any ambassador or envoy of a Foreign State may, with the consent of Government certified by the signature of the Minister[1] (but not without such consent), be sued in any competent court.

(2) Such consent shall not be given unless—

(*a*) the prince, chief, ambassador, or envoy has instituted an action in such court against the person desiring to sue him ; or

(*b*) the prince, chief, ambassador, or envoy by himself or another trades within the local limits of the jurisdiction of such court ; or

(*c*) the prince, chief, ambassador, or envoy is in possession of immovable property situate within such limits, and is to be sued with reference to such possession or for money charged on that property.

(3) No such prince, chief, ambassador, or envoy shall be arrested under this Ordinance ; and no decree shall be executed against the property of any such prince, chief, ambassador, or envoy, unless with consent of Government certified as aforesaid.

CHAPTER XXXIII

Actions By And Against Corporations And Companies

Actions by or against a corporation or company.

470. In actions by or against any corporation, or by or against a board or other public body, or any company authorized to sue or be sued, the name and the style of the corporation, board, public body, or company, or of

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the officer (if any) in whose name any such corporation, board, public body, or company is authorized to sue and be sued, as the case may be, may be inserted as the name of the plaintiff or defendant ; and the plaint or answer may be subscribed on behalf of the corporation, board, public body, or company by any member, director, secretary, manager, or other principal officer thereof who is able to depose to the facts of the case ; and in any case in which such corporation, board, public body, or company is represented by a proctor, shall be subscribed by such proctor.

Service on corporation or company.

471. When the action is against a corporation, or against a board or other public body, or a company authorized to sue and be sued in the name of an officer or of a trustee, except in cases where a particular mode of service is directed by law, the summons may be served—

(*a*) by leaving it at the registered office (if any) of the corporation, board, public body, or company ; or

(*b*) by giving it to the secretary or other principal officer of the corporation, board, public body, or company ;

and the court may in such summons or by special order require the personal appearance of such secretary or other principal officer of the corporation, board, public body, or company who may be able to answer material questions relating to the action.

CHAPTER XXXIV

Actions By And Against Trustees, Executors, And Administrators

Actions against trustees, executors, and administrators.

472. In all actions concerning property vested in a trustee, executor, or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent

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persons so interested ; and it shall not ordinarily be necessary to make them parties to the action. But the court may, if it think fit, order them, or any of them, to be made such parties.

All executors, &c., should be made parties.

473. When there are several trustees, executors, or administrators, they shall all be made parties to an action by or against one or more of them :

Provided that executors who have not proved their testator's will, and trustees, executors, and administrators beyond the local limits of the jurisdiction of the court, need not be made parties.

Executors and administrators liable in costs.

474. In every action brought by an executor or administrator in right of his testator or intestate, such executor or administrator shall, unless the court shall otherwise order, be liable to pay costs to the defendant in case of judgment being entered for the defendant, and in all other cases, in which he would be liable if such plaintiff were suing in his own right upon a cause of action accruing to himself ; and the defendant shall have judgment for such costs, and they shall be recovered accordingly.

Husband of executrix not to be made party.

475. Unless the court directs otherwise, the husband of a married executrix or administratrix shall not be a party to an action by or against her in her representative capacity.

CHAPTER XXXV

Actions By And Against Minors And Persons Under Other Disqualification

Action by minor.

476. Every action by a minor shall be instituted in his name by an adult person, who in such action shall be designated in the plaint the next friend of the minor, and may be ordered personally to pay any costs in the action as if he were the plaintiff.

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Next friend and guardian *ad litem.*

477. Every application to the court on behalf of a minor (other than an application under section 487) shall be made in his name by his next friend or his guardian for the action, and shall be so expressed to be made on the face of the application.

Procedure where no next friend.

478. (1) If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the proctor or other person by whom it was presented.

(2) Such application shall be made on summary procedure by the defendant; and the court after hearing the objections, if any, of the person against whom it is made, may make such order in the matter as it thinks fit.

Court may appoint guardian *ad litem.*

479. Where the defendant to an action is a minor, the court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the action for such minor, and generally to act on his behalf in the conduct of the case.

No order to affect minor not represented.

480. Every order made in an action or on any application before the court in or by which a minor is in any way concerned or affected without such minor being represented by a next friend or guardian for the action, as the case may be, may be discharged on application made on summary procedure for the purpose; and, if the proctor of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, it may on such application be discharged with costs to be paid by such proctor, provided he was duly made a respondent to the application.

Who may act as next friend.

481. (1) Any person being of sound mind and full age may be appointed next friend of a minor, provided his interest is not adverse to that of such minor and he is not a defendant in the action.

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(2) Such appointment shall be made after application by way of summary procedure supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor, and to such application the defendant shall be made respondent. And on the occasion of any such application being made the minor should appear personally in court unless prevented by good cause, such as extreme youth or illness.

On cause shown court may remove next friend.

482. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the action, ceases to reside within Ceylon, or for any other sufficient cause, application may be made on summary procedure on behalf of the minor or by a defendant for his removal ; and the court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Retirement of next friend.

483. (1) Unless otherwise ordered by the court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be on summary procedure supported by affidavit, showing the fitness of the person proposed, and also that he has no interest adverse to the minor, and to such application the defendant shall be made respondent.

Death or removal of next friend.

484. On the death or removal of the next friend of a minor further proceedings shall be stayed until the appointment of a next friend in his place.

Appointment of new next friend.

485. If the proctor of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may, on summary procedure, apply to

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the court for the appointment of one, making the defendant a respondent to the application; and the court may thereupon appoint such person as it thinks fit.

Minor's right of election on coming of age.

486. A minor plaintiff, or a minor not a party to an action on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the action or application.

Discharge of next friend on minor's election to proceed with action.

487. (1) If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

(2) The title of the action or application shall, upon such order being made, be altered so as to read thenceforth thus: "*A. B.*, late a minor, by *C. D.*, his next friend, but now of full age".

Procedure on election of sole plaintiff to abandon on payment of costs.

488. If he elects to abandon the action or application he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the action or application, on repayment of the costs incurred by the defendant, or respondent, or which may have been paid by his next friend.

Application to be *ex parte*.

489. Any application under section 487 or section 488 may be made *ex parte*; and the affidavit of facts upon which it is based must satisfy the court that the late minor has attained his full age.

Procedure on election of a co-plaintiff to repudiate.

490. (1) A minor co-plaintiff on coming of age, and desiring to repudiate the action, must apply to have his name struck out as co-plaintiff; and the court, if it finds that he is not a necessary party, shall dismiss him from the action on such terms as to costs or otherwise as it thinks fit.

(2) The next friend, as well as the defendant, shall be served with the petition of application as respondent, and it must be proved by affidavit that the late minor has attained his full age; the costs of all parties of such application and of all or any proceedings theretofore had in the action shall be paid by such persons as the court directs.

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If the late minor be a necessary party to the action, the court may direct him to be made a defendant.

Procedure when ex-minor applies to have action dismissed as unreasonable or improper.

491. (1) If any minor on attaining majority can prove to the satisfaction of the court that an action instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply by way of summary procedure to have the action dismissed.

(2) Notice of the application shall be served on all the parties concerned, including the next friend, and the court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the action.

Minor may in person sue for wages.

492. Nothing in the foregoing sections shall affect the right of any minor to prosecute any proceedings in a Court of Requests for any money which may be due to him for wages or piecework, or for work as a servant, artificer, or labourer, in the same manner as if he were of full age.

Application for appointment of guardian *ad litem*.

493. (1) An order for the appointment of a guardian for the action may be obtained upon application on summary procedure in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the action adverse to that of the minor, and that he is a fit person to be so appointed.

(2) On the occasion of such an application being made, the minor ought to appear personally in court unless prevented by good cause, such as extreme youth or illness, from doing so.

When officer of court may be appointed.

494. When there is no other person fit and willing to act as guardian for the action, the court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor.

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Co-defendant may be appointed.

495. A co-defendant of sound mind and of full age may be appointed guardian for the action, if he has no interest adverse to that of the minor, but neither a plaintiff nor a married woman can be so appointed.

Court may remove guardian *ad litem*.

496. If the guardian for the action of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the court may remove him and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Death of guardian.

497. If the guardian for the action dies pending such action, or is removed by the court, the court shall appoint a new guardian in his place.

Procedure for execution of decree against minor heir.

498. When the enforcement of a decree or order is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the action of such minor shall be appointed by the court, on an application of summary procedure duly made for this purpose, and the decree-holder shall then serve on such guardian notice of such application.

When court may allow next friend funds for suit.

499. No sum of money or other thing shall be received or taken by a next friend or guardian for the action on behalf of a minor at any time before decree or order, unless he has first obtained the leave of the court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

Next friend may not compound action without leave of court.

500. (1) No next friend or guardian for the action shall, without the leave of the court, enter into any agreement or compromise on behalf of a minor with reference to the action in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the court shall be voidable against all parties other than the minor.

This Chapter to apply to persons of unsound mind.

501. The provisions contained in this Chapter shall, *mutatis mutandis,* apply in the case of persons of unsound mind, adjudged to be so under the provisions of this Ordinance or under any law for the time being in force.

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Majority, what is.

502. For the purposes of this Chapter, a minor shall be deemed to have attained majority or full age on his attaining the age of twenty-one years, or on marriage, or on obtaining letters of *venia aetatis*.

CHAPTER XXXVI

Actions By And Against Persons In The Naval, Military, Or Air Service

Actions by or against persons in the naval, military, or air force.

503. (1) When any officer in the naval, military, or air service or any sailor, soldier, or airman actually serving the Government in the capacity of a member of a naval, military, or air force is a party to an action, and cannot obtain leave of absence for the purpose of prosecuting or defending the action in person, he may authorize any person to sue or defend in his stead.

Authority to agent.

(2) The authority shall be in writing, and shall be signed by the party in the presence of—

(*a*) his commanding officer, or of the next subordinate officer if the party be himself the commanding officer ; or

(*b*) where the party is serving in naval, military, or air force staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in court.

(3) When so filed, the counter-signature shall be sufficient proof that the authority was duly executed, and that the party by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the action in person.

Explanation.—In this Chapter the expression "commanding officer" means the officer in actual command for the time being of any ship, regiment, corps, detachment, or naval, military, or air depot to which the party belongs.

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Agent may sue or defend in person.

504. Any person authorized by such party to prosecute or defend an action in his stead may prosecute or defend it in person in the same manner as such party could do if present; or he may appoint a proctor to prosecute or defend the action on behalf of such party.

Service of process in such cases.

505. Processes served upon any person authorized by any party under section 503, or upon any proctor appointed as aforesaid by such person to act for or on behalf of such party, shall be as effectual as if they had been served on the party in person or on his proctor; and no process in the action shall be served upon such party personally without express order of court.

Copy of summons may be sent to commanding officer for service.

506. (1) When any naval, military, or air officer or any sailor, soldier, or airman is a defendant, a copy of the summons shall be sent by the Fiscal to his commanding officer for the purpose of being served on him.

(2) The officer to whom such copy is sent shall cause it to be served on the person to whom it is addressed, if practicable, and shall return it to the Fiscal with the written acknowledgment of such person endorsed thereon.

(3) If from any cause the copy cannot be so served, it shall be returned to the Fiscal by whom it was sent, with information of the cause which has prevented the service.

Warrant of arrest may likewise be delivered for execution.

507. (1) If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, or naval, military, or air station, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

(2) The commanding officer shall, if the person named therein is by law liable to arrest, back the warrant or other process with his signature, and shall in the case of a warrant of arrest cause such person, if within the limits of his command, to be arrested and delivered to the officer so charged.

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CHAPTER XXXVII

ACTIONS OF ACCOUNT

Actions of account.

508. When the claim which is made in the plaint, or is set up in the answer, is such that the action cannot be disposed of, or a complete and final decree made in the matter thereof between the parties without the taking of accounts, or the making inquiry into facts, or the demarcation of land, or the realization of assets, as the case may be, it shall be competent to the court to adjudicate piecemeal upon the matters in issue, and in such adjudications to make interlocutory decrees or orders of a final character between the parties at hearings had by successive adjournments ; and, in particular, to take any accounts, and to make an inquiry into facts separately from the remaining matter of the action on a day to be appointed for the purpose, and to issue the necessary directions or commissions for the demarcation of land or realization of assets, and to adjourn the hearing from time to time for further orders or directions, or for final determination, to such dates as may be necessary or convenient to enable the accounts to be taken, the inquiries made, and the demarcation of land or realization of assets, as the case may be, to be effected, in the interval.

Interlocutory order for taking accounts, &c.

509. In any such case the order of adjournment for the purpose of the accounts being taken, inquiries made, or commissions or directions issued, must adjudicate (either by consent or upon admissions of the parties, or upon other sufficient evidence) upon so much of the rights of, or of the fiduciary relations between, the parties, which are at issue in the action, as may suffice to give rise to the liability of the respective parties affected by the order to account, or may serve to render the inquiries, directions, or commissions thereby directed proper and necessary.

Form and scope of order.

510. Every order directing an account to be taken, or giving leave to a party to falsify or to surcharge an account, shall appoint a day for the filing of the

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account or of the document of falsification or surcharge, and also a subsequent time for the opposing party to file objections thereto, and again a later time for the hearing and determination of the issues between the parties arising out of the objections, and for the finding on the footing of such determination of the state of the account directed to be taken.

The taking of the accounts.

511. The account directed to be taken, before it is filed, must be verified on oath or affirmation by the accounting party. Objections to the account may be filed by any party concerned in the right taking of the accounts, and may be directed as well to adding new entries or enhancing existing entries on the debit side of the accounting party, as to falsifying the account given by him in any particular. And the trial of the issues arising out of the objections to the account shall conform, as nearly as may be, in regard to the order and method of proceeding and the taking of evidence, to the rules herein before laid down for the trial of a regular action.

Reasonable care to be taken in appointing the days for the purpose.

512. The day for filing the account directed to be taken, and the times for filing the objections thereto, and for the hearing and determination of the issues arising thereout, shall respectively be fixed with a due regard to the circumstances of the matter and the situation of the parties therein, so that reasonable opportunity may be afforded to the accounting party to make out his account, to the opposing party to examine the same and to satisfy himself in respect to its correctness, and to all parties to prepare for trial.

Procedure where accounting party makes default.

513. In the event of the accounting party not duly filing his account, and not satisfying the court that there is just cause for his default, the court shall proceed with the hearing of the matter of the account and adjudicate upon the same on the day appointed therefor by finding the actual state of the account directed to be taken upon such materials as may be furnished by the opposing party:

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Provided, nevertheless, that any reasonable extension of time which may be bona fide required by any party, either for filing accounts or objections thereto, or for preparing for trial, may be granted by the court on such terms as it may think proper, if such extension of time be applied for at the earliest possible moment, upon materials showing good and sufficient ground, and upon notice to the other parties concerned.

What provisions apply when an order is made in an action for an inquiry.

514. When an order is made in an action for an inquiry into facts, the foregoing rules shall, *mutatis mutandis,* apply to the making of the order, the filing of the state of facts and of the objections thereto, or counterstate of facts, and to the trial of the issues arising thereout respectively, so nearly as reasonably may be.

Adjournment of the hearing until after the accounts, &c., shall have been taken.

515. When the hearing of an action is adjourned for the intermediate taking of accounts, making of inquiries, or execution of commissions, or of other directory orders, the interval of adjournment shall be adjusted with immediate reference to the proceedings prescribed by the foregoing rules for such interlocutory matter, so as to allow of its being conveniently completed before the resumption of the hearing so adjourned. And the order for adjournment shall include or comprehend the orders and directions requisite under these rules for the taking of the accounts or executing the other matters for which the adjournment is made :

Provided, nevertheless, that any reasonable extension of the time of adjournment which may seem to the court necessary, or which may be bona fide required by any party, in consequence of extension of time being granted for, or of delay in, or prolongation of, the proceedings of the interlocutory matters, or upon other good and sufficient ground shown by proper evidence, may be ordered by the court either on the day to which the hearing is adjourned, or upon any other day, provided reasonable notice of the application to the court for the extension of the time of adjournment be afforded to all parties.

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CHAPTER XXXVIII

TESTAMENTARY ACTIONS

Deposit of the will of deceased.

516. When any person shall die leaving a will in Ceylon, the person in whose keeping or custody it shall have been deposited, or who shall find such will after the testator's death, shall produce the same to the District Court of the district in which such depository or finder resides, or to the District Court of the district in which the testator shall have died, as soon as reasonably may be after the testator's death. And he shall also make oath or affirmation, or produce an affidavit (form No. 81, First Schedule) verifying the time and place of the death, and stating (if such is the fact) that the testator has left property within the jurisdiction of that or any other, and in that event what, court, and the nature and value of such property ; or, if such is the fact, that such testator has left no property in Ceylon.

The will so produced shall be numbered and initialled by the secretary, and deposited and kept in the record-room of the District Court.

Penalty on neglect.

517. Any person liable to produce any will to any court under the provisions of the last preceding section, who shall wilfully omit to produce such will, or to furnish the information thereby required, shall be guilty of an offence, and liable to a fine not exceeding one thousand rupees.

Who may apply for probate or administration.

518. (1) When any person shall die leaving a will under or by virtue of which any property in Ceylon is in any way affected, any person appointed executor therein may apply to the District Court of the district within which the testator died, or, if the testator died out of Ceylon and the applicant has obtained an order of the Supreme Court appointing any court to have sole testamentary jurisdiction over his estate or effects, to such court, to have the will proved, and to have probate thereof issued to him ; also any person interested, either by virtue of the will or otherwise, in having the property of the testator administered, may apply to such court to have the will proved, and to obtain grant to himself of administration of the estate with copy of the will annexed.

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(2) If any person who would be entitled to administration is absent from Ceylon, a grant of letters of administration with or without the will annexed, as the case may require, may be made to the duly constituted attorney of such person.

Probate or administration compulsory where value of estate is or over two thousand five hundred rupees.

519. (1) Upon any such application being made, and, in every case in which the estate of the testator amounts to or exceeds in value two thousand five hundred rupees, whether any such application shall have been made or not, it shall be obligatory on the court to, and the court shall, issue probate of the will to the executor or executors named therein ; or if there is no executor resident in Ceylon competent and willing to act, the court shall issue letters of administration with or without the will annexed, as the case may require, to some person who by the provisions of the last preceding section is competent to apply for the same, or to some other person who, in the opinion of the court, by reason of consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, is a proper person to be appointed administrator ; and in every such case letters of administration may be limited or not in manner hereinafter provided, as the court thinks fit.

(2) The grant of such letters shall be subject to the rules and regulations hereinafter provided with regard to such grants in other cases ; and in the judgment by which such grant is made the court shall adjudicate upon the facts which constitute the grounds of the appointment.

When secretary of the court may be appointed.

520. Where there is no person fit and proper in the opinion of the court to be appointed administrator in manner in the last preceding section provided, or no such person is willing to be so appointed, and not in any other case, the court shall appoint the secretary of the court such administrator.

Security.

521. In every case in which it is found necessary, whether by reason of such executor as aforesaid not applying for probate, or by reason of there being no executor resident in Ceylon competent and willing to act, or by reason of no person who is competent under

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section 518 to apply for letters of administration so applying, that any such person as is in section 519 mentioned, or the secretary of the court, should be appointed administrator, the court shall take from such person or secretary security for the due administration of the estate in manner in section 538 mentioned, and it shall not in any case be competent for the court to dispense with such security under the provisions of section 541.

Secretary when allowed to proceed on blank.

522. In every case in which letters of administration have so as aforesaid been granted to the secretary of the court, it shall be competent for the court in its discretion to allow such secretary to proceed without supplying the stamps required by law to be supplied by executors and administrators in proceedings taken under this Chapter, until such time as assets of the estate sufficient to defray the cost of the same shall have come to his hands. The amount which would have been payable by such secretary as administrator on any proceedings in which he has been so allowed to proceed on blank shall be calculated by the court, and shall be a first charge on all the assets of the estate.

To whom grant in either case should be made.

523. In the case of a conflict of claims to have the will proved and probate or grant of administration issued, the claim of an executor or his attorney shall be preferred to that of all others, and the claim of a creditor shall be postponed to the claim of a residuary legatee or devisee under the will. And in the like case of a conflict of claims for grant of administration where there is intestacy, the claim of the widow or widower shall be preferred to all others, and the claim of an heir to that of a creditor.

Mode of application and proof in case of a will.

524. (1) Every application to the District Court to have the will of a deceased person proved shall be made on petition by way of summary procedure, which petition shall set out in numbered paragraphs the relevant facts of the making of the will, the death of the testator, the heirs of the deceased to the best of the petitioner's knowledge, the details and situation of the deceased's property, and the grounds upon which the petitioner is entitled to have the will proved; the

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petition shall also show whether the petitioner claims as creditor, executor, administrator, residuary legatee, legatee, heir, devisee, or in any and what other character.

(2) If the will is not already deposited in the District Court in which the application is made, it must either be appended to the petition, or must be brought into court and identified by affidavit, with the will as an exhibit thereto, or by parol testimony at the time the application is made.

(3) Every person making, or intending to make, an application to a District Court under this section to have the will of a deceased person proved, which will is deposited in another District Court, is entitled to procure the latter court to transmit the said will to the court to which application is to be made, for the purpose of such application. Also the application must be supported by sufficient evidence either in the shape of affidavits of facts, with the will as an exhibit thereto, or of oral testimony, proving that the will was duly executed according to law, and establishing the character of the petitioner according to his claim.

Application to be made on affidavits.

Affidavit of no opposition.

525. If the petitioner has no reason to suppose that his application will be opposed by any person, he may file with his petition an affidavit to that effect, and may omit to name any person in his petition as respondent.

Court if satisfied with proof, to make order *nisi* declaring will proved.

526. Upon the application being made, if the court is of opinion that the evidence adduced is sufficient to afford prima facie proof of the due making of the will and of the character of the petitioner, it shall make an order *nisi* declaring the will to be proved, which order shall be served upon the respondent, if any, and upon such other person as the court shall think fit to direct, and shall come on for final hearing and disposal on a day to be named therein.

Order *nisi* to direct probate.

527. If the applicant claims as the executor or one of the executors of the will, and asks that probate may be issued to him, the order *nisi* shall declare that he is executor, and shall direct the issue of probate to him accordingly.

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Grant of administration with copy of will annexed.

528. If the applicant claims in any other character than that of executor, and asks that the administration of the deceased's property be granted to him, then the order *nisi* shall include a grant to the applicant of a power to administer the deceased's property according to the will, with a copy of the will annexed.

When court may make order absolute in the first instance.

529. In the case of an application for probate if no respondent is named in the petition, the court may in its discretion make the order absolute in the first instance.

Mode of application and proof for grant of administration in absence of a will.

530. Every application to the District Court for grant of administration of a deceased person's property, where the deceased has died without making a will, or where the will cannot be found, shall be made on petition by way of summary procedure, which petition shall set out in the numbered paragraphs prescribed by section 524 the relevant facts of the absence of the will, the death of the testator, and the heirs of the deceased, to the best of the petitioner's knowledge; the petition shall also show the character in which the petitioner claims and the facts which justify his doing so.

The application shall also be supported by sufficient evidence, either in the shape of affidavits of facts or of oral testimony, to afford prima facie proof of the material allegations in the petition, and shall name the next of kin of the deceased as respondents.

Court declaring petitioner's status to make order *nisi* for issue of grant.

531. Upon the application for grant of administration being made, if the court is of opinion that the material allegations of the petition are proved, it shall make an order *nisi* declaring the petitioner's status accordingly, and making the grant prayed for, which order shall be served upon the respondent and upon such other persons as the court shall think fit to direct, and shall come on for final hearing and disposal on a day to be named therein.

Order *nisi* to be advertised.

532. In all cases of application for the grant of the administration of the deceased's property, whether with or without a will, the court shall, whether a

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respondent is named in the petition or not, direct the order *nisi* to be advertised in the Gazette, and twice in a local paper, before the day of final hearing: the paper to be selected by the court with the object that notice of the order should reach all persons interested in the administration of the deceased's property:

Provided that the court may in its discretion direct such other mode of advertisement in lieu of such publication as to it seems sufficient.

At final hearing on objection, court shall frame issues.

533. If on the day appointed for final hearing, or on the day to which it may have been duly adjourned, the respondent or any person upon whom the order *nisi* has been directed to be served, or any person then appearing to be interested in the administration of the deceased's property, satisfies the court that there are grounds of objection to the application, such as ought to be tried on viva voce evidence, then the court shall frame the issues which appear to arise between the parties, and shall direct them to be tried on a day to be then appointed for the purpose under section 386.

When order *nisi* shall be made absolute; and

534. If at the final hearing, or on the determination of the issues thus framed, it shall appear to the court that the prima facie proof of the material allegations of the petition has not been rebutted, then the order *nisi* shall be made absolute, and probate or grant of administration with the will annexed, or grant of administration only, as the case may be, shall issue accordingly, subject to the conditions hereinafter prescribed. If, on the other hand, it shall then appear to the court that the prima facie proof of any material allegations in the petition has been rebutted, the order *nisi* shall be discharged, and the petition dismissed. And in the event of the respondent or objector having at such hearing or trial of issues established his right to have probate or grant of administration of the deceased's estate issued to him instead of to the petitioner, then the court shall further make an order to that effect in his favour:

when discharged.

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Provided, however, that the dismissal of the petition shall not be a bar to a renewal of the application by the petitioner as long as grant either of probate of the deceased's will, or of administration of his property, shall not have been made, either on the occasion of this application or subsequently thereto, to some other person than the petitioner.

Who may file a *caveat*.

535. At any time after the filing of a petition in a District Court, asking to have the will of a deceased person proved, or that the grant of probate thereof or of administration of a deceased person's property be made, and before the final hearing of the petition, it shall be competent to any person interested in the said will or in the said deceased person's property or estate, though not a respondent on the face of the petition, to intervene, by filing in the same court a *caveat* against the allowing of the petitioner's claim or a notice of opposition thereto, and any order *nisi* which may be made upon such petition shall be served upon such objector as if he had been originally named a respondent in the petition.

Effect thereof.

Power of District Court to recall or revoke probate or grant of administration.

536. In any case where probate of a deceased person's will has issued on an order absolute in the first instance, or a grant of administration of a deceased person's property has been made, it shall be competent to the District Court to recall the said probate or grant of administration, and to revoke the grant thereof, upon being satisfied that the will ought not to have been held proved, or that the grant of probate or of administration ought not to have been made; and it shall also be competent to the District Court to recall the probate or grant of administration at any time upon being satisfied that events have occurred which render the administration thereunder impracticable or useless.

Applications therefor to be by petition.

537. All applications for the recall or revocation of probate or grants of administration shall be made by petition, in pursuance of the rules of summary procedure herein before prescribed; and no such application shall be entertained unless the petitioner

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shows in his petition that he has such an interest in the estate of the deceased person as entitles him in the opinion of the court to make such application.

Inventory and valuation.

538. (1) In every case where an order absolute has been passed by a District Court declaring any person entitled to have issued to him probate of a deceased person's will, or grant of administration of a deceased person's property, it shall be the duty of the said person, executor, or administrator, in whose favour such order is made, to take the oath of an executor or administrator according to the form prescribed in the First Schedule and thereafter to file in court, within a time to be appointed therefor in the order, an inventory of the deceased person's property and effects, with a valuation of the same, such inventory and valuation to be verified on oath or affirmation by the said executor or administrator in the form No. 92 in the said Schedule, and where the court requires it to enter into a bond with two good and sufficient sureties in the form No. 90 in the said Schedule, for the due administration of the deceased person's property.

Security.

(2) The bond so entered into shall render the sureties responsible in any suit brought for the administration of the deceased person's property for all deficiencies, depreciation, or loss of that property attributable to the default of their principal, and liable to make good the same to the same extent and in like manner as if the said default were their own, subject, however, to the conditions of the bond in that behalf.

Limited probate and administration.

539. It is competent to the District Court to make a grant of probate or a grant of administration, limited either in respect to its duration, or in respect to the property to be administered thereunder, or to the power of dealing with that property which is conveyed by the grant, in the following cases :—

(*a*) When the original will of the deceased person has been lost since the testator's death, but a

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copy has been preserved, probate of that copy may be granted, limited until the original be brought into court.

(*b*) In the like event, and with the like limitation, if no copy has been preserved, probate of a draft will may be granted, or if in addition no draft is available, then probate of the contents or of the substance and effect of the will, so far as they can be established by evidence, may be granted.

(*c*) When the original will is in the hands of some person residing out of Ceylon, who cannot be compelled to give it up to the executor, and if the executor produces a copy, then probate of that copy may be granted, limited until the original be brought into court. If, however, the will has been duly proved out of Ceylon, probate may be granted to the executor on a proper exemplification of the foreign probate without any limitation in the grant.

(*d*) If the sole executor of a will resides, or if there are more executors than one and all the executors reside, out of Ceylon, or such of the executors as reside in Ceylon decline to act, then the court may grant administration with copy of the will annexed to any person within Ceylon, as attorney of the executor or of the executors, who shall be appointed for that purpose by power of attorney, the grant so made being limited for the use and benefit of the principal until the executor or one of the executors comes in and obtains probate for himself. If the document admitted to proof in this case be a copy of or substitute for the original, on account of the original itself not being forthcoming by reason of one of the just-mentioned causes, the grant shall further be limited until the original is brought into court :

Provided also, that if the person applying for the grant is not the attorney of all the executors, where there are more than one, the

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grant of administration shall not be made to him until the remaining executors have declined to act.

(*e*) In the case of a will, and there being no executor within Ceylon willing to act, grant of administration with copy of the will annexed may be made to the attorney of an absent residuary legatee, or heir, limited until the principal shall come in and obtain administration for himself ; or in the like case, the grant may be made to the guardian of a minor residuary legatee, within Ceylon, limited during the minority, or to the manager of the estate of a residuary legatee who is of unsound mind, within Ceylon, limited during the unsoundness of mind.

(*f*) In the case of intestacy, grants of administration of the deceased person's property may be made, limited in like manner to the guardian of a minor heir or to the manager of the estate of an heir who is of unsound mind.

(*g*) The court may grant probate or administration limited to any particular property or for any particular purpose, in any case where it considers that a larger grant is unnecessary.

In all the foregoing cases, the material and relevant facts necessary to justify the court in making the limited grant must be set out in the petition of application, and must be established by prima facie evidence before the order is made, as is prescribed in section 524.

Power of administration when not limited.

540. If no limitation is expressed in the order making the grant, then the power of administration, which is authenticated by the issue of probate, or is conveyed by the issue of a grant of administration, extends to every portion of the deceased person's property, movable and immovable, within Ceylon, or so much thereof as is not administered, and endures for

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the life of the executor or administrator or until the whole of the said property is administered, according as the death of the executor or administrator, or the completion of the administration, first occurs.

Court may dispense with security.

541. In all cases of the issue of probate security shall not be required, unless for some special reason the court deems that security is absolutely necessary for the protection of the estate ; and in cases where the grant of administration is limited in regard to the dealing with the property which is the subject thereof, it shall be within the discretion of the court to dispense with the giving of the bond under section 538 ; and in all cases the court may limit the amount secured by the bond to the value of the movable property, which appears to the court likely to come into the hands of the administrator and to be liable to misappropriation :

Provided that every order, dispensing with the bond or limiting the amount to be secured thereby in cases of administration, or requiring security in cases of probate, shall adjudicate upon the facts upon which the court intends it to rest.

Person dying intestate, death to be reported by next of kin.

542. When any person shall die in Ceylon without leaving a will, it shall be the duty of the widow, widower, or next of kin of such person, if such person shall have left property in Ceyon amounting to or exceeding in value two thousand five hundred rupees, within one month of the date of his death to report such death to the court of the district in which he shall have so died, and at the same time to make oath or affirmation or produce an affidavit verifying the time and place of such death, and stating if such is the fact that the intestate has left property within the jurisdiction of that or any other, and in that event what, court, and the nature and value of such property.

Penalty for neglect.

543. Every person made liable to report any death under, or to furnish any information required by, section 542, who shall wilfully omit to report such death or to furnish such information within the time

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therein prescribed therefor, shall be guilty of an offence, and liable to a fine not exceeding one thousand rupees.

Who may apply for administration in case of intestacy.

544. In any case where a person is so reported to have died intestate, and also in any case in which the applicant produces an order of the Supreme Court appointing any court to have sole testamentary jurisdiction over the estate or effects of any person who has died out of Ceylon intestate as to any property in Ceylon, any person interested in having the estate of such intestate administered may apply to such court for grant to himself of letters of administration; and the court shall have power, having regard, where there is a conflict of claims, to the provisions of section 523, to appoint such person administrator.

In event of no application, court may appoint some person to administer the estate.

Compulsory, where the value of the estate is two thousand five hundred rupees or over.

545. In case no such person shall apply for letters of administration, and it appears to the court necessary or convenient to appoint some person to administer the estate or any part thereof, it shall be lawful for the court in its discretion, and in every such case where the estate amounts to or exceeds in value two thousand five hundred rupees it shall be obligatory on such court, to appoint some person, whether he would under ordinary circumstances be entitled to take out administration or otherwise, to administer the estate, and all the provisions of sections 519 to 521, both inclusive, shall apply, so far as the same can be made applicable, to any such appointment.

Issue of letters *ad colligenda*.

546. If any person shall die leaving property in Ceylon, the Judge of the court of any district in which such property shall be situate shall, on the facts being verified to his satisfaction and it being made to appear that there is not resident, within the local limits of his jurisdiction, some next of kin or other person entitled to administration of the estate of the person so dying, issue letters *ad colligenda* in the form No. 91 in the First Schedule to one or more responsible persons to take charge of such property until the same shall be claimed by some executor or administrator lawfully entitled to administer the same.

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No action maintainable to recover property of testator or intestate of or over two thousand five hundred rupees unless probate or administration has been taken out.

547. No action shall be maintainable for the recovery of any property, movable or immovable, in Ceylon belonging to or included in the estate or effects of any person dying testate or intestate in or out of Ceylon, where such estate or effects amount to or exceed in value the sum of two thousand five hundred rupees, unless grant of probate or letters of administration duly stamped shall first have been issued to some person or persons as executor or administrator of such testator or intestate; and in the event of any such property being transferred without such probate or administration being so first taken out, every transferor and transferee of such property shall be guilty of an offence, and liable to a fine not exceeding one thousand rupees; and in addition to any fine imposed under the provisions of this section it shall be lawful for the Crown to recover from such transferor and transferee, or either of them, such sum as would have been payable to defray the cost of such stamps as would by law have been necessary to be affixed to any such probate or letters of administration. And the amount so recoverable shall be a first charge on the estate or effects of such testator or intestate in Ceylon, or any part of such estate or effects, and may be recovered by action accordingly:

Transfer of such property, where an offence.

Penalty.

Estates of persons dying intestate before commencement of this Ordinance.

Provided always that no action for the recovery of, or involving proof of title to, any property, movable or immovable, belonging to or included in the estate or effects of any person who died intestate before the commencement of this Ordinance, shall be defeated, nor shall the title to such property claimed through such person be deemed invalid, by reason only that letters of administration to the estate or effects of such person have not issued;

Provided further that the transferor and transferee of such property as is mentioned in the foregoing proviso shall not be guilty of the offence created by this section.

Probate when executor is appointed for limited purpose.

548. When a person is appointed executor of a will for a particular purpose only of the will, and not executor of the will generally, probate will be granted to him limited for that purpose only.

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Fresh grant, when allowed.

549. When a sole executor or a sole surviving executor to whom probate has been granted, or a sole administrator or a sole surviving administrator to whom a grant of administration has been made, dies leaving a part of the deceased's property unadministered, then a fresh grant of administration may be made in respect of the property left unadministered according to the rules herein before prescribed for a first grant.

Rectification of errors in grant.

550. Errors in names and descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly.

Compensation of executors and administrators.

551. Compensation shall be allowed to executors and administrators by way of commission as well on property not sold but retained by the heirs, as on property sold by such executors and administrators, at such rate not exceeding three *per centum,* and on cash found in the estate and on property specially bequeathed, at such rate not exceeding one and a half *per centum,* as the court shall, after taking into consideration the circumstances of each particular case with reference to the trouble incurred by such executors or administrators, determine. In no case shall a larger sum than five thousand rupees be allowed to any executor or administrator as such compensation, unless it shall be made apparent to the court that such unusual trouble has fallen upon him as to entitle him, in the opinion of the court, to receive further remuneration.

Compensation of several executors.

552. Each executor or administrator shall be entitled to the full compensation allowed by law to a sole executor or administrator, unless there are more than three, in which case the compensation to which three would be entitled shall be apportioned among them all according to the services rendered by them respectively, and a like apportionment shall be made in all cases where there shall be more than one executor or administrator. But where the will provides a specific compensation for an executor or administrator, he shall not be entitled to any allowance other than that so provided, unless he files in court a written renunciation of the specific compensation.

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Filing of the account, and payment into court.

553. Every executor and administrator shall file in the District Court, on or before the expiration of twelve months from the date upon which probate or grant of administration issued to him, a true account of his executorship or administration, as the case may be, verified on oath or affirmation, with all receipts and vouchers attached, and may at the same time pay into court any money which may have come to his hands in the course of his administration to which any minor or minors may be entitled.

Executor or administrator who fails to administer within the year liable for interest.

554. If any executor or administrator shall fail to pay over to the creditors, heirs, legatees, or other persons the sums of money to which they are respectively entitled, within one year after probate or administration granted, such executor or administrator shall be liable to pay interest out of his own funds for all sums which he shall retain in his own hands after that period, unless he can show good and sufficient cause for such detention.

CHAPTER XXXIX

Actions Relating To Persons Of Unsound Mind

Definition of "person of unsound mind".

555. The expression "person of unsound mind" as used in this Ordinance shall, unless the contrary appears from the context, mean every person found by due course of law to be of unsound mind and incapable of managing his affairs.

District Court to institute inquiry.

556. (1) Whenever any person who is possessed of property is alleged to be a person of unsound mind, the District Court within whose jurisdiction such person is residing may, upon such application as is hereinafter mentioned, institute any inquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

Application for, how to be made.

(2) Application for such inquiry may be made on petition in the way of summary procedure by any relative of the person alleged to be of unsound mind,

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or by the provincial Superintendent of Police, or at the instance of the Attorney-General, or, if the property of the person alleged to be of unsound mind consists in whole or in part of land, or of any interest in land, by the Government Agent of the district in which it is situate.

When may petition be dismissed.

557. When the District Court on such application being made to it is not satisfied by affidavit or other evidence that such inquiry as aforesaid ought to be instituted, it shall dismiss the petition.

Procedure on court being satisfied that inquiry ought to be instituted.

558. When the District Court on any such application being made to it is satisfied by affidavit or other sufficient evidence that such inquiry as aforesaid ought to be instituted, it shall pass an order to that effect and then appoint a time and place for holding the inquiry.

Proceeding in such case.

559. As soon as such order shall have been passed, the District Court shall cause a copy of the petition and of the order made thereon to be served upon the person alleged to be of unsound mind. If it shall appear that the person alleged to be of unsound mind is in such a state that personal service on him would be ineffectual, the court may direct such substituted service of the petition and order as it shall think proper. The court may also direct a copy of such petition and order to be served upon any specified relative of the person alleged to be of unsound mind.

Person alleged to be of unsound mind may be required to attend.

560. The District Court may also at any time before or pending the inquiry, require the person alleged to be of unsound mind to attend at such convenient time and place as it may appoint, for the purpose of being personally examined by the court or by any person from whom the court may desire to have a report of, or testimony as to, the mental capacity and condition of such person alleged to be of unsound mind. The court may likewise make an order authorizing any person or persons therein named to have access to the person alleged to be of unsound mind for the purpose of a personal examination.

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Assessors.

561. The District Court, if it think fit, may appoint two or more persons to act as assessors to the court in the said inquiry.

Issue.

562. The issue to be tried on such inquiry shall be whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his affairs.

Trial of issue to be public.

563. The trial of this issue shall be effected by viva voce examination and cross-examination of witnesses, as nearly as may be as is herein before directed for the trial of the matter of an ordinary civil action ; and the inquiry, whether held in court or in a private house, shall be public.

Person of unsound mind to be present.

564. The person alleged to be of unsound mind shall be present at the inquiry and shall take part as a party defendant therein either by his proctor or counsel or in person, unless his state of health, or his behaviour, is such as to render either his being present or his participating in the proceedings unfitting or unseemly.

Any relative of the person alleged to be of unsound mind may also, if the court thinks fit, appear and take part in the inquiry on behalf of the person alleged to be of unsound mind.

Adjudication on the issue.

Costs.

565. Upon the completion of the inquiry, the court shall adjudicate whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his affairs. And at the same time the court may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or by the person alleged to be of unsound mind, if he be adjudged to be of sound mind, or out of his estate, if he be adjudged of unsound mind and incapable of managing his affairs, or otherwise, as it may think proper.

When petition to be dismissed after inquiry.

566. When a person has been adjudged not to be of unsound mind and not incapable of managing his affairs, the court shall dismiss the petition.

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Manager to be appointed.

567. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, the District Court shall appoint a manager of the estate. Any near relative of the person of unsound mind or any other suitable person may be appointed manager.

Guardian of person.

568. Whenever a manager of the estate of a person of unsound mind is appointed by the District Court, the court shall appoint a fit person to be guardian of the person of the person of unsound mind. The manager may be appointed guardian :

Provided always that the heir-at-law of the person of unsound mind shall not in any case be appointed guardian of his person.

Allowance to manager or guardian.

569. If the person appointed to be manager of the estate of a person of unsound mind, or the person appointed to be guardian of the person of a person of unsound mind, shall be unwilling to discharge the trust gratuitously, the court may fix such allowance or allowances to be paid out of the estate of the person of unsound mind as, under the circumstances of the case, may be thought suitable.

Duties of guardian.

570. The person appointed to be guardian of the person of a person of unsound mind shall have the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the court, either at the time when the guardian is appointed or afterwards, on an application made by such guardian by petition in the way of summary procedure, for the maintenance of the person of unsound mind and of his family.

Powers of manager.

571. Every manager of the estate of a person of unsound mind appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a person of unsound mind ; and may collect and pay all just claims, debts, and liabilities due to or by the estate of the person of unsound mind. But no such manager shall have power to sell or mortgage the estate or any

Restrictions on manager's powers.

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part thereof, or to grant a lease of any immovable property for any period exceeding five years, without an order of the District Court previously obtained.

Inventory.

572. (1) Every person appointed by the District Court to be manager of the estate of a person of unsound mind shall, within a time to be fixed by the court, deliver in court an inventory of the immovable property belonging to the person of unsound mind, and of all such movable property, sums of money, goods, and effects as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the court annually, within three months of the close of the year, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

Account.

(2) If any relative of the person of unsound mind, or the Attorney-General, by petition to the court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the court may summon the manager and inquire summarily into the matter and make such order thereon as it shall think proper.

Excess over expenditure, to be paid into kachcheri.

573. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the person of unsound mind or of the estate shall be paid into the kachcheri on account of the estate, and shall be dealt with thereafter in such manner as is prescribed by law in the case of suitors' deposits.

Relative may sue for account.

574. It shall be lawful for any relative of a person of unsound mind to sue for an account from any manager, appointed under this Ordinance, or from such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

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Manager or guardian how to be removed.

575. (1) The District Court, for any sufficient cause, may on the application of the guardian or of a relative of the person of unsound mind, or of the Attorney-General, provincial Superintendent of Police, or (where the property of the person of unsound mind consists in whole or in part of land, or of any interest in land) of the Government Agent, made by petition in the way of summary procedure, remove any manager appointed by the court, and may appoint any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him.

(2) The court may also, for any sufficient cause, in like manner remove any guardian appointed by the court.

Punishment for neglect or refusal to account.

576. The District Court may on any application made to it by a relative of the person of unsound mind or a public officer under section 575 impose a fine not exceeding five hundred rupees on any manager of the estate of a person of unsound mind who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of court, and may also commit him to close custody until he shall deliver such accounts or property.

Where not necessary court need not appoint manager.

577. If it appears to the District Court, having regard to the situation and condition in life of the person of unsound mind and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as herein before provided, the court may, instead of appointing such manager, order that the property if money, or if of any other description the proceeds thereof, when realized in such manner as the court shall direct, be paid to such persons as the court may think fit, to be applied for the maintenance of the person of unsound mind and his family.

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Further inquiry when person of unsound mind so found is alleged to have recovered.

578. (1) When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the District Court, or if the court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the court may institute an inquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs.

(2) The inquiry shall be conducted in the manner provided in section 560 and the four following sections of this Ordinance ; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the court shall make an order for his estate to be delivered over to him, and such order shall be final.

Saving of Mental Diseases Ordinance.

579. In all cases in which this Chapter is applicable, the procedure herein provided shall be followed, anything in the Mental Diseases Ordinance to the contrary notwithstanding.

Appeal to Supreme Court.

580. Every order made by a District Court under the provisions of this Chapter shall be subject to an appeal to the Supreme Court, and such appeal may be prosecuted by, or at the instance of, the person suspected or adjudged to be of unsound mind, or of any relative or friend of his, or of any medical practitioner who shall have certified or testified to his state of mind ; and the Supreme Court shall take cognizance of such appeal, and deal with the same as an appeal from an interlocutory order of the District Court, and make such order thereon as to the said court shall seem fit. And it shall be the duty of the District Court to conform to and execute such order.

Proceedings exempt from stamp duty.

581. No stamp duty shall attach or be payable for any application, process, or other document filed in court under the provisions of this Chapter.

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CHAPTER XL

Actions For The Appointment Of Guardians

Certificate of right to have charge of minor's property.

582. Every person who shall claim a right to have charge of property in trust for a minor, under a will or deed, or by reason of nearness of kin, or otherwise, may apply to the District Court for a certificate of curatorship ; and no person shall be entitled to institute or defend any action connected with the estate of a minor, of which he claims the charge, until he shall have obtained such certificate :

Provided that when the property is below the value of two thousand five hundred rupees, or for any other sufficient reason, any court having jurisdiction may allow any relative of a minor to institute or defend an action on his behalf, although a certificate of curatorship has not been granted to such relative ;

And provided further that any such person so claiming to have charge of any such property under the provisions of a will of which probate shall have been duly granted, may institute or defend any such action without having obtained such certificate.

Explanation.—A person to whom letters of administration of a deceased person's estate have been granted under Chapter XXXVIII of this Ordinance does not thereby obtain a right to have charge, within the meaning of this section, of such portion or share of his deceased's estate, if any there be, as descends to a minor heir.

Application for appointment of person to have charge of property or person of minor.

583. Any relative or friend of a minor, in respect of whose property such certificate has not been granted, may apply by petition in the way of summary procedure to the District Court, to appoint a fit person to take charge of the property and person or of either property or person of such minor.

To be made in district where minor resides.

584. If the property is situate in more than one district, any such application as aforesaid shall be made to the District Court of the district in which the minor at the time of the application resides.

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Charge of property of minor to whom to be granted.

585. (1) If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the court shall grant a certificate of curatorship to such person.

(2) If there is no person so entitled, or if such person is unwilling to undertake the trust and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the court may grant a certificate to such relative.

Same person may be appointed guardian of person.

(3) The court may also, if it think fit (unless a guardian has been appointed by the father), appoint such person as aforesaid or such relative, or any other relative or friend of the minor, to be guardian of the person of the minor.

Court may call upon headman to report on qualification.

(4) The court may call upon any headman for a report on the character and qualification of any relative or friend of the minor who may be desirous or willing to be entrusted with the charge of the property or person of such minor, and who resides in the division.

When charge of property may be granted to any fit person.

586. If no title to a certificate is established to the satisfaction of the court by a person claiming under a will or deed, and if there is no near relative willing and fit to be entrusted with the charge of the property of the minor, and the court shall think it necessary for the interest of the minor that provision should be made by the court for the charge of the property and person of such minor, the court may grant a certificate to any fit person whom the court may appoint for the purpose.

Guardian to have charge of the person and maintenance, to be appointed at the same time;

587. (1) Whenever the court shall grant a certificate of curatorship to the estate of a minor who is resident in Ceylon to any person under the last section, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor.

(2) The person to whom a certificate of curatorship has been granted may be appointed guardian, provided he would not be the legal heir of the minor, if the minor then died.

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his allowance.

(3) If the person appointed to be guardian be unwilling to discharge the trust gratuitously, the court may assign him such allowance, to be paid out of the estate of the minor, as under the circumstances of the case it may think suitable. The court may also fix such allowance as it may think proper for the maintenance and education of the minor ; and such allowance and the allowance of the guardian (if any) shall be paid to the guardian by the other person as aforesaid.

(4) In any case in which the court is satisfied that it will be for the interest of the minor, it may direct the raising of such allowance out of the corpus of the estate, by mortgage or sale or such other mode of realization as it thinks fit.

Costs of inquiries.

588. (1) In all inquiries held by the District Court under this Chapter, the court may make such order as to the payment of costs by the person on whose application the inquiry was made, or out of the estate of the minor, or otherwise, as it may think proper.

Inventory.

(2) Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this Chapter, shall, within a time to be fixed by the court, file in court an inventory of the

Accounts.

property belonging to the minor, and shall also twice every year, namely, within one month from the first day of January and the first day of July, respectively, in each year, file an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate and the balance in hand.

Impeachment of the inventory and accounts.

589. Any relative of the minor or the minor himself by a next friend or the Attorney-General may, by petition and by way of summary procedure, impeach and falsify the correctness of the said inventory and periodic accounts, or complain of delay in the filing of them ; and the court may on any such application make such order as it shall think proper.

Any relative of minor may sue curator for accounts.

590. It shall be lawful for any relative of a minor with the leave of the court, or the minor himself by a next friend, at any time during the continuance of the minority, to sue for an account from any person to

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whom a certificate shall have been granted under the provisions of this Ordinance, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Recall of the certificates.

591. The District Court, for any sufficient cause shown on petition by way of summary procedure preferred by the guardian, or by a relative, or by a next friend of the minor, or by the Attorney-General, may recall any certificate granted under this Chapter and may grant a certificate to any other person ; and may compel the person whose certificate has been recalled to make over the property in his hands to his successor, and to account to such successor for all moneys received and disbursed by him. The court may also for sufficient cause in like manner remove any guardian appointed by the court.

Resignation and discharge of curator of property, or guardian of person of minor.

592. (1) The District Court may permit any person to whom a certificate shall have been granted under this Ordinance, and any guardian appointed by the court, to resign his trust ; and may give him a discharge therefrom on his accounting to his successor, duly appointed, for all moneys received and disbursed by him, and making over the property in his hands.

(2) The application to be discharged from the trust shall be made by petition in the way of summary procedure, in which petition a near relative of the minor or the Attorney-General shall be named a respondent ; and it shall be competent to the court to direct that any other person be made a respondent.

Allowance of curator.

593. Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this Chapter, if he is not willing to discharge the trust gratuitously, shall be entitled to receive such allowance, to be paid out of the minor's estate, as the District Court shall by order, made when

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the curator is appointed or afterwards on an application made by the curator by petition in the way of summary procedure, think fit to direct.

Minor's education.

594. Every guardian appointed by the District Court under this Chapter, who shall have charge of any minor, shall be bound to provide for his education in a suitable manner. The general superintendence and control of the education of all such minors shall be vested in the District Court.

CHAPTER XLI

Actions For Appointment And Removal Of Trustees

Trustees.

595. Applications to the District Court for the exercise of its jurisdiction for the appointment or removal of a trustee, and not asking any further remedy or relief, may be made by petition in the way of the summary procedure herein before prescribed.

CHAPTER XLII

Matrimonial Actions

Procedure in matrimonial actions.

596. In all actions for divorce *a vinculo matrimonii*, or for separation *a mensa et thoro*, or for declaration of nullity of marriage, the pleadings shall be by way of plaint and answer, and such plaint and answer shall be subject to the rules and practice by this Ordinance provided with respect to plaints and answers in ordinary civil actions, so far as the same can be made applicable, and the procedure generally in such matrimonial cases shall (subject to the provisions contained in this Chapter) follow the procedure herein before set out with respect to ordinary civil actions.

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Court of district in which petitioner resides to have jurisdiction.

597. Any husband or wife may present a plaint to the District Court within the local limits of the jurisdiction of which he or she, as the case may be, resides, praying that his or her marriage may be dissolved on any ground for which marriage may, by the law applicable in Ceylon to his or her case, be dissolved.

Co-defendant.

598. Upon any such plaint presented by a husband, in which the adultery of the wife is the cause or part of the cause of action, the plaintiff shall make the alleged adulterer a co-defendant to the said action, unless he is excused from so doing on one of the following grounds, to be allowed by the court upon an application for the purpose :—

(1) that the defendant is leading the life of a prostitute, and that the plaintiff knows of no person with whom the adultery has been committed ;

(2) that the name of the alleged adulterer is unknown to the plaintiff, although he has made due efforts to discover it ;

(3) that the alleged adulterer is dead ;

and it shall be lawful in any such plaint to include a claim for pecuniary damages against such co-defendant.

Affidavit where co-defendant is excused.

599. The prayer to be excused from making the alleged adulterer a co-defendant and the allegations of fact upon which it is founded, supported by affidavit of fact or other sufficient evidence, shall be embodied in the plaint.

Connivance, condonation, counter-charge.

600. Upon the trial had upon the footing of any such plaint for the dissolution of a marriage, the court shall satisfy itself, not only as to the facts alleged, but also whether or not the plaintiff has been in any manner accessory to or conniving at the act or conduct which constitutes the ground upon which the dissolution of marriage is prayed for in the plaint, or has condoned the same, and shall also inquire into any counter-charge which may be made by the defendant or co-defendant against the plaintiff.

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Plaint, when to be dismissed.

601. In case the court, on the evidence in relation to any such plaint, is not satisfied that the plaintiff's case has been proved, or finds that the plaintiff has, during the marriage, been accessory to or conniving at the act or conduct which constitutes the ground upon which the dissolution of marriage is prayed for, or has condoned the same, or that the plaint is presented or prosecuted in collusion with either of the defendants, then and in any of the said cases the court shall dismiss the plaint.

Otherwise decree to be passed.

602. (1) In case the court is satisfied on the evidence that the case of the plaintiff has been proved, and does not find that the plaintiff has been in any manner accessory to or conniving at the act or conduct which constitutes the ground upon which the dissolution of marriage is prayed for, or has condoned the same, or that the plaint is presented or prosecuted in collusion with either of the defendants, the court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 604 and 605 hereinafter made and declared :

Provided that the court shall not be bound to pronounce such decree if it finds that the plaintiff has, during the marriage, been guilty of adultery, or if the plaintiff has, in the opinion of the court, been guilty of unreasonable delay in presenting or prosecuting such plaint, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse, or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

(2) No adultery shall be deemed to have been condoned within the meaning of this Chapter unless where conjugal cohabitation has been resumed or continued.

Defendant when entitled to relief.

603. In any action instituted for dissolution of marriage, if the defendant opposes the relief sought on any ground which would have enabled him or her to sue as plaintiff for such dissolution, the court may in

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such action give to the defendant on his or her application the same relief to which he or she would have been entitled in case he or she had presented a plaint seeking such relief.

Decree to be decree *nisi* in first instance.

604. (1) Every decree for dissolution of marriage shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of not less than three months from the pronouncing thereof, or such longer period as the Supreme Court by general or special order from time to time directs.

During that period any person shall be at liberty, in such manner as the Supreme Court by general or special order from time to time directs, and in the absence of any such order, by petition on summary procedure to which the plaintiff and the defendants shall, if reasonably possible, be made respondents, to show cause against the said decree being made absolute by reason of the same having been obtained by collusion or by reason of material facts not having been brought before the court. On cause being so shown, the court shall deal with the case by reversing the decree *nisi*, or by requiring further inquiry, or otherwise, as justice may demand.

Costs.

(2) The court may order the costs of counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Decree when to be made absolute.

605. Whenever a decree *nisi* has been made and no sufficient cause has been shown why the same should not be made absolute as in the last preceding section provided within the time therein limited, such decree *nisi* shall on the expiration of such time be made absolute.

Procedure on suspicion of collusion during progress of action in District Court.

606. During the progress of the action, any person suspecting that any parties to the action are or have been acting in collusion for the purpose of obtaining a divorce shall be at liberty, in such manner as the Supreme Court by general or special order from time to time directs, and in the absence of any such order,

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by petition on summary procedure supported by affidavit of fact or other sufficient evidence, to apply to the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

Actions of nullity of marriage.

607. (1) Any husband or wife may present a plaint to the District Court within the local limits of the jurisdiction of which he or she (as the case may be) resides, praying that his or her marriage may be declared null and void.

(2) Such decree may be made on any ground which renders the marriage contract between the parties void by the law applicable to Ceylon.

Court of district in which applicant resides to have jurisdiction.

608. Application for a separation *a mensa et thoro* on any ground on which by the law applicable to Ceylon such separation may be granted, may be made by either husband or wife by plaint to the District Court, within the local limits of the jurisdiction of which he or she, as the case may be, resides, and the court, on being satisfied on due trial of the truth of the statements made in such plaint, and that there is no legal ground why the application should not be granted, may decree separation accordingly.

Separated wife's property.

609. (1) In every case of such separation under this Chapter the wife shall, from the date of the sentence and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

(2) Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, devolve as the same would have devolved if she had died unmarried :

Provided that if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

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Separated wife's contracts and rights to sue.

610. In every case of such separation under this Chapter the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceedings; and her husband shall not be liable in respect of any contract, act, or costs entered into, done, omitted, or incurred by her during the separation:

Provided that where, upon any such separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use to the persons who supplied them;

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

When decree for separation may be reversed by the court which made it.

611. (1) Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of separation has been pronounced, may, at any time thereafter, present a petition to the court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence at the hearing, and that there was reasonable excuse for such absence, and also for the alleged desertion, where desertion was the ground of such decree.

(2) Such petition shall be deemed and shall be dealt with by the court as a plaint in a regular action, and the party in whose favour the decree of separation sought to be reversed was passed shall be made a defendant therein. And the court may, after trial in regular course of procedure, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but such reversal shall not prejudice or affect the rights or remedies which any other person would have had in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the time of the sentence of separation and of the reversal thereof.

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Co-defendant may be ordered to pay costs.

612. Whenever in any plaint presented by a husband the alleged adulterer has been made a co-defendant, and the adultery has been established, the court may order the co-defendant to pay the whole or any part of the costs of the proceedings in addition to any damages which may be awarded, where such damages have been claimed :

Provided that the co-defendant shall not be ordered to pay the plaintiff's costs, nor shall any damages be awarded—

(*a*) if the defendant was at the time of the adultery living apart from her husband and leading the life of a prostitute ; or

(*b*) if the co-defendant had not at the time of the adultery reason to believe the defendant to be a married woman.

Intervenient under section 606 may be ordered to pay costs.

613. Whenever any application is made under section 606, the court if it thinks that the applicant had no grounds, or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

Alimony *pendente lite.*

614. In any action under this Chapter, whether it be instituted by a husband or a wife, the wife may present a petition for alimony pending the action. Such petition shall be preferred and dealt with as of summary procedure, and the husband shall be made respondent therein ; and the court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the action as it may deem just :

Provided that alimony pending the action shall in no case be less than one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

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Permanent alimony.

615. (1) The court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of separation obtained by the wife, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable ; and for that purpose may cause a proper instrument to be executed by all necessary parties.

(2) In every such case the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the court may think reasonable :

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the court seems fit.

Form of decree for alimony.

616. In all cases in which the court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the court, and may impose any terms or restrictions which to the court seem expedient, and may from time to time appoint a new trustee if it appears to the court expedient so to do.

Court may order settlement of property.

617. (1) Whenever the court pronounces a decree of dissolution of marriage for adultery of the wife, if it is made to appear to the court that the wife is entitled to any property the court may, if it thinks fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

(2) Any instrument executed pursuant to any order of the court at the time of or after the pronouncing of a decree of dissolution of marriage, or separation, shall

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be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Court may inquire into ante-nuptial and post-nuptial settlements.

618. The court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the court seems fit :

Provided that the court shall not make any order for the benefit of the parents or either of them at the expense of the children.

Court may before decree for separation order maintenance of minor children.

619. In any action for obtaining a separation, the court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such action, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said court.

Court may after decree of separation make order respecting custody, &c., of minor children.

620. The court after a decree of separation may, upon application by way of summary procedure for this purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

Court may make interim orders and also provide for custody, &c., of minor children in decree.

621. In any action for obtaining a dissolution of marriage or a decree of nullity of marriage, the court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim orders, and may make such provision in the decree absolute or decree, as the court deems proper with

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respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the action, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the court.

Court may after decree absolute make orders respecting custody, &c., of minor children.

622. The court after a decree absolute for dissolution of marriage or a decree of nullity of marriage may, upon application by petition on summary procedure for the purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said court as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

Adjournment and further evidence.

623. The court may from time to time adjourn the hearing of any petition or plaint under this Chapter, and may of its own motion require further evidence thereon if it sees fit so to do.

Appeal.

624. All decrees and orders made by the court in any action or proceeding under this Chapter shall be enforced and may be appealed from, in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the laws, rules, and orders for the time being in force.

When parties may marry again.

625. (1) Upon a decree *nisi* for divorce being made absolute under the provisions of this Chapter, or when three months after the passing of the decree thereunder of nullity of marriage shall have elapsed, without an appeal having been taken therefrom, or upon the confirmation in appeal of any such decree, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death:

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.

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(2) In the event of such an appeal having been presented, then when it has been dismissed, or when in the result thereof the marriage is required to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death.

Protection of third parties dealing with wife after decree made and before reversal.

626. (1) Every decree for separation or order to protect property obtained by a wife under this Chapter shall, until reversed or discharged, be deemed valid, so far as necessary for the protection of any person dealing with the wife.

(2) No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order and of the reversal, discharge, or variation thereof.

(3) All persons who, in reliance on any such decree or order, make any payment to, or permit any transfer to be made, or act to be done by the wife who shall have obtained such decree or order, shall (notwithstanding the same may then have been reversed, discharged, or varied, or notwithstanding the separation of the wife from her husband may have ceased or may at some time since the making of the decree or order have been discontinued) be protected and indemnified as if at the time of such payment, transfer, or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued, unless at the time of the payment, transfer, or other act such persons had notice of the reversal, discharge, or variation of the decree or order or of the cessation or discontinuance of the separation.

Saving of the application of this Ordinance as to Muslim and Kandyan marriages.

627. Nothing in this Chapter contained shall be taken to apply to any marriage between persons professing Islam or to any marriage affected by the provisions of the Kandyan Marriage and Divorce Act.

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CHAPTER XLIII

INTERPLEADER ACTIONS

Interpleader actions.

628. When two or more persons claim adversely to one another payment of the same sum of money or delivery of the same property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute an action of interpleader against all the claimants, for the purpose of obtaining a decision as to the party to whom the payment should be made or the property delivered, and of obtaining indemnity for himself :

Provided that if any action is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute an action of interpleader.

Form of plaint.

629. In every action of interpleader the plaint must, in addition to the other statements necessary for plaints, state—

(*a*) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder ;

(*b*) the claims made by the defendants severally ; and

(*c*) that there is no collusion between the plaintiff and any of the defendants ;

and such plaint shall also be supported by an affidavit of the plaintiff verifying the statements contained therein.

Property claimed to be deposited in court.

630. When the thing claimed is capable of being paid into court or placed in the custody of the court, the plaintiff must so pay or place it before he can be entitled to any order in the action.

Procedure at the hearing.

631. At the hearing the court may—

(*a*) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the action ;

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or if it thinks that justice or convenience so require—

(*b*) retain all parties until the final disposal of the action ;

and if it finds that the admissions of the parties or other evidence enable it to do so, may—

(*c*) adjudicate upon the title to the thing claimed ;

or else it may—

(*d*) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the court.

Who may not be sued in interpleader.

632. Nothing in this Chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations

(*a*) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader action against A and C.

(*b*) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader action against A and C.

Of the plaintiff's costs therein.

633. When the action is properly instituted, the court may provide the plaintiff's costs by giving him a charge on the thing claimed, or in some other effectual way.

Procedure where stakeholder is sued by defendant.

634. If any of the defendants in an interpleader action is actually suing the stakeholder in respect of the subject of such action, the court in which the action against the stakeholder is pending shall, on being duly informed by the court which passed the decree in the interpleader action in favour of the stakeholder, that such decree has been passed, stay the proceedings as against him, and his costs in the action so stayed may be

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provided for in such action ; but if and so far as they are not provided for in that action, they may be added to his costs incurred in the interpleader action.

CHAPTER XLIV

Actions Which Fail For Want Of Jurisdiction

Power to make order for costs notwithstanding want of jurisdiction.

635. When an action fails for want of jurisdiction in the court to entertain and determine the matter of the action on its merits, it shall, nevertheless, be competent to the court to make such order on the parties for the payment of costs as to it shall seem just ; and every such order for the payment of costs is a decree for money within Chapter XX.

When want of jurisdiction caused by exclusive jurisdiction of any Rural Court, averment of jurisdiction in plaint is traversed.

636. When the want of jurisdiction is caused by reason of the exclusive jurisdiction of any Rural Court, the averment in the plaint made in pursuance of section 45 shall be considered as traversed, whether the defendant in his answer is silent in reference to it or not ; and it shall be the duty of the court to dismiss the action on this preliminary issue in bar at the earliest stage of the action whereat, by the admission of the parties or other evidence, it appears to the court that such Rural Court has exclusive jurisdiction.

Order of dismissal not reversed on appeal, conclusive as to jurisdiction of other court.

637. The order of court so dismissing the action shall adjudicate upon the facts which found the jurisdiction of such Rural Court ; and if not appealed against, or if, in the event of an appeal, not reversed, this order shall be conclusive evidence of jurisdiction on the same claim being made before such Rural Court.

And conversely.

638. Also the decision of a Rural Court declining jurisdiction shall be conclusive evidence against such jurisdiction in an action upon the same claim brought in any other court.

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PART V

PROVISIONAL REMEDIES

CHAPTER XLVII*

Of Arrest And Sequestration Before Judgment

Arrest before judgment.

650.* If a plaintiff or one of several plaintiffs in any action, either at the commencement thereof or at any subsequent period before judgment, shall, by way of motion on petition, supported by his own affidavit and viva voce examination (should the Judge consider such examination desirable), subject, however, to the exceptions hereinafter contained, satisfy the Judge that he has a sufficient cause of action against the defendant, either in respect of a money claim of or exceeding two hundred rupees or because he has sustained damage to that amount, and that he has no adequate security to meet the same, and that he does verily believe that the defendant is about to quit Ceylon, and, if he shall at the same time further establish to the satisfaction of the Judge by affidavit or (if the Judge shall so require) by viva voce testimony such facts that the Judge infers from them that the defendant is about to quit Ceylon, and will do so unless he be forthwith apprehended, such Judge may order a warrant (form No. 100, First Schedule) to arrest the body of the defendant and to bring him before the court unless he shall give bail in, or make deposit of, such an amount as the said Judge shall consider reasonable and adequate, which amount the said Judge at the time of making the said order shall set out on the face thereof ; and the said warrant may be executed within one calendar month from the date thereof, including the day of such date, and not afterwards, in any district of Ceylon :

Provided that if the plaintiff shall be in possession of any security in part, he or the person making the application on his behalf shall, on pain of punishment as for

* Chapter XLV—Section 639, repealed by Ordinance No. 9 of 1917 ;

Sections 640 to 644 (both inclusive), repealed by Ordinance No. 21 of 1927 ;

Chapter XLVI—Sections 645 to 648 (both inclusive), repealed by Act No. 7 of 1949 ;

Section 649 repealed by Ordinance No. 21 of 1927.

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contempt of court, set forth the same particularly in his application and the amount thereof, which amount shall be deducted from the amount of security to be required from the defendant.

Arrested person to be discharged on giving bail,

651. The defendant being arrested on such a warrant shall at once be brought up before the court by which it was issued in custody of the Fiscal, unless he shall give reasonable security (form No. 101, First Schedule) to the Fiscal to appear and answer the plaintiff's claim and to abide by and perform the judgment of the court, or to surrender himself or be surrendered to be charged in execution for the same ; in which case the Fiscal shall be authorized to discharge him. If he is brought before the court under the warrant, or if he appears in discharge of the bail taken by the Fiscal, he must give bail (form No. 102, First Schedule) to abide by and perform the judgment of the court, and pay any sum or sums which may be awarded against him, or to surrender himself or be surrendered by his sureties, to be charged in execution for the same ; or if he is unable or unwilling to give such bail, he shall be committed to prison (form No. 103, First Schedule) until he does so, or until the determination of the action ; and in the event of the decree being passed against him, then until the execution of the decree subject to the provisions of Chapter XXII in regard to imprisonment in execution of a decree for money ; and

otherwise committed to prison.

Provided also that no person shall in any case be imprisoned under this section for a longer period than three months before decree.

Arrested person may deposit money with Fiscal instead of giving bail.

652. The defendant may, instead of giving bail, as is herein before directed, deposit with the Fiscal or in court the sum mentioned in the warrant, and thereupon he shall be discharged from custody, and a minute of the same shall be made on the warrant ; and the sum so deposited shall be applied in satisfaction of the judgment should the same eventually pass against the defendant, and the surplus, if any, shall be refunded to the defendant.

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Of sequestration before judgment.

653. If a plaintiff in any action, either at the commencement thereof or at any subsequent period before judgment, shall, by way of motion on petition supported by his own affidavit and viva voce examination (if the Judge should consider such examination necessary) satisfy the Judge that he has a sufficient cause of action against the defendant, either in respect of a money claim of or exceeding two hundred rupees or because he has sustained damage to that amount, and that he has no adequate security to meet the same, and that he does verily believe that the defendant is fraudulently alienating his property to avoid payment of the said debt or damage ; and if he shall at the same time further establish to the satisfaction of the Judge by affidavit or (if the Judge should so require) by viva voce testimony such facts that the Judge infers from them that the defendant is fraudulently alienating his property with intent to avoid payment of the said debt or damage, or that he has with such intent quitted Ceylon leaving therein property belonging to him, such Judge may order a mandate (form No. 104, First Schedule) to issue to the Fiscal, directing him to seize and sequester the houses, lands, goods, money, securities for money and debts, wheresoever or in whose custody soever the same may be within his district, to such value as the court shall think reasonable and adequate and shall specify in the mandate, and to detain or secure the same to abide the further orders of the court.

Explanation.—Sequestration of immovable property has the effect of sequestering all rents and profits which proceed thereout, pending the sequestration.

Plaintiff to give security before such warrant of arrest or sequestration is issued.

654. Before making the order for a warrant of arrest or mandate of sequestration, the Judge shall require the plaintiff to enter into a bond (form No. 105, First Schedule), with or without sureties, in the discretion of the Judge, to the effect that the plaintiff will pay all costs that may be awarded and all damages which may be sustained by reason of such arrest or sequestration, by the defendant or by any other person in whose possession such property shall have been so sequestered ; and it shall be competent to the court

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to award such damages and costs of suit either to the defendant or to those in whose possession such property shall have been so sequestered.

Who may make affidavit in lieu of plaintiff.

655. In substitution for the affidavit of the plaintiff required by sections 650 and 653—

(*a*) when the action is brought by the Attorney-General, then any officer of the Crown ; and

(*b*) when the action is brought by a corporation, board, public body, or company, then any principal officer of such corporation, board, public body, or company ; and

(*c*) when the plaintiff is absent from Ceylon, then his attorney duly authorized to bring and conduct the action ; and

(*d*) when the plaintiff, or if there are more plaintiffs than one when such of the plaintiffs as are in Ceylon, or when such attorney of the plaintiff as is just above-mentioned is or are unable from want of personal knowledge or from bodily or mental infirmity to make the required affidavit, then any recognized agent of the plaintiff,

may be allowed by the court to make an affidavit in these matters instead of the plaintiff :

Provided that in each of the foregoing cases the person who makes the affidavit instead of the plaintiff must be a person having personal knowledge of the facts of the cause of action, and must in his affidavit swear or affirm that he deposes from his own personal knowledge of the matter therein contained, and shall be liable to be examined as to the subject-matter thereof at the discretion of the Judge, as the plaintiff would have been if the affidavit had been made by him.

Punishment for wilful false statement.

656. Any person wilfully making any false statement by affidavit or otherwise in the course of any of the proceedings aforesaid may be punished as for a contempt of court, besides his liability to be tried and punished under the Penal Code for the offence of giving false evidence where such statement is on oath or affirmation.

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Manner of sequestration.

657. The sequestration ordered in pursuance of section 653 shall be made in the manner herein before provided for sequestration or seizure of property preliminary to sale thereof in execution of a decree for money.

Manner of investigating any claim to property sequestered.

658. If any claim be preferred to the property sequestered before judgment, such claim shall be investigated in the manner herein before provided for the investigation of claims to property seized in execution of a decree for money.

Costs and damages where sequestration wrongful.

659. If upon any such investigation the court is satisfied that the property sequestered was not the property of the defendant, it shall pass an order releasing such property from seizure, and shall decree the plaintiff to pay such costs and damages by reason of such sequestration, as the court shall deem meet. If otherwise, the court shall disallow the claim, and make such order as to costs as it shall deem meet.

Effect of sequestration on prior rights.

660. Sequestration before judgment shall not affect the rights, existing prior to the sequestration, of persons not parties to the action, nor bar any person holding a decree against the defendant from applying for the sale of the property under sequestration in execution of such decree.

Subsequent seizure of property under decree unnecessary.

661. Where property is under sequestration by virtue of the provisions of this Chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to again seize the property as preliminary to sale or delivery in execution of such decree.

CHAPTER XLVIII

Of Injunctions

When injunction may be granted.

662. Every application for an injunction for any of the purposes mentioned in section 86 of the Courts Ordinance, except in cases where an injunction is prayed for in a plaint in any action, shall be by petition,

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and shall be accompanied by an affidavit of the applicant or some other person having knowledge of the facts, containing a statement of the facts on which the application is based.

Disobedience to injunction how punished.

663. An injunction granted by the court on any such application may in case of disobedience be enforced by the punishment of the offender as for a contempt of court.

Application to be on notice to opposite party.

664. The court shall in all cases, except when it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction cause the petition of application for the same together with the accompanying affidavit to be served on the opposite party; and where the application is made after the defendant has answered, the injunction shall in no case be granted before such service. But the court may in its discretion enjoin the defendant until the hearing and decision of the application.

Effect on corporation, &c.

665. An injunction directed to a corporation or board or other public body or company is binding not only on the corporation, board, public body, or company itself, but also on all members or officers of the corporation, board, public body, or company, whose personal action it seeks to restrain.

How set aside or varied.

666. An order for an injunction made under this Chapter may be discharged, or varied, or set aside by the court, on application made thereto on petition by way of summary procedure by any party dissatisfied with such order.

When court may award compensation to respondent.

667. If it appears to the court that the injunction was applied for on insufficient grounds, or if, after the issue of an injunction which it has granted, the action is dismissed or judgment is given against the applicant by default or otherwise, and it appears to the court that there was no probable ground for applying for the injunction, the court may, on the application of the party against whom the injunction issued, award against the party obtaining the same in its decree such

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sum as it deems a reasonable compensation for the expense or injury caused to such party by the issue of the injunction. An award under this section shall bar any action for compensation in respect of the issue of the injunction.

CHAPTER XLIX

Of Interim Orders

Order for sale of perishable property.

668. Any court may, on the application of any party to an action, order the sale by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property being the subject of such action, which is subject to speedy and natural decay. The party carrying out the sale shall, within such time as the court shall limit, and after deducting thereout such expenses as the court allows him, deposit the proceeds of the sale in court to the credit of the action.

Order for detention, preservation, or inspection of property.

669. The court may, on the application of any party to an action, and on such terms as it thinks fit—

(*a*) make an order for the detention, preservation, or inspection and survey of any property being the subject of such action ;

(*b*) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such action ; and

(*c*) for all or any of the purposes aforesaid authorize any samples to be taken or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

Application herein to be made by way of summary procedure.

670. Every application under either of the two preceding sections shall be made by petition in the way of summary procedure ; and every party who is sought to be affected by the order must be named a respondent in the petition. Any such application may be made by a plaintiff after service of summons, or by a defendant after he has appeared in the action.

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CHAPTER L

Of The Appointment Of Receivers

When court may appoint a receiver.

671. Whenever it appears to the court to be necessary for the restoration, preservation, or better custody or management of any property, movable or immovable, the subject of an action, or under sequestration, the court may on the application of any party who shall establish a prima facie right to or interest in such property, by order—

(*a*) appoint a receiver of such property, and, if need be,

(*b*) remove the person, in whose possession or custody the property may be, from the possession or custody thereof;

(*c*) commit such property to the custody or management of such receiver ; and

And give him powers over subject of action or sequestration.

(*d*) grant to such receiver such fee or commission on the rents and profits of the property by way of remuneration as the court thinks fit, and all such powers as to bringing and defending actions and for the realization, management, protection, preservation, and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the court thinks fit.

Notice of application.

672. Notice of an application for the appointment of a receiver under this Chapter must be served on the adverse party, unless he has left Ceylon without leaving a recognized agent, or unless he has failed to appear in the action and the time limited for his appearance has expired ; or if he has left a recognized agent, such notice may be given to such agent.

Receivers to give security and pass accounts.

673. Every receiver so appointed as aforesaid shall—

(*a*) give such security (if any) as the court thinks fit duly to account for what he shall receive in respect of the property ;

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(b) pass his accounts at such periods and in such forms as the court directs ;

(c) pay the balance due from him therein as the court directs ; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Power of court to remove, or require fresh security.

674. The court may at any time, on sufficient cause shown therefor, remove a receiver or require him to give fresh security.

Powers conferable by the court not to exceed those of parties themselves.

675. Nothing in sections 671 and 673 authorizes or empowers the court to remove from the possession or custody of property under sequestration any person whom the parties to the action or some or one of them have or has not a present right so to remove.

PART VI

OF SPECIAL PROCEEDINGS

CHAPTER LI

Of Reference To Arbitration

Matter in difference in an action may by consent of parties be referred to arbitration.

676. (1) If all the parties to an action desire that any matter in difference between them in the action be referred to arbitration, they may at any time before judgment is pronounced apply, in person or by their respective proctors, specially authorized in writing in this behalf, to the court for an order of reference.

Mode of submission.

(2) Every such application shall be in writing, and shall state the particular matters sought to be referred, and the written authority of the proctor to make it shall refer to it, and shall be filed in court at the time when the application is made, and shall be distinct from any power to compromise or to refer to arbitration which may appear in the proxy constituting the proctor's general authority to represent his client in the action.

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(3) The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them. Appointment of arbitrator.

(4) If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the court, the court shall nominate the arbitrator. When court may nominate arbitrator.

677. (1) The court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award and specify such time in the order. The matter in difference to be referred to arbitrator by order of court.

(2) When once a matter is referred to arbitration, the court shall not deal with it in the same action, except as hereinafter provided.

678. (1) If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators— Appointment of an umpire.

(*a*) by the appointment of an umpire ; or

(*b*) by declaring that the decision shall be with the majority if the major part of the arbitrators agree ; or

(*c*) by empowering the arbitrators to appoint an umpire ; or

(*d*) otherwise, as may be agreed between the parties ; or if they cannot agree, as the court determines.

(2) If an umpire is appointed, the court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

679. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects, or becomes incapable to act, or leaves Ceylon under circumstances showing that he will probably not return at an early date, the court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to In event of death, &c., court may appoint new arbitrator ; or supersede arbitration.

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act, or leaving Ceylon, or make an order superseding the arbitration, and in such case shall proceed with the action.

When court may appoint umpire.

680. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice has been served, or such further time as the court may in each case allow, no umpire be appointed, the court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of umpire appointed after reference.

681. Every arbitrator or umpire appointed under the foregoing sections shall have the like powers as if his name had been inserted in the order of reference.

Court to issue process.

682. (1) The court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire to examine as the court may issue in actions tried before it.

Power of arbitrators to take evidence.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or being guilty of any contempt to an arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the court on the representation of such arbitrator or umpire, as they would incur for the like offences in actions tried before the court.

Extension of time for award.

683. If from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the action.

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When umpire may enter on the reference in lieu of arbitrators.

684. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators—

(*a*) if they have allowed the appointed time to expire without making an award ; or

(*b*) when they have delivered to the court or to the umpire a notice in writing stating that they cannot agree.

Award to be filed in court.

685. When an award in an action has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them ; and notice of the filing shall be given to the parties.

Award may be in form of special case.

686. Upon any reference by an order of court the arbitrators or umpire may, with the consent of the court, state the award as to the whole or any part thereof in the form of a special case, for the opinion of the court ; and after the filing of such special case upon notice to the parties, the court shall upon an appointed day hear argument and deliver its opinion thereon ; and such opinion shall be added to and form part of the award.

Application to set aside or correct the award.

687. Within fifteen days from the date of receipt of notice of the filing of the award any party to the arbitration may by petition apply to the court to set aside the award, or to modify or to correct the award, or to remit the award to the arbitrators for reconsideration, on grounds mentioned in the following sections.

When court may correct award.

688. The court may, by order, modify or correct an award—

(*a*) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred ; or

(*b*) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

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Court may make order as to costs.

689. The court may also make such orders as it thinks fit respecting the costs of the arbitration, if any question arises respecting such costs and the award contains no sufficient provision concerning them.

When court may remit award for re-consideration.

690. The court may remit the award on any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit—

(*a*) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration ;

(*b*) where the award is so indefinite as to be incapable of execution ;

(*c*) where an objection to the legality of the award is apparent upon the face of it.

When an award is void.

691. (1) An award remitted under section 690 becomes void on the refusal of the arbitrators or umpire to reconsider it.

When may an award be set aside.

(2) No award shall be set aside except on one of the following grounds, namely :

(*a*) corruption or misconduct of the arbitrator or umpire ;

(*b*) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ;

(*c*) the award having been made after the issue of an order by the court superseding the arbitration and restoring the action ;

When award is not valid.

and no award shall be valid unless made within the period allowed by the court.

Judgment to be according to the award.

692. (1) If the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application

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has been made to set aside the award, or if it has been made and the court has refused such application, then the court shall, after the time for making such application has expired, on a day of which notice shall be given to the parties, proceed to give judgment according to the award ; or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

And decree to be framed thereon.

(2) Upon the judgment so given a decree shall be framed, and shall be enforced in manner provided in this Ordinance for the execution of decrees.

(3) No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Agreement to refer any difference to arbitration may be filed in court.

693. (1) When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement, or to be appointed by any court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in such court.

Application therefor.

(2) The application shall be by petition in the way of summary procedure as herein before provided, in which the parties to the agreement other than the petitioner or petitioners shall be named respondents.

Court to order reference thereon.

694. On such application being made, if no sufficient cause be shown to the contrary, the court may cause the agreement to be filed, and shall make an order of reference thereon ; and may also nominate the arbitrator when he is not named therein and the parties cannot agree as to the nomination.

Provisions of this Chapter to apply to such reference.

695. The foregoing provisions of this Chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the court under the last preceding section, and to the award of arbitration and to the enforcement of the decree founded thereupon.

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Award made on a reference independently of court may be filed in court.

696. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may within six months of the making of the award apply to the court having jurisdiction over the matter to which the award relates, that the award be filed in court.

Application therefor.

697. The application shall be by petition in the way of summary procedure as herein before provided, in which the parties to the arbitration other than the petitioner or petitioners shall be named respondents.

Filing and enforcement of such award.

698. If on the hearing of such application no ground such as is mentioned or referred to in sections 690 or 691, be shown against the award, the court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this Chapter.

CHAPTER LII

Of Proceedings On Agreement Of Parties

Agreed statement of case for decision of court.

699. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing, stating such question in the form of a case for the opinion of the court, and providing that upon the finding of the court with respect to such question—

(*a*) a sum of money fixed by the parties, or to be determined by the court, shall be paid by one of the parties to the other of them ; or

(*b*) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them ; or

(*c*) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

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(2) Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the court to decide the question raised thereby.

When value of property is to be stated therein.

700. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

To what court agreement may be presented.

701. The agreement, if framed in accordance with the rules herein before contained, may for the determination of the question or questions thereby raised be brought before the court which would have jurisdiction to entertain an action, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement. And for this purpose it shall be presented to the court as an exhibit to a petition preferred by one or more of the parties to the agreement in the way of summary procedure, to which petition the other parties to the agreement shall be named respondent, and in which petition it shall be alleged that the agreement was duly executed by all the parties, and that the controversy is real, and that the agreement is submitted bona fide for the purpose of determining the rights of the parties ; such petition shall be verified by affidavit, and the prayer of the petition shall conform to the stipulations of the agreement within section 699.

Judgment and decree thereon.

702. If at the hearing of this petition on consideration of the evidence before it the court is satisfied that the allegations of the petition are established, and is further of opinion that the subject of the agreement is fit to be decided, then it shall proceed to pronounce judgment between the parties upon the facts and questions stated in the agreement, and upon the judgment so given a decree shall be framed and passed, and shall be enforced in the manner provided in this Ordinance for the execution of decrees.

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CHAPTER LIII

Of Summary Procedure On Liquid Claims

Action by summary procedure on liquid claims.

703. All actions where the claim is for a debt or liquidated demand in money arising upon a bill of exchange, promissory note, or cheque, or instrument or contract in writing for a liquidated amount of money, or on a guarantee where the claim against the principal is in respect of such debt or liquidated demand, bill, note, or cheque, may, in case the plaintiff desires to proceed under this Chapter, be instituted by presenting a plaint in the form prescribed by this Ordinance, but the summons shall be in the form No. 19 in the First Schedule, or in such other form as the Supreme Court may from time to time prescribe.

Defendant not to appear or defend except with leave.

Without such leave decree at once with speedy execution.

704. (1) In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the action unless he obtains leave from the court as hereinafter mentioned so to appear and defend; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest to the date of the payment, and such costs as the court may allow at the time of making the decree.

(2) The defendant shall not be required, as a condition of his being allowed to appear and defend, to pay into court the sum mentioned in the summons, or to give security therefor, unless the court thinks his defence not to be prima facie sustainable, or feels reasonable doubt as to its good faith.

Instrument to be produced with the plaint, and affidavit to be made.

705. (1) The plaintiff who so sues and obtains such summons as aforesaid must on presenting the plaint produce to the court the instrument on which he sues, and he must make affidavit that the sum which he claims is justly due to him from the defendant thereon.

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(2) If the instrument appears to the court to be properly stamped, and not to be open to suspicion by reason of any alteration or erasure or other matter on the face of it, and not to be barred by prescription, the court may in its discretion make an order for the service on the defendant of the summons above mentioned.

Summons to be of short date.

(3) The day to be inserted in the notice as the day for the defendant's appearance shall be as early a day as can be conveniently named, regard being had to the distance of the defendant's residence from the court.

When leave to defend may be granted.

706. The court shall, upon application by the defendant, give leave to appear and to defend the action upon the defendant paying into court the sum mentioned in the summons, or upon affidavits satisfactory to the court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application and on such terms as to security, framing, and recording issues, or otherwise, as the court thinks fit.

When court may set aside decree, &c.

707. After decree the court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the action, if it seem reasonable to the court so to do, and on such terms as the court thinks fit.

Court may order deposit of instrument.

708. In any proceeding under this Chapter the court may order the instrument on which the action is founded to be forthwith deposited with an officer of the court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of expenses incurred in noting.

709. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance, or non-payment,

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or otherwise, by reason of such dishonour, as he has under this Chapter for the recovery of the amount of such bill or note.

Saving clause.

710.* Except as provided in this Chapter, the procedure in actions under this Chapter shall be the same as the procedure in actions instituted under Chapter VII.

Special trial roll to be kept.

711. In every court in which cases may be instituted under this Chapter, a special trial roll shall be kept of such cases in which issue has been joined. And it shall be competent for the Judge of such court to order such cases to be set down for hearing on such days, and on the day fixed for the hearing of any such case to direct the same to be called on for trial, in such order as to him shall appear best calculated to promote the ends of justice, any rule or practice of such court to the contrary notwithstanding:

Provided that the parties to such case shall have received reasonable notice of the day of hearing.

PART VII

OF THE AIDING AND CONTROLLING OF EXECUTORS AND ADMINISTRATORS, AND THE JUDICIAL SETTLEMENT OF THEIR ACCOUNTS

CHAPTER LIV

Of Aiding, Supervising, And Controlling Executors And Administrators

Proceedings to discover property withheld, &c.

712. (1) An executor or administrator may present to the court from which grant of probate or administration issued to him a petition entitled as of the action in which such grant issued, setting forth upon knowledge, or information and belief, any facts tending to show that money or other movable property which ought to be delivered to the petitioner, or which

* This section does not apply to Courts of Requests.—*Vide post* section 829A.

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ought to be included in his inventory and valuation, is in the possession, under the control, or within the knowledge or information of a person who withholds the same from him, or who refuses to impart any knowledge or information he may have concerning the same, or to disclose any other fact which will in any way aid the petitioner in making discovery of such property, so that it cannot be inventoried and valued ; and praying an inquiry respecting it, and that the person complained of may be cited to attend the inquiry and to be examined accordingly.

(2) The petition may be accompanied by affidavits or other evidence tending to support the allegations thereof.

(3) If the court is satisfied upon the materials so presented that there are reasonable grounds for inquiry, it shall issue a citation accordingly, which may be made returnable forthwith, or at such future time as the court shall direct.

Order to accompany citation.

713. (1) There shall be annexed to, or endorsed on, the citation an order signed by the Judge, requiring the person cited to attend personally at the time and place therein specified.

Service of citation.

(2) The citation and order must be personally served, and the service shall be ineffectual unless it is accompanied with payment or tender of the sum required by law to be paid or tendered to a witness subpœnaed to attend a trial in a civil court.

Failure to obey citation.

(3) Failure to attend as required by the citation and order may be punished as a contempt of court.

Examination of person cited.

714. (1) Upon the attendance of a person in obedience to such citation and order, he shall be examined fully and at large, on oath or affirmation, respecting any money or other property of the testator or intestate, or of which the testator or intestate was in possession at the time of or within two years preceding his death.

Refusal to answer.

(2) A refusal to be sworn or to answer any question allowed by the court is punishable in the same manner as a like refusal by a witness in a civil case.

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(3) In case the person cited puts in an affidavit that he is the owner of any of the said property, or is entitled to the possession thereof by virtue of any lien thereon or special property therein, the proceedings as to such property so claimed shall be dismissed.

Further evidence.

715. In the absence of the affidavit last mentioned, either party may on any such inquiry produce further evidence in like manner and with like effect as upon a trial.

Unless the person cited gives security, decree awarding possession to the petitioner.

716. Where it appears to the court, from the examination and other testimony, if any, that there is reason to suspect that money or other property of the testator or intestate is withheld or concealed by the person cited, the court shall, unless the person cited gives security by a bond entered into with the petitioner as obligee, with such sureties and in such penalty as the court approves, for the payment of the money or delivery of the property, or in default of such delivery for the payment to the obligee of the full value thereof, and in either case of all damages which may be awarded against the obligor for withholding the same whenever it shall be determined in an action brought by the obligee that it belongs to the estate of the testator or intestate, make a decree reciting the grounds thereof, and requiring the person cited to deliver possession of the money or other property, specifying the sum or describing the property, to the petitioner. But in the event of such security being given, and after payment within a time to be fixed therefor of any costs which the court may award to the petitioner, the proceedings shall be dismissed.

Disobedience to decree, contempt.

717. (1) Where the decree requires the person cited to deliver money, disobedience thereto may be punished as contempt of court.

Warrant to seize property.

(2) Where it requires him to deliver possession of other property, a warrant shall issue on the application of the petitioner directed to the Fiscal, and commanding him to search for and seize the property, if it

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is found in the possession of the person cited, or his agent, or any person deriving title from him since the presentation of the petition to deliver the same to the petitioner, and to return the warrant within sixty days.

(3) The issue of such a warrant does not affect the power of the court to enforce the decree, or any part thereof, by punishing a disobedience thereto.

Executor, &c., how compelled to return inventory and accounts.

718. (1) A creditor, or any person interested in the estate, may present to the court in the action in which grant of probate or administration issued, proof by affidavit that an executor or administrator has failed to file in court the inventory and valuation, and account (or a sufficient inventory and valuation, or sufficient accounts) required by law within the time prescribed therefor.

(2) Thereupon, or of its own motion, if the court is satisfied that the executor or administrator is in default, it shall make an order requiring the delinquent to file the inventory and valuation or accounts, or a further inventory and valuation or further accounts, as the case may be; or in default thereof to show cause at a time and place therein specified why he should not be attached.

(3) Upon the return of the order, if the delinquent has not filed a sufficient inventory and valuation or sufficient accounts, the court shall issue a warrant of attachment against him, and shall deal with him as for a contempt of court.

How executor or administrator may be discharged from commitment.

719. A person committed to jail under the provisions of the last preceding section may be discharged by the court upon his paying and delivering under oath all the money and other property of the testator or intestate, and all papers relating to the estate under his control, to the Judge, or person authorized by the Judge to receive the same.

Petition by creditor or legatee to compel payment.

720. In either of the following cases a petition, entitled as of the action in which grant of probate or administration issued, may be presented to the court which issued the same, praying for a decree directing

D 27—J. N. R 7590 (4/60)

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an executor or administrator to pay the petitioner's claim, and that he be cited to show cause why such decree should not be made—

(*a*) by a creditor, for the payment of a debt, or of its just proportional part, at any time after twelve months have expired since grant of probate or administration ;

(*b*) by a person entitled to a legacy, or any other pecuniary provision under a will, or a distributive share, for the payment or satisfaction thereof, or of its just proportional part, at any time after twelve months have expired since such grant.

Citation to issue.

Hearing and decree.

721. On the presentation of such petition the court shall issue a citation accordingly, and upon the return thereof shall make such decree in the premises as justice requires. But in any case where the executor or administrator files an affidavit setting forth facts which show that it is doubtful whether the petitioner's claim is valid and legal, and denying its validity or legality absolutely, or upon information and belief, or where the court is not satisfied that there is money or other movable property of the estate applicable to the payment or satisfaction of the petitioner's claim, and which may be so applied without injuriously affecting the rights of others entitled to priority or equality of payment or satisfaction, the decree shall dismiss the petition, but such dismissal shall not prejudice the right of the petitioner to an action or accounting.

Appeal.

722. Every order or decree made under the provisions of this Chapter shall be subject to an appeal to the Supreme Court.

CHAPTER LV

Of The Accounting And Settlement Of The Estate

Executor may file intermediate acccunt at any time.

723. An executor or administrator may at any time voluntarily file in the court from which grant of probate or administration issued to him an intermediate account, and the vouchers in support of the same.

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Court may compel executor to file intermediate account at any time.

724. The court may in any case at any time, and either upon the application of a creditor or party interested or of its own motion, make an order requiring an executor or administrator to render an intermediate account.

Judicial settlement of account.

725. In any of the following cases, and either upon the application of a party mentioned in the next section or of its own motion, the court may from time to time compel a judicial settlement of the account of an executor or administrator :—

(*a*) where one year has expired since grant to him of probate or administration ;

(*b*) where such grant has been revoked, or for any other reason his powers have ceased ;

(*c*) where he has sold or otherwise disposed of any immovable property of the testator, or devisable interest therein, or the rents, profits, or proceeds thereof, pursuant to a power in the will, where one year has elapsed since the grant of probate to him.

Who may apply for accounting.

726. (1) The application for a judicial settlement in the last section mentioned shall be by petition, entitled as of the action in which grant of probate or administration issued, and may be presented by a creditor, or by any person interested in the estate or fund, including a child born after the making of a will ; or by any person in behalf of an infant so interested ; or by a surety in the official bond of the person required to account, or the legal representative of such surety.

Citation.

(2) Upon the presentation thereof, citation shall issue accordingly ; but in a case specified in paragraph (*a*) of the last preceding section the court may, if the petition is presented within less than eighteen months after the issue of probate or administration, entertain or refuse to entertain it in its discretion.

Order to account.

727. (1) Upon the return of such citation, if the executor or administrator fails either to appear, or to show good cause to the contrary, or to present, in a proper case, a petition as prescribed in section 729, an

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order shall be made directing him to account within such a time and in such a manner as the court prescribes, and to attend before the court from time to time for that purpose. And the executor or administrator shall be bound by such order without service thereof, and if he disobeys it the court may issue a warrant of attachment against him, and the grant of probate or administration issued to him may be revoked.

Supplemental citation.

(2) If it appears that there is a surplus, distributable to creditors or persons interested, the court may at any time issue a supplemental citation, directed to such persons as must be cited upon the petition of an executor or administrator for a judicial settlement of his account, requiring them to attend the accounting.

Person cited may bring in other parties.

728. (1) Upon the return of any citation issued under any of the foregoing sections of this Chapter, the executor or administrator may, if one year has expired since grant of probate or administration issued to him, present a petition as in the next section prescribed.

Proceedings.

(2) A citation issued upon such a petition need not be directed to the petitioner in the special proceeding pending against the executor or administrator ; but the hearing of the special proceeding shall be adjourned until the return of the citation so issued, whereupon the two special proceedings shall be consolidated. Such consolidation shall not affect any power of the court which might be exercised in either special proceeding.

Executor, &c., may petition for judicial settlement of his account.

729. At any time after the expiration of one year since grant of probate or administration to an executor or administrator, he may present to the court which issued the same a petition, entitled as of the action in which such grant issued to him, praying that his account may be judicially settled, and that the creditors or persons claiming to be creditors, husband or wife, heirs, next of kin, and legatees (if any) of the testator or intestate, or, if any of those persons has died, his executor or administrator (if any), may be cited to attend the settlement. If one or more co-executors or

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co-administrators presents such a petition for a settlement of his separate account, it must pray that his co-executors or co-administrators be also cited. And upon the presentation of any such petition a citation shall issue accordingly.

Citation.

730. (1) Upon the return of such citation the court must take the account and hear the allegations and proofs of the parties respecting the same.

Hearing.

(2) Any party may contest the account with respect to a matter affecting his interest in the settlement and distribution of the estate ; and any party may contest an intermediate account rendered under section 724 in case the same has not been consolidated under section 728.

731. Any creditor or person interested in the estate, although not cited, is entitled to appear upon the hearing, and thus make himself a party to the special proceeding.

Creditor not cited may appear.

732. Any executor or administrator whose grant has been revoked or who is desirous of resigning his office may, in the same action, present to the court a petition praying that his account may be judicially settled, and that his successor (if any) and the other persons specified in section 729 may be cited to attend the settlement. The proceedings thereon shall be regulated according to the provisions of the last three sections.

Executor, &c., whose grant has been revoked may petition.

733. To each account filed under this Chapter shall be appended an affidavit of the accounting party, to the effect that the account contains, according to the best of his knowledge and belief, a full and true statement of all his receipts and disbursements on account of the estate of the testator or intestate, and of all money and other property belonging to the estate which has come to his hands, or which has been received by any other person by his order or authority for his use ; and that he does not know of any error or omission in the account to the prejudice of any creditor of, or person interested in, the estate.

Affidavit to be annexed to accounts.

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Vouchers to be produced.

734. Upon every accounting by an executor or administrator, the accounting party must produce and file a voucher for every payment, except in one of the following cases :—

(1) He may be allowed, without a voucher, any proper item of expenditure, not exceeding twenty rupees, if it is supported by his own uncontradicted oath or affirmation, stating positively the fact of payment and specifying where and to whom the payment was made :

Provided that all the items so allowed against an estate, upon all the accountings of all the executors or administrators, shall not exceed two hundred rupees.

(2) If he proves, by his own or another's sworn testimony, that he did not take a voucher when he made the payment, or that the voucher then taken by him has been lost or destroyed, he may be allowed any item of which he satisfactorily proves the payment by the testimony of the person to whom he made it, or, if that person is dead or cannot be found, by any competent evidence other than his own or his wife's oath or affirmation.

But no such item shall be allowed unless the court is satisfied that the charge is correct and just.

Accounting party to be examined.

735. The court may at any time make an order requiring the accounting party to make and file his account, or to attend and be examined on oath or affirmation touching his receipts and disbursements, or touching any other matter relating to his administration, or any act done by him under colour of his grant or after the death of the testator or intestate, and before the issue of such grant, or touching any movable property of the testator or intestate owned or held by him at the time of his death.

Court to determine claims.

736. (1) Upon a judicial settlement of the account of an executor or administrator, he may prove any debt owing to him by his testator or intestate :

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Provided that a concise statement of such debt with an intimation of the petitioner's intention so to prove the same has been inserted in the petition.

(2) Where a contest arises between the accounting party and any of the other parties respecting any property alleged to belong to the estate, but to which the accounting party lays claim, or respecting a debt alleged to be due by the accounting party to the testator or intestate, or by the testator or intestate to the accounting party, the contest must be tried and determined in the same special proceeding and in the same manner as any issue arising on a civil trial.

Prescription.

737. From the death of the testator or intestate until the first judicial settlement of an account by his executor or administrator, the running of the Ordinance relating to the prescription of actions against a debt due from the deceased to the accounting party, or any other cause of action in favour of the latter against the deceased, is suspended, unless the accounting party was appointed upon the revocation of a former grant to another person; in which case the running of the Ordinance is so suspended from the grant to him until the first judicial settlement of his account. After the first judicial settlement of the account of an executor or administrator, the Ordinance begins again to run against a debt due to him from the deceased, or any other cause of action in his favour against the deceased.

Court may allow for property lost, &c.

738. Upon a judicial settlement of the account of an executor or administrator, the court may allow the accounting party for property of the testator or intestate perished or lost without the fault of the accounting party.

Effect of judicial settlement.

739. A judicial settlement under this Chapter, either by the decree of the District Court or upon an appeal therefrom, is conclusive evidence against all parties who were duly cited or appeared, and all

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persons deriving title from any of them at any time, of the following facts, and no others :—

(*a*) that the items allowed to the accounting party for money paid to creditors, legatees, heirs, and next of kin, for necessary expenses, and for his services are correct ;

(*b*) that the accounting party has been charged with all the interest for money received by him and embraced in the account, for which he was legally accountable ;

(*c*) that the money charged to the accounting party, as collected, is all that was collectible at the time of the settlement on the debts stated in the account ;

(*d*) that the allowances made to the accounting party for the decrease, and the charges against him for the increase, in the value of property were correctly made.

Decree for payment and distribution.

740. (1) When an account is judicially settled under the provisions of this Chapter, and any part of the estate remains and is ready to be distributed to the creditors, legatees, heirs, next of kin, husband, or wife of the testator or intestate, or their assigns, the decree must direct the payment and distribution thereof to the persons so entitled, according to their respective rights.

(2) If any person who is a necessary party for that purpose has not been cited, or has not appeared, a supplemental citation must be issued as prescribed in section 727.

(3) Where the validity of a debt, claim, or distributive share is not disputed, or has been established, the decree must determine to whom it is payable, the sum to be paid, and all other questions concerning the same. And such decree shall be conclusive with respect to the matters enumerated in this section upon each party to the special proceeding who was duly cited or appeared, and upon every person deriving title from such party.

When specific property may be delivered.

741. (1) In either of the following cases the decree may direct the delivery of unsold property, movable or immovable, or the assignment of an uncollected

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demand, or any other movable property, to a party or parties entitled to payment or distribution in lieu of the money value of the property :—

(*a*) where all the parties interested, who have appeared, manifest their consent thereto by a writing filed in court ;

(*b*) where it appears that a sale thereof, for the purpose of payment or distribution would cause a loss to the parties entitled thereto.

(2) The value must be ascertained, if the consent does not fix it, by an appraisement under oath made by one or more persons appointed by the court for the purpose.

When money may be retained.

742. Where an admitted debt of the testator or intestate is not yet due, and the creditor will not accept present payment with a rebate of interest, or where an action is pending between the executor or administrator and a person claiming to be a creditor of the deceased, the decree must direct that a sum sufficient to satisfy the claim, or the proportion to which it is entitled, together with the probable amount of the interest and costs, be retained in the hands of the accounting party, or paid into court for the purpose of being applied to the payment of the claim when it is due, recovered, or settled ; and that so much thereof as is not needed for that purpose be afterwards distributed according to law.

Share of person of unsound mind or minor.

743. Where a legacy or distributive share is payable to a person of unsound mind or a minor, the decree may, in the discretion of the court, direct it to be paid to the manager or curator, as the case may be, of the estate of such person of unsound mind or minor, and where a sum of less than one hundred rupees is so payable to a minor, the decree may direct that the same be applied to the maintenance or education of the minor. And such manager or curator shall apply and account for any sum received by him under this Chapter in manner in Chapters XXXIX and XL respectively provided with regard to sums coming to his hands as such manager or curator.

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Appeal.

744. Every order or decree made under the provisions of this Chapter shall be subject to an appeal to the Supreme Court.

CHAPTER LVI

Of Accounting In Cases Of Persons Of Unsound Mind And Of Minors

Compulsory judicial settlement of accounts in cases of persons of unsound mind and minors.

745. A petition praying for the judicial settlement of the account of—

(*a*) the manager of the estate of a person of unsound mind ;

(*b*) the guardian of the person of a person of unsound mind ;

(*c*) the curator of the estate of a minor ;

(*d*) the guardian of the person of a minor ;

(*e*) the next friend of a minor plaintiff ;

(*f*) the guardian for the action of a minor defendant ;

and that such person may be cited to attend the settlement thereof, may in every case where any such person is required by law to file accounts, be presented to the court having jurisdiction, in the manner in the last preceding Chapter provided, by any of the following persons respectively, namely :—

In cases falling under paragraphs (*a*) and (*b*)—

by the person of unsound mind after he has been found by adjudication to have ceased to be of unsound mind, or by any relative or friend of the person of unsound mind, or by the executor or administrator of a deceased person of unsound mind, or under (*a*) by the guardian of the person and under (*b*) by the manager of the estate of a person of unsound mind, or by any public officer mentioned in section 556 ;

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In cases falling under paragraphs (*c*), (*d*), (*e*), and (*f*)—

by the minor after he has attained majority, or by the executor or administrator of a deceased minor, or under (*c*) by the guardian of the person, and under (*d*) by the curator of the estate of a minor ;

And in any case by the successor of any such manager, curator, guardian, next friend, or guardian for the action. But in cases falling under paragraphs (*b*), (*d*), (*e*), and (*f*) proof must be adduced to the satisfaction of the court that the person so required to account has received money or property of the minor for which he is liable to account and has not accounted.

Voluntary judicial settlement of accounts in case of persons of unsound mind and minors.

746. A petition praying for the judicial settlement of his account and a discharge from his duties and liabilities may be presented in like manner by any of the persons described under paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), and (*f*) of the last preceding section, in any case where a petition for a judicial settlement of his account may be presented by any other person as prescribed in the last section. The petition must pray that every person who might have so presented a petition may be cited to attend the settlement.

Procedure.

747. (1) Upon the presentation of any petition as mentioned in the last two sections, the court shall issue a citation accordingly.

(2) Sections 724 to 740 both inclusive shall be taken to apply as far as practicable, *mutatis mutandis*, to all proceedings under this Chapter. And the accounting party must annex to every account produced and filed by him an affidavit verifying the account.

Appeal.

748. Every order or decree made under the provisions of this Chapter shall be subject to an appeal to the Supreme Court.

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CHAPTER LVII

General Clauses

Requisites of petitions relating to persons of unsound mind, minors, or trustees.

749. Every petition by which an application is made to a District Court for the exercise of its powers over or in respect of persons of unsound mind, minors, or trustees shall state expressly that the petitioner does not know of any person interested in the subject of the petition or in the person sought to be affected by the order prayed for in the petition, who is likely to entertain any objection thereto, other than those who are named as respondents in the petition.

Citations.

750. But the court shall have power nevertheless to direct that the order *nisi* be served on any person or persons other than a respondent, whom it may consider entitled to have notice of the application.

Security bonds.

751. All security bonds made under or in pursuance of the provisions of Chapters XXXIX, XL, and XLI shall, unless otherwise expressly or by implication directed, be expressed to be made with the secretary of the court for the time being, and in the case of bonds so made, upon each occurrence of a change of secretary the new secretary shall be deemed to take the place of, and to be substituted for, the secretary whom he succeeds, as party obligee to the contract on the bond, and shall become such party as fully and completely in all respects as if he were originally made such party on the occasion of the making of the bond.

Security from managers and curators.

752. The District Court shall have the like power to make the person appointed manager of the estate of a person of unsound mind, or the person appointed curator of a minor's estate, give security for the due administration of the estate as it has in the case of administrators of deceased persons' estates.

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PART VIII

OF APPEALS

CHAPTER LVIII

Of Appeals And Revisions

Powers of revision by Supreme Court.

753. The Supreme Court may call for and examine the record of any case, whether already tried or pending trial, in any court, for the purpose of satisfying itself as to the legality or propriety of any judgment or order passed therein, or as to the regularity of the proceedings of such court, and may upon revision of the case so brought before it pass any judgment or make any order which it might have made had the case been brought before it in due course of appeal instead of by way of revision.

Form of appeal and transmission thereof.

754. (1) Every appeal to the Supreme Court from any judgment, decree, or order of any original court, shall be made in the form of a written petition to the Supreme Court in the name of the appellant, and shall be preferred to the Supreme Court as hereinafter provided.

(2) The petition of appeal shall be presented to the court of first instance for this purpose by the party appellant or his proctor within a period of ten days, or where such court is a Court of Requests, seven days, from the date when the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of Sundays and public holidays, and the court to which the petition is so presented shall receive it and deal with it as hereinafter provided. If those conditions are not fulfilled it shall refuse to receive it.

Petitions of appeal to be drawn by advocate or proctor.

755. All petitions of appeal shall be drawn and signed by some advocate or proctor, or else the same shall not be received :

Provided always that any party desirous to appeal may within the time limited for presenting a petition

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of appeal, and upon his producing the proper stamp required for a petition of appeal, be allowed to state viva voce his wish to appeal together with the particular grounds of such appeal, and the same shall (so far as they are material) be concisely taken down in writing from the mouth of the party by the secretary or chief clerk of the court in the form of a petition of appeal, when it shall be signed by such party and attested by the secretary or chief clerk, and be received as the petition of appeal of such party without the signature of any advocate or proctor.

Security for costs of appeal.

756. (1) When a petition of appeal has been received by the court of first instance under section 754, the petitioner shall forthwith give notice to the respondent that he will on a day to be specified in such notice, and within a period of twenty days, or where such court is a Court of Requests, fourteen days, from the date when the decree or order appealed against was pronounced, computed as in the same section is directed for the periods of ten days and seven days therein respectively mentioned, tender security as hereinafter directed for the respondent's costs of appeal, and will deposit a sufficient sum of money to cover the expenses of serving notice of the appeal on the respondent. And on such day the respondent shall be heard to show cause if any against such security being accepted. And in the event of such security being accepted and also the deposit made within such period, then the court shall immediately issue notice of the appeal together with a copy of the petition of appeal, to be furnished to the court for that purpose by the appellant, to the Fiscal for service on the respondent who is named by the appellant in his petition of appeal, or on his proctor if he was represented by a proctor in the court of first instance, and shall forward to the Supreme Court the petition of appeal together with all the papers and proceedings of the case relevant to the decree or order appealed against ; retaining, however, an office copy of the decree or order appealed against, for the purposes of execution if necessary. And such proceedings shall be accompanied by a certificate (form No. 128, First Schedule) from the secretary or clerk of the

Notice of appeal to be served on respondent by Fiscal.

Certificate of secretary.

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court, stating the dates of the institution and decision of the case, in whose favour it was decided, the respective days on which petition of appeal was filed and security given, and whether either the plaintiff sued or the defendant defended *in forma pauperis*. But where an appeal is taken from the decision of a Judge of the Supreme Court sitting alone as in section 37 of the Courts Ordinance provided, the Registrar of such court shall, after doing all acts and things necessary to be done by such secretary or clerk as aforesaid preparatory to forwarding proceedings in appeal to the Supreme Court as in this section provided, proceed in manner in section 768 prescribed.

(2) The Fiscal's return to the process issued under this section shall immediately upon being received by the court of first instance be transmitted to the Supreme Court, but where the appeal is from the decision of a Judge of the Supreme Court so sitting alone as in the last-mentioned Ordinance provided, such return shall be made to and filed by the Registrar with the proceedings in appeal.

And when a petition of appeal has been so received, but the petitioner has failed to give the security and to make the deposit as in this section provided, then the petition of appeal shall be held to have abated, and the further proceedings in this section prescribed shall not be necessary.

(3) In the case of any mistake, omission, or defect on the part of any appellant in complying with the provisions of this section, the Supreme Court, if it should be of opinion that the respondent has not been materially prejudiced, may grant relief on such terms as it may deem just.

Security to be by bond and with surety.

757. The security to be required from a party appellant shall be by bond (form No. 129, First Schedule) with one or more good and sufficient surety or sureties, or shall be by way of mortgage of immovable property or deposit and hypothecation by bond of a sum of money sufficient to cover the cost of the appeal and to no greater amount.

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Language and form of appeal.

758. (1) The petition of appeal shall be distinctly written in the English language upon good and suitable paper, and shall contain the following particulars :—

(*a*) the name of the court in which the case is pending ;

(*b*) the names of the parties to the action ;

(*c*) the names of the appellant and of the respondent ;

(*d*) the address to the Supreme Court ;

(*e*) a plain and concise statement of the grounds of objection to the judgment, decree, or order appealed against—such statement to be set forth in duly numbered paragraphs ;

(*f*) a demand of the form of relief claimed.

In deciding appeal, court not confined to grounds set forth by appellant.

(2) The court in deciding any appeal shall not be confined to the grounds set forth by the appellant, but it shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of being heard on that ground.

Where petition to be rejected.

759. If the petition of appeal is not drawn up in the manner in the last preceding section prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended, within a time to be fixed by the court ; or be amended then and there. When the court rejects under this section any petition of appeal, it shall record the reasons of such rejection. And when any petition of appeal is amended under this section, the Judge, or such officer as he shall appoint in that behalf, shall attest the amendment by his signature.

When one of several plaintiffs or defendants may appeal against whole decree.

760. Where there are more plaintiffs or more defendants than one in an action, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

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CHAPTER LIX

Of The Execution Of Decrees Under Appeal

Execution pending appeal may be stayed before expiration of appealable time by the court which passed the decree.

761. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree ; but, if any application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the court which passed the decree may for sufficient cause order the execution to be stayed :

Provided that no order shall be made under this section unless the court making it is satisfied—

(*a*) that substantial loss may result to the party applying for stay of execution unless the order is made ;

(*b*) that the application has been made without unreasonable delay ; and

(*c*) that security is given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

Application how to be made.

762. Every application to the court for stay of execution under the immediately preceding section must be made by petition, in which the judgment-creditor shall be named respondent.

Application for execution of decree pending appeal must be on notice to debtor ; and execution will only be granted on security.

763. In the case of an application being made by the judgment-creditor for execution of a decree which is appealed against, the judgment-debtor shall be made respondent.

If, on any such application, an order is made for the execution of a decree against which an appeal is pending, the court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Supreme Court.

And when an order has been passed for the sale of immovable property in execution of a decree for money, and an appeal is pending against such decree,

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the sale shall, on the application of the judgment-debtor, be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the court which passed the decree thinks fit.

Exception in favour of the Crown.

764. No such security in appeal shall be required from the Crown or (when Government has undertaken the defence of the action) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

CHAPTER LX

Of Appeal Notwithstanding Lapse Of Time

Appeal notwithstanding lapse of time.

765. It shall be competent to the Supreme Court to admit and entertain a petition of appeal from a decree of any original court, although the provisions of sections 754 and 756 have not been observed :

Provided that the Supreme Court is satisfied that the petitioner was prevented by causes not within his control from complying with those provisions ; and

Provided also that it appears to the Supreme Court that the petitioner has a good ground of appeal, and that nothing has occurred since the date when the decree or order which is appealed from was passed to render it inequitable to the judgment-creditor that the decree or order appealed from should be disturbed.

Petition therefor,

766. In every such petition of appeal as is the subject of the last section the judgment-creditor shall be named respondent, and the petition shall be accompanied by a certified copy of the decree or order appealed from, and of the judgment on which it is based, as well as by such affidavits of facts and other materials as may constitute prima facie evidence that the conditions precedent to the petition of appeal being entertained, which are prescribed in the last section, are fulfilled. Also, every such petition shall be presented immediately to the Supreme Court in its appellate jurisdiction, and in addition to the prayer for relief in respect to the subject of appeal it shall contain a prayer that the appeal may be admitted notwithstanding the lapse of time.

to be presented immediately to the Supreme Court.

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Order of Supreme Court thereon.

767. On any such petition being forwarded to the Supreme Court, the question whether or not it ought to be admitted shall be a preliminary question to be determined forthwith on summary procedure, according to the provisions of alternative (*b*), section 377, and for this purpose the jurisdiction of the court may be exercised by a single Judge thereof. If upon the hearing of this question the Supreme Court is satisfied that the conditions prescribed in section 765 are fulfilled, it may order the petition of appeal to be admitted upon such conditions as to costs, security, or otherwise as to the court may seem just, and in the event of its doing so the Registrar shall, where the court of first instance is the Supreme Court, proceed as in section 768 provided ; but where such court is a District Court or Court of Requests, the Supreme Court shall issue a mandate to such court, directing it to forward to the Supreme Court the record of the proceedings of the action in which the decree or order appealed from was passed ; if, however, on the contrary, the court is not satisfied that the said conditions are fulfilled, it shall dismiss the petition and make such order as to costs as may seem to the court just.

CHAPTER LXI

Hearing Of The Appeal

Hearing of appeal.

768. When the petition of appeal has been preferred to the Supreme Court in manner in section 756 prescribed, or in the event of the petition of appeal being presented immediately to the Supreme Court, when the order for its admission has been made, the Registrar shall, unless the court otherwise orders, number the petition and enter it in the roll of causes for hearing, according to the standing orders of court for the time being relative to the course of business of the court ; and the matter of the appeal shall come on for hearing before the court in the order of its position on that roll, and according to the said standing orders without further notice to the parties concerned :

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Provided that a list of the appeals pending before the court in their order on the roll, or of a sufficient number of them, be daily kept suspended upon the doors of the court, and that no appeal shall come on for hearing until it has been in that list in the case of appeals from District Courts for fourteen, or in the case of appeals from Courts of Requests for seven days ; and

Provided also that the court may of its own motion or on the application of a party concerned, and with reasonable notice to the parties, accelerate or postpone the hearing of an appeal, upon any such terms as to the prosecution or the costs of the appeal, or otherwise, as it may think fit.

Appellant and respondent to be heard.

769. (1) When the appeal comes on for hearing, the appellant shall be heard in support of the appeal. The court shall then, if it does not at once dismiss the appeal or affirm the decree appealed from, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

(2) If the appellant does not appear either by counsel or in person, and has not been allowed to appeal *in forma pauperis,* the appeal may in the discretion of the court be dismissed :

When party may obtain rehearing of appeal.

Provided that on sufficient cause shown it shall be lawful for the Supreme Court to reinstate, upon such terms as the court shall think fit, any appeal that has been dismissed for non-appearance.

Power of court to adjourn hearing.

770. If at the hearing of the appeal the respondent is not present and the court is not satisfied upon the affidavits returned by the Fiscal, or other evidence, that the notice of appeal was duly served upon him or his proctor, as prescribed in section 756, or if it appears to the court at such hearing that any person who was a party to the action in the court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the court may adjourn the hearing to a future day, to be fixed by the court, and direct that such person be made a respondent, and may issue the requisite notices of appeal to the Fiscal for service.

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Right of respondent to object to decree.

771. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to rehear the appeal ; and if he satisfies the court that the notice of appeal was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the court may rehear the appeal on such terms as to costs or otherwise as the court thinks fit to impose upon him.

Rights of respondent at hearing.

772. (1) Any respondent, though he may not have appealed against any part of the decree, may, upon the hearing, not only support the decree on any of the grounds decided against him in the court below, but take any objection to the decree which he could have taken by way of appeal, provided he has given to the appellant or his proctor seven days' notice in writing of such objection.

(2) Such objection shall be in the form prescribed in paragraph (*e*) of section 758.

Power of court to dismiss the appeal, affirm, vary, or set aside the decree, or direct new trial, &c.

773. Upon hearing the appeal it shall be competent to the Supreme Court to exercise any of the powers in that behalf conferred upon it by section 37 of the Courts Ordinance, or to order a new or further trial on the ground of discovery of fresh evidence subsequent to the trial.

Judgment of the court.

774. (1) On the termination of the hearing of the appeal, the Supreme Court shall either at once or on some future day, which shall either then be appointed for the purpose, or of which notice shall subsequently be given to the parties or their counsel, pronounce judgment in open court ; and if the bench hearing the appeal is composed of more than one Judge, each Judge may, if he desires it, pronounce a separate judgment.

(2) The judgment, which shall be given or taken down in writing, and shall be signed and dated by the Registrar, shall, unless the decree or order appealed

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from is simply affirmed, or the petition of appeal is dismissed, state—

(*a*) the points for determination ;

(*b*) the decision of the Judge or Judges thereon ;

(*c*) the reasons which have led to the decision ;

(*d*) the relief, if any, to which the appellant is entitled on the appeal in consequence of the decision.

When appeal may be reheard.

775. (1) When the bench hearing the appeal is composed of two Judges, and the Judges composing the bench do not agree as to the decree which should be passed by the court on the appeal, then the appeal shall be reheard by three Judges of the said court on a day specially appointed for the purpose, of which notice shall be given to the parties or their counsel. And after such rehearing any Judge dissenting from the decree, which the majority consider ought to be passed on appeal, shall state in writing the decree which he thinks ought to be made, and shall state his reasons for the same :

Provided that in the case of appeals from the decision of a Judge of the Supreme Court sitting alone, as in the Courts Ordinance provided, when the two Judges hearing the appeal do not agree, the original judgment shall stand affirmed.

(2) When all the Judges of which the bench hearing the appeal is composed are unanimous in regard to the decree which ought to be passed, the Judges shall pronounce the judgments in order of seniority, commencing with the Judge who is senior in rank, but, if otherwise, they shall pronounce their judgments in the reverse order.

Decree of the Supreme Court ;

776. (1) The decree of the Supreme Court shall be passed in accordance with the judgments of the Judges of which the bench hearing the appeal is composed, if they are unanimous in regard to it, but, if otherwise, in accordance with the judgments of the majority of them. It shall bear date the day on which the judgment

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was pronounced, and shall contain the following particulars :—

how framed ;

(*a*) the heading "In the Supreme Court";

(*b*) the court number and title of the appeal ;

(*c*) the names of the parties ;

(*d*) the names of the appellant and of the respondents cited ;

(*e*) the parties present and heard ;

(*f*) a clear specification of the order made and relief granted or other determination of the appeal.

(2) The decree shall also state by what parties, and in what proportions, the costs of the action are to be paid.

decree to be sealed ;

(3) The decree shall be sealed with the seal of the court.

after sealing of decree proceedings to be returned to court of first instance.

(4) As soon as the decree is sealed all the proceedings in the case sent up to the Supreme Court on appeal (together with the petition of appeal and order thereon, if any, a copy of the judgment or judgments pronounced on appeal, and the decree of the Supreme Court) shall be forthwith returned to the court of first instance ; which shall conform to and execute such decree in all particulars.

Execution of the decree passed in appeal.

777. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this Chapter desires to obtain execution of the same, he shall apply to the court which passed the decree against which the appeal was preferred ; and such court shall proceed to execute the decree passed in appeal, according to the rules herein before prescribed for the execution of decrees in an action.

CHAPTER LXII

Of Pauper Appeals

Pauper appeals.

778. Any person entitled under this Ordinance or any other law to prefer an appeal, who is unable to pay for the stamps required for the petition of appeal, may, on

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an application for that purpose made to the Supreme Court in accordance with the rules herein before prescribed for applications for the admission of an appeal notwithstanding lapse of time, so far as the same are applicable, be allowed to appeal as a pauper :

Provided that the court shall reject the application unless upon a perusal thereof, and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed from is erroneous or unjust ; and

Provided further, that the question as to the pauperism of the applicant shall be inquired into and determined by the Supreme Court in the same manner as is prescribed for the case of an application in the court of first instance to be allowed to sue as a pauper ; and

Provided lastly, that if the applicant was allowed to sue as a pauper in the court against whose decree the appeal is made, no further inquiry into his pauperism shall be necessary unless the Supreme Court sees special cause to direct such inquiry.

PART IX

OF SUMMARY PROCEDURE IN RESPECT OF CONTEMPTS OF COURT

CHAPTER LXV *

Summary procedure in case of contempt.

792. In all courts the summary procedure to be followed for the exercise of the special jurisdiction to take cognizance of and to punish summarily offences of contempt of court, and offences declared by this Ordinance to be punishable as contempts of court, shall be that which is prescribed in the sections next immediately following.

Summons to accused.

793. The court shall issue a summons to the accused person in the form No. 132 in the First Schedule or to the like effect, which summons shall state shortly

* Chapters LXIII and LXIV—sections 779 to 791 (both inclusive)—repealed by Ordinance No. 31 of 1909.

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the nature of the alleged offence and the information or grounds upon which the summons is issued, and shall require the accused person to appear before the court on a day named in the summons to answer the charge.

When may court issue warrant simultaneously with summons.

794. It shall be competent to the court simultaneously with issuing such summons, or at any time after such summons has been issued, if it has reason to believe that the attendance of the accused person at the time appointed in the summons to answer the charge cannot otherwise be secured, to issue a warrant for his arrest in the form No. 133 in the First Schedule or to the like effect, which warrant shall recite the issuing of the summons, and the day appointed therein for the hearing of the charge, and shall command that the accused person after arrest be kept in custody until that day, and be then brought before the court to answer the charge in the summons:

Provided that the person arrested shall at any time after arrest be enlarged upon sufficient security, to an amount endorsed on the warrant by the court, either of the accused person's own bond or that of another person, for his appearance in court on the day named in the summons, being furnished to the officer in whose custody he is.

Judge to record minute of facts observed by him.

795. When the information upon which the charge is based is furnished to the court, either wholly or in part, by the personal observation of the Judge of the accused person's behaviour and language in his presence, the Judge shall at the time record a minute of the facts so observed by him, which shall be admissible as evidence at the hearing of the charge, and in such case no such summons as in section 793 is mentioned shall be necessary, but the accused person may be forthwith committed to jail or admitted to bail as in the last preceding section provided, and all further steps shall be taken in manner herein provided, as though such summons or summons and warrant as aforesaid had been issued.

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On day of hearing court may ask accused if he admits truth of charge.

796. On the day appointed by the court for the hearing of the charge, or on any subsequent day to which the hearing may have been adjourned in consequence of the previous non-attendance of the accused person, the court shall commence the hearing by asking the accused person whether or not he admits the truth of the charge ; and if he does not admit the truth of the charge, the court shall proceed to take evidence (if any) which may be necessary in addition to the court minute under section 795 to establish the charge ; and also to take the accused person's statement and any evidence which he may offer in answer to the charge.

Form of the conviction and sentence thereon.

797. (1) If the accused person admits the charge, or if after taking the evidence on both sides and considering the court minute and hearing the accused person's explanation the court finds the accused person guilty of the charge, it shall make out a conviction in the form No. 134 in the First Schedule or to the like effect, which shall recite the materials on which the conviction is founded, and adjudicate upon the material facts of the accused person's behaviour and language, with so much of the surrounding circumstances as cause these to constitute the offence of contempt of court. And the sentence passed by the court shall be recorded on this conviction.

When may court dismiss charge.

(2) If the court finds the accused person not guilty of the charge laid, it shall dismiss the charge, and shall make and record an order to that effect.

Appeal to Supreme Court.

798. An appeal shall lie to the Supreme Court from every order, sentence, or conviction made by any court in the exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of contempt of court, and of offences by this Ordinance made punishable as contempt of court ; and the procedure on any such appeal shall follow the procedure laid down in the Criminal Procedure Code regulating appeals from orders made in the ordinary criminal jurisdiction of District and Magistrates' Courts.

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Procedure for carrying out sentence of court in case of conviction for contempt.

799. Every sentence of fine or imprisonment passed by a court in exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of, contempt of court, and offences by this Ordinance made punishable as contempt of court, shall be carried into effect in the same manner and according to the same procedure as is provided in the Criminal Procedure Code for carrying into effect sentences of fine or imprisonment passed by any court in the exercise of its ordinary criminal jurisdiction.

Sentences to be imposed under this Chapter.

800. The following sentences of fine or imprisonment, as the case may be, may be imposed on conviction for contempt under this Chapter by the following courts respectively, namely :—

(*a*) by the Supreme Court—imprisonment, either simple or rigorous, until the contempt is purged, or for such period as the court directs, and fine not exceeding five thousand rupees in addition thereto or in lieu thereof ;

(*b*) by a District Court—fine not exceeding one thousand rupees, or imprisonment, either simple or rigorous, for a period not exceeding six months ;

(*c*) by a Court of Requests—fine not exceeding one hundred rupees, or imprisonment, either simple or rigorous, for a period not exceeding three months.

PART X

SPECIAL PROCEDURE FOR COURTS OF REQUESTS

CHAPTER LXVI

Courts Of Requests

GENERAL

Rules for Courts of Requests.

801. The following special rules as to procedure in Courts of Requests shall be taken as limiting and controlling the general provisions herein before contained,

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but so far only as any such provisions are either expressly or impliedly applicable to such courts. Such general provisions shall apply to Courts of Requests in all respects whenever they are not inconsistent with the special rules in this Chapter contained ; but where there is any such inconsistency the special rules herein contained shall apply.

PLEADINGS

Pleadings.

802. The pleadings in Courts of Requests shall be limited to the following :—

(*a*) the plaint of the plaintiff ;

(*b*) the answer and claim in reconvention (if any) of the defendant ;

(*c*) the plaintiff's reply to the defendant's claim in reconvention.

But where there is no claim in reconvention there shall be no further pleadings beyond the answer.

Plaint to be numbered.

803. The plaint, or statement by way of plaint, shall bear the serial number of the court in the order in which, and the date of the day and year on which, it was filed, and shall state the names and residences of the parties.

Plaint to state cause of action.

804. The plaint must state in a plain and direct manner the facts constituting the cause of action.

What causes of action may be joined.

805. The plaintiff may unite in the same plaint two or more causes of action when they all arise—

(1) out of the same transaction or transactions connected with the same subject of action ; or

(2) out of contract express or implied.

But it must appear on the face of the plaint that all the causes of action so united are consistent with each other, that they entitle the plaintiff to the same kind of relief, and that they affect all the parties.

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Summons to issue.

806. Upon such plaint or statement being filed as aforesaid the chief clerk shall, by a note thereon, appoint a day for the appearance of the defendant, and shall inform the plaintiff or his proctor or advocate thereof ; and shall also issue a summons for the appearance of the defendant, stating therein the names and residences of the parties, the substance of the claim, and the number of the case. Every such summons shall be in the form No. 16 in the First Schedule.

SUMMONS

Of the transmission of the summons.

807. All summonses, orders, and other process issuing from any Court of Requests shall be signed by the chief clerk of the court, and shall be transmitted to any Fiscal or Deputy Fiscal throughout Ceylon for service or execution :

Provided that where it shall be made to appear to the Commissioner that service of any summons, order, or process (excepting writs of execution and of possession) may be more conveniently or speedily effected otherwise than by transmitting the same to a Fiscal or Deputy Fiscal, it shall be lawful for the Commissioner, by endorsement on any such summons, order, or process, to direct that the same may be served by any person named therein.

Of the service of summons.

808. Sections 59 to 71, both inclusive, and Chapter XXIII of this Ordinance shall apply to the service, return, and proof of service of summons of the Courts of Requests, so far as they are not inconsistent with the provision in the last preceding section contained.

PROCEEDINGS ON APPEARANCE

The defendant to appear and admit or deny the claim.

809. (1) At the place and on the day specified in the summons the defendant shall be called upon to admit or deny the plaintiff's claim.

If the defendant admits the claim.

(2) If the defendant shall admit the claim, the Commissioner shall enter such admission on the record in the form No. 135 in the First Schedule and shall require the defendant to sign the same :

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Provided that it shall be lawful for a defendant, who cannot conveniently attend the court, to forward his admission to the chief clerk, signed by himself in the presence and under the attestation of a Justice of the Peace or notary public ; and upon the entry or receipt of such admission the Commissioner shall enter judgment for the plaintiff accordingly.

If the defendant denies the claim.

(3) If the defendant shall deny the claim, he shall be called upon to plead to the same forthwith, or within such time as the court on cause shown may allow ; and he shall either state his defence orally to the Commissioner as in section 73 provided, who shall enter the substance thereof by way of answer on a separate sheet of paper in the record upon a proper stamp being supplied by the defendant, or he shall deliver to the chief clerk an answer in writing duly stamped, setting out his defence and any claim in reconvention which he may have against the plaintiff. Such answer shall be signed by the defendant, his proctor, or advocate, and shall be dated and forthwith filed of record by the chief clerk.

Examination of parties.

810. The parties may at any stage of the proceedings be examined by the Commissioner with the view of ascertaining the points at issue between them and of dispensing with any unnecessary evidence.

Of the claim in reconvention.

811. If the defendant pleads a claim in reconvention with his answer, the plaintiff shall be called upon to admit or deny the same. If he denies the claim in reconvention, the plaintiff shall be required forthwith, or at such further time as the Commissioner shall fix, to plead thereto, and the provisions of subsection (3) of section 809 shall, so far as applicable, apply, *mutatis mutandis,* to the plaintiff's reply to the defendant's claim in reconvention :

Of the reply thereto.

Provided, however, that in no case shall the plaintiff set out in his reply new matter amounting to a new cause of action if he could have pleaded the same in his original plaint.

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Of entering admission.

812. If the plaintiff admits the claim in reconvention, the Commissioner shall enter such admission of record and shall require the plaintiff to sign the same.

MISCELLANEOUS PROVISIONS RELATING TO PLEADINGS

Action founded upon account or instrument for payment of money.

814.* For the purpose of setting forth a cause of action, or claim in reconvention founded upon an account or upon an instrument for the payment of money only, it is sufficient for the party to deliver the instrument, or a copy of the account, to the court, and to state that there is due to him thereupon from the adverse party a specified sum which he claims to recover or set off.

Immaterial variance to be disregarded.

815. A variance between an allegation in a pleading and the proof shall be disregarded as immaterial, unless such proof discloses a new cause of action, or the court is satisfied that the adverse party has been misled thereby to his prejudice.

Amendment of pleadings.

816. The court shall, upon application, allow a pleading to be amended at any time before trial, or during the trial, if substantial justice will be promoted thereby. Where a party amends his pleading after joinder of issue, and it is made to appear to the satisfaction of the court that an adjournment is necessary to the adverse party in consequence of the amendment, an adjournment shall be granted. The court may also in its discretion, as a condition of allowing an amendment, require the payment of costs to the adverse party.

Consequence of neglect to plead claim in reconvention.

817. Where the defendant in an action for breach of a contract neglects to interpose a claim in reconvention consisting of a cause of action in his favour for a like cause, which might have been allowed to him at the trial of the action, he and every person deriving title thereto through or from him are for ever thereafter precluded from maintaining an action to recover the same.

* Section 813 repealed by Ordinance No. 12 of 1895.

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Cases to which section 817 does not apply.

818. The prohibition in the last section contained does not extend to the following cases :—

(*a*) where the amount of the claim in reconvention is over three hundred rupees ;

(*b*) where the claim in reconvention consists of a judgment rendered before the commencement of the action in which it might have been interposed ;

(*c*) where the claim in reconvention is for unliquidated damages ;

(*d*) where the claim in reconvention consists of a claim upon which another action was pending at the time the action was commenced ;

(*e*) where judgment is taken against the defendant without personal service of the summons upon him, or an appearance by him.

Judgment upon claim in reconvention.

819. Where a claim in reconvention is established which equals the plaintiff's claim, the judgment must be in favour of the defendant ; where it is less than the plaintiff's claim, plaintiff must have judgment for the residue only ; where it exceeds the plaintiff's claim, the defendant must have judgment for the excess, or so much thereof as is due from the plaintiff.

FIXING DAY OF TRIAL

Fixing the cause for trial.

820. (1) Immediately after the defendant's oral defence has been recorded or his written answer received, as provided by subsection (3) of section 809, or where there is a claim in reconvention immediately after the same has been pleaded to as provided by section 811, the Commissioner shall fix a day for the trial of the action, and shall enter a minute thereof on the record ; and all actions fixed for trial shall be entered in their proper order in the trial roll to be for that purpose kept by the chief clerk, and shall be taken up for trial in the order in which they are so entered :

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Provided, however, that it shall be competent for the Commissioner, upon cause shown, to take up any action and try the same out of its turn.

List of witnesses.

(2) The parties shall, as soon as the day of trial is fixed, file a list of their witnesses and of the documents which they propose to read in evidence at the trial, and no witness shall be examined and no document shall be received in evidence at the trial without the special leave of the Commissioner unless the name of such witness and the description of such document appears in such list.

ADJOURNMENTS

Of adjournment at the instance of the parties.

821. Whenever the Commissioner shall be satisfied by affidavit or otherwise that either party is not ready to proceed to trial by reason of the absence of any material witness (such witness not being kept away by collusion), or for other sufficient cause, it shall be lawful for the Commissioner to adjourn the trial of the action to a time fixed by the Commissioner, once or oftener, upon such terms as the circumstances of the case may render necessary :

Provided that no adjournment shall be allowed for a longer period than six weeks, except with the consent of both the parties ; but the mere consent of the parties or of their proctors or advocates shall not be deemed sufficient ground for granting an adjournment unless good cause for such adjournment to the satisfaction of the court be likewise shown.

The court may upon adjournment, order examination of witnesses.

822. Upon granting an application for adjournment the Commissioner may in his discretion, or upon the application of either party, direct that any witness who is in attendance be then examined, and the testimony of a witness so examined shall be recorded, and may be read at the trial as the evidence of such witness.

OF DEFAULT OF APPEARANCE

Proceedings on default of appearance of plaintiff.

823. (1) If upon the day specified in the summons or upon any day fixed for the hearing of the action the plaintiff shall not appear or sufficiently

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excuse his absence, the plaintiff's action may be dismissed :

Provided that if the defendant when called upon under section 809 shall admit the claim of the plaintiff, the Commissioner shall enter judgment for the plaintiff according to law.

On default of appearance of defendant.

(2) If upon the day specified in the summons or upon any day fixed for the hearing of the action the defendant shall not appear or sufficiently excuse his absence, the Commissioner, upon due proof of service of the summons, notice, or order requiring such appearance, may enter judgment by default against the defendant :

Provided, however, that in all cases wherein the title to, interest in, or right to, the possession of land shall be in dispute, and in any other case in which the Commissioner shall deem it necessary or expedient to hear evidence in support of the plaintiff's claim, he shall order him to adduce such evidence on any day to be fixed for that purpose ; and after hearing such evidence the Commissioner shall give such judgment on the merits as justice shall require, and without reference to the default that has been committed.

Judgment by default may be opened up in certain cases.

(3) If the defendant shall within a reasonable time, after such judgment or order, by affidavit or otherwise, satisfy the Commissioner that he was prevented from appearing in due time by accident, misfortune, or other unavoidable cause, or by not having received sufficient information of the proceedings, and that he did not absent himself for the purpose of avoiding service of the summons or notice, and that he has a good and valid defence on the merits of the case, then the Commissioner may set aside such judgment or order and any proceedings had thereon, and may admit the defendant to proceed with his defence upon such terms and notice to the plaintiff as the Commissioner may think fit.

If neither party appears action to be dismissed.

(4) If upon the day specified in the summons or upon any day fixed for the hearing of the action neither party appears when the case is called on, the Commissioner shall enter judgment dismissing the plaintiff's action, but without costs.

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(5) When an action has been dismissed under the provisions of subsection (1) or subsection (4) of this section, and the plaintiff has by affidavit or otherwise satisfied the Commissioner that he was prevented from appearing by accident, misfortune, or other unavoidable cause, the Commissioner may grant to the plaintiff permission to institute a fresh action upon payment into court of the amount (if any) due to the defendant as costs in the previous action. Plaintiff may be granted permission to institute a fresh action.

(6) No appeal shall lie against any judgment entered under this section for default of appearance, anything in the Courts Ordinance, or in this Code contained to the contrary notwithstanding. No appeal from judgment by default.

(7) Sections 84 to 88, both inclusive, shall not apply to Courts of Requests. Sections 84 to 88 not to apply to Courts of Requests.

INTERROGATORIES

824. Sections 94 to 100, both inclusive, shall not apply to Courts of Requests. Sections 94 to 100 not to apply to Courts of Requests.

OF THE ATTENDANCE OF WITNESSES

825. The process of Courts of Requests for compelling the attendance of witnesses shall be by summons, with or without a clause requiring the production of documents in their possession or control ; every such summons shall be substantially in the form No. 136 in the First Schedule. The attendance of witnesses.

826. The provisions of Chapter XVII of this Ordinance, exclusive of section 121, shall apply to Courts of Requests. Chapter XVII, exclusive of section 121, to apply to Courts of Requests.

OF THE TRIAL

827. On the day of trial the Commissioner shall hear and determine the action according to law. The trial.

828. A full and complete record shall be kept of the examination of the parties, the evidence of the witnesses, and of all other proceedings had in the action. Record of the proceedings.

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Extent of application of Chapter XIX to Courts of Requests.

829. The provisions of Chapter XIX of this Ordinance shall, so far as they are not inconsistent with the provisions in this Chapter contained, apply to Courts of Requests.

Action by summary procedure on liquid claims.

829A. (1) In any action where the claim is for a debt or liquidated demand in money arising upon a bill of exchange, promissory note, or cheque or instrument or contract in writing for a liquidated amount of money, or on a guarantee where the claim against the principal is in respect of such debt or liquidated demand, bill, note, or cheque, and the plaintiff desires to proceed by way of summary procedure, he may institute such action in manner provided in Chapter LIII of this Ordinance, and the provisions of that Chapter, exclusive of section 710, shall, for the purposes of any such action, apply to Courts of Requests.

Saving clause.

(2) Except as provided in Chapter LIII of this Ordinance, the procedure in any such action shall be the same as the procedure in actions instituted under this Chapter.

Extending provisions of section 655 to section 705.

(3) The provisions of section 655 in respect of the affidavit of the plaintiff required by sections 650 and 653 shall extend to affidavits required by section 705 in actions instituted under Chapter LIII of this Ordinance in District Courts and Courts of Requests.

OF THE JUDGMENT

Judgments and decrees.

830. Judgments in Courts of Requests cases shall be pronounced in open court, reduced into writing on the record, and be signed by the Commissioner ; and the provisions of Chapter XX of this Ordinance shall, so far as they are not inconsistent with the provisions in this Chapter contained, apply to Courts of Requests.

Appeal and stay of execution pending appeal.

831. The provisions of Chapters LVIII, LIX, LX, LXI, and LXII, with reference to appeals and the stay of execution pending appeal, shall, so far as they are not inconsistent with the provisions of this Chapter, apply to Courts of Requests.

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EXECUTIONS

Executions.

832. (1) The provisions of Chapter XXII of this Ordinance shall apply to all executions from Courts of Requests, so far as they are not inconsistent with the provisions in this Chapter contained.

Money realized in execution.

(2) Money which has been realized in execution of a decree shall be paid out to the decree-holder on his *ex parte* application, provided that no notice has been received by the court of any claim to such money by any other person or persons.

TAXATION OF COSTS

Taxation of costs.

833. Before any writ of execution shall be issued as aforesaid, the chief clerk shall, at the request of the party applying for the writ, forthwith tax the costs and expenses of the action as against the adverse party, and shall enter a note of such taxation and of the amount thereby allowed on the record of the case; and such costs and expenses shall in all cases be taxed and payable according to the rates specified in the Second Schedule.

APPEALS

Appeals.

833A. (1) There shall be no appeal from any final judgment or any order having the effect of a final judgment, pronounced by the Commissioner of any Court of Requests in any action for debt, damage, or demand, unless upon a matter of law, or upon the admission or rejection of evidence, or with the leave of the Commissioner, anything in section 78 of the Courts Ordinance notwithstanding.

(2) In the event of the Commissioner refusing to grant leave to appeal, it shall be lawful for the party aggrieved thereby, within seven days from the date of such refusal, to file in the Court of Requests a written application by petition to the Supreme Court for leave to appeal. Such application shall be forthwith forwarded by the Commissioner to the Supreme Court, together with all papers and proceedings of the case, and a record of his grounds and reasons for refusing to

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grant leave to appeal, and shall be disposed of *ex parte* by a Judge of the Supreme Court. If upon hearing the application the Judge shall allow the appeal, he shall issue an order to the Commissioner to admit a petition of appeal, upon such conditions and within such time as to the Judge shall seem meet.

(3) Such application shall be liable to the stamp duty, payable or leviable in respect of petitions of appeal in Courts of Requests under the provisions of Part II of Schedule A of the Stamp Ordinance, but when an appeal is allowed upon such application no further stamp duty shall be payable or leviable in respect of such petition of appeal.

(4) The stamp duty paid on the application for leave to appeal shall, for the purposes of taxation of costs, be treated as though it had been affixed to the petition of appeal.

CHAPTER LXVII

MISCELLANEOUS

Privilege from arrest of Judges, parties, proctors, and advocates.

834. No Judge, Magistrate, or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from his court. And where any matter is pending before a court having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto and their proctors and advocates shall be exempt from arrest under civil process while going to or attending such court for the purpose of such matter, and while returning from such court.

When may civil court send cases for investigation to Magistrate.

835. (1) When in a case pending before any court there appears to the court sufficient ground for sending for investigation to a Magistrate a charge of any such offence as is described in sections 190, 193, 196, 197, 202, 203, 204, 205, 206, 207, 452, 459, 462, 463, 464, or 466 of the Penal Code, which may be made in the course of any other action or proceeding or with respect to any document offered in evidence in the case, the court may

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cause the person accused to be detained till the rising of the court, and may then or sooner send him in custody to the Magistrate or take sufficient bail for his appearance before the Magistrate. The court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

(2) The Magistrate shall receive such charge and proceed with it according to law.

Warrant or arrest may be cancelled on ground of illness of party.

836. At any time after a warrant of arrest has been issued under this Ordinance the court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

Judgment-debtor under arrest may be released on ground of illness.

837. (1) When a judgment-debtor has been arrested under this Ordinance, the court may release him, if in its opinion he is not in a fit state of health to undergo imprisonment.

(2) When a judgment-debtor has been committed to jail, he may be released therefrom—

[§ 5, 41 of 1944.]

(*a*) by the Commissioner of Prison and Probation Services or by any two Visitors of the jail, on the ground of his suffering from any infectious or contagious disease ; or

(*b*) by the committing court or any court having jurisdiction in the place at which such jail may be situate, on the ground of his suffering from any serious illness.

Released judgment-debtor may be rearrested.

838. A judgment-debtor released under the last preceding section may be rearrested, but the period of his imprisonment shall not in the aggregate exceed six months.

Inherent powers of court saved.

839. Nothing in this Ordinance shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

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FIRST SCHEDULE

No. 1

[Section 10.]

FORM OF NOTICE OF MOTION FOR TRANSFER OF AN ACTION OR MATTER

In the Supreme Court of the Island of Ceylon

(*Title of the action, &c., showing in what court it is pending.*)

Take notice that the accompanying affidavit will be read and a motion made before the Honourable the Supreme Court at Colombo (*or as the case may be*) on the ———— day of ————, 19—, at ———— o'clock of the forenoon, or so soon thereafter as counsel may be heard, on the part of the defendant (*or as the case may be*) that this action (*or* prosecution, *or* matter) may be withdrawn from (*name the court or place in which the action, &c., is pending*) and may be transferred to (*name the court or place to which transfer is desired*) ; and that the plaintiff (*or as before*) may be ordered to pay to the applicant his costs of, and occasioned by, this application.

This ———— day of ————, 19—.

(*Signed*) ————,

(*Name and address of proctor or party giving notice.*)

To (*name and address of proctor or party to be served*).

(*Annex to this notice copy of the affidavit on which motion is to be made.*)

No. 2

[Section 10.]

FORM OF AFFIDAVIT IN SUPPORT OF MOTION FOR TRANSFER

(*For formal parts see No. 75.*)

1.—(*State proceedings in court of institution.*)

2.—(*Where the motion is for transfer to a court of inferior jurisdiction.*) The plaintiff's claim is for (*state nature and particulars of claim as furnished to defendant, and show that the action is within the jurisdiction of the court to which transfer is desired*).

3.—(*In the like case.*) The plaintiff has no visible means of paying my costs should judgment not be given for the said plaintiff.

4.—(*Show means of knowledge.*)

5.—(*Where the motion is for transfer to a court of superior jurisdiction.*) I am advised, and verily believe, that upon the trial of the said action several difficult questions of law are likely to arise, and amongst others the following : (*here state the questions likely to arise, and verify the facts raising them*).

6.—(*State special reasons, if any, for transfer.*)

7.—(*Show means of knowledge.*)

8.—(*Where defendant moves.*) I have a good defence to this action upon the merits, and this application is not made for the purpose of embarrassing or delaying the plaintiff, but bona fide and for the purpose of obtaining a proper trial of the said action.

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No. 3

FORM OF NOTICE TO A PERSON WHO THE COURT CONSIDERS SHOULD BE JOINED AS A CO-PLAINTIFF [Section 18.]

(*Title.*)

To ————, of ————.

Whereas the above-named (*plaintiff*) has instituted the above-named action against the above-named (*defendant*) for ————:

And whereas it appears to this court necessary that you should be added as a plaintiff in the said action, in order to enable this court effectually and completely to adjudicate thereon:

Take notice that you should on or before the ———— day of ————, 19—, signify to this court whether you consent to be so added.

This ———— day of ————, 19—.

(*Signed*)————, District Judge.

No. 4

FORM OF AUTHORITY FOR THE APPEARANCE OF ONE OR MORE OF SEVERAL PLAINTIFFS OR DEFENDANTS ON BEHALF OF THE OTHER OR OTHERS OF THEM [Section 23.]

(*Title.*)

I, ————, of ———— (*or*, We, ————, of ————), plaintiff (*or* defendant, *or* plaintiffs, *or* defendants) in the above-named action, do hereby appoint ————, of ———— (and ————, of ————), who is (are) also (plaintiff *or* defendant) in the said action, to appear, plead, and act for me (us) therein.

Witness my (our) hand (hands) this ———— day of ————, 19—.

(*Signed*)————.

Address ————.

No. 5

FORM OF GENERAL POWER OF ATTORNEY [Section 25.]

I, ————, of ————, do hereby constitute and appoint ————, of ————, my true and lawful attorney for me and in my name and on my behalf to appear, sue, or answer, and to receive all process in any action, appeal, or other judicial proceeding whatsoever in any court, and generally to act in all such proceedings in any way in which I might, if present, be permitted or called on to act.

Witness my hand this ———— day of ————, 19—.

(*Signed*)————.

Address ————.

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No. 6

[Section 27.] FORM OF APPOINTMENT OF A PROCTOR BY THE ATTORNEY-GENERAL

I, the undersigned, ————, Attorney-General of Ceylon, do hereby authorize and appoint ————, gentleman, one of the Proctors of the Supreme Court of the Island of Ceylon (*or* of the District Court of ————), to appear for me before the District Court of ———— in a certain action to be instituted in the said court in my name at the instance of the Crown against one ———— (*or* in a certain action instituted in the said court by one ———— against me as representing the Crown), wherein (*state what the action is*) to (sue *or* defend, *as the case may be*) and to represent the Crown therein, and generally to do and perform all such acts, matters, and things as may be necessary to be done and performed in and about the premises, and, if need be, to appeal from any judgment or order of the said District Court in the said action; hereby promising to ratify and confirm whatsoever the said proctor may lawfully do herein.

Given under my hand at ———— this ———— day of ————, 19—.

The address for service of the said proctor is at ————.

Signature ————.

No. 7

[Section 27.] FORM OF APPOINTMENT OF A PROCTOR

Know all men by these presents that I, *A. B.*, of ———— (*or* we, *A. B.*, of ————, and *C. D.*, of ————), have nominated, constituted, and appointed, and do hereby nominate, constitute, and appoint ————, Proctor of the Honourable the Supreme Court of the Island of Ceylon (*or* of the District Court of ————, *as the case may be*), to be ———— proctor, and for ———— and in ———— name and behalf before the ———— to appear and therein to (sue *or* defend, *as the case may be, showing what the action is*).

And to receive and to take all moneys that may be paid to him by the said ———— in the said action, and to move for and obtain in his name any order or orders from the said court for any payments of any sum or sums of money that may be deposited therein in respect of ————, and to give all necessary receipts, releases, and discharges therefor. And if need be, to refer the case to the award and decision of arbitrators and to name an arbitrator for ————, and for that purpose to sign any motion, submission, or bond; or, if necessary, to allow and consent to a judgment being entered against ———— as to ———— said proctor shall appear fit and proper; and against any judgment, order, sentence, or decree interlocutory or final of the said ———— Court to appeal; and every bond or recognizance whatsoever necessary in the course of proceedings for the prosecution of such appeal for and in ———— name and as ———— act to sign, and upon any judgment or order of the said ———— Court to proceed to execution against the person and property of the said ————.

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And ——— do further authorize and empower ——— said proctor to take and use all lawful ways and means, and to do and perform all such acts, matters, and things as may be necessary in and about the premises which ——— being personally present might or could lawfully do, and, if necessary, one or more proctor or proctors, or an advocate or advocates, to appoint, and again at pleasure such appointment to revoke. And ——— further promise and agree to release all kinds of irregularities, and to ratify, confirm, and allow all and whatsoever the said proctor or his substitute or substitutes, or the said advocate or advocates, shall do herein.

Witness ——— hand at ——— this ——— day of ———, One thousand nine hundred and ———.

The address for service of the said proctor is at ———.

Signature ———.

No. 8

FORM OF REVOCATION OF SUCH APPOINTMENT [Section 27.]

(*Title.*)

Know all men by these presents that I, *A. B.*, of ——— (*or* we, *A. B.*, of ———, and *C. D.*, of ———), having received the leave of the above-named court in that behalf, do (and each of us doth) hereby revoke and cancel the paper writing filed in the above-named action, and dated (*&c.*), whereby I (we) have nominated and appointed ———, of ———, to be my (our) proctor (proctors) in the said action; and that the said ——— has (have) from this date ceased to be my (our) proctor (proctors) in the said action; and the said paper writing shall be henceforth of no force or effect.

The ——— day of ———, 19—.

———

(*Signed as the Proxy.*)

No. 9

FORM OF NOTICE TO APPOINT A NEW PROCTOR IN PLACE OF ONE CEASING TO ACT [Section 28.]

(*Title.*)

To *Y. Z.*, the defendant (*or* plaintiff) above named.

Take notice that you are hereby required to appoint another proctor in place of *A. B.*, your former proctor of record, who (died, *or* was removed *or* suspended, *or*) became incapable to act by reason of (*state reason, as the case may be*) on or about the ——— day of ———, 19— ; and cause notice of such new appointment to be given to the undersigned at the under-written address.

The ——— day of ———, 19—.

(*Signed*) ———, Party (*or* Proctor).

Address ———.

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No. 10

Section 28.] FORM OF NOTICE OF SUBSTITUTION OF NEW PROCTOR IN PLACE OF ONE CEASING TO ACT

(*Title.*)

To (*party or proctor issuing the last preceding notice*).

Take notice that the undersigned has been substituted (*or, where the party himself gives the notice,* that I, the said Y. Z., have substituted *name and address of new proctor*) in the place of *A. B.*, formerly proctor of record for (defendant *or* plaintiff) in the above-named action.

The ——— day of ———, 19—.

(*Signed*) ———, Party (*or* Proctor).

Address ———.

No. 11

[Section 30.] FORM OF APPOINTMENT OF AGENT TO ACCEPT SERVICE OF SUMMONS AND OTHER PROCESS (GENERAL AND SPECIAL)

(*Where the appointment is special, head with title of the action.*)

I, ———, of ———, do hereby constitute and appoint ———, of ———, my agent to receive on my behalf the service of all summonses and other processes in (any action, appeal, or other civil proceeding whatsoever in any court, *or where the appointment is special, substitute* in the above-named action).

Witness my hand this ——— day of ———, 19—.

The address for service of the said ——— is at ———.

(*Signed*) ———.

Address ———.

No. 12

[Sections 31 and 32.] WARRANT OR POWER OF ATTORNEY TO CONFESS JUDGMENT— AND DEFEASANCE THEREON

To *X. Y.*, Proctor of the Supreme Court (*or* of the District Court of ———), or to any other proctor of the same court.

These are to desire and authorize you, the proctor above named, or any other proctor of the said court, to appear for me, *C. D.*, of ——— (*or* for us, *C. D.*, of ———, and *E. F.*, of ———, or either of us), at any time in the ——— Court of ——— (*or as the case may be*) and to receive summons for me (*or* us, *or* either of us, *as the case is*) in an action for ——— rupees for money found to be due and payable from me (*or as before*) to *A. B.*, on an account stated between us (*or* on a bond made by me, the said *C. D.*, to *A. B.*, in the penal sum of ——— rupees, *or as the case is*) at the suit of the said, *A. B.*, his heirs, executors, or administrators, and thereupon to confess the same action or else to suffer judgment by default or otherwise to pass against me (*or as before*) therein and to be thereupon forthwith entered up

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against me (*or as before*) of record in the said court for the said sum, together with costs of action. And I (*or as before*), the said *C. D.* (and *E. F., and each of us*), do hereby further authorize and empower you, the said proctor, after the said judgment shall be entered up as aforesaid for me and in my name (*or as before,* for us and in our or either of our names), to sign and execute a good and sufficient release or releases in the law to the said *A. B.*, his heirs, executors, and administrators, of all and all manner of appeals or proceedings by way of appeal, and all benefit and advantage thereof, and defects and imperfections whatsoever had, made, committed, done, or suffered in, about, touching, or concerning the said judgment or any proceedings whatsoever in any way concerning the same. And for what you, the said proctor, shall do or cause to be done in the premises or any of them, this shall be to you a sufficient warrant and authority.

In witness whereof I (*or* we) have hereto set my hand (*or* our hands) the ——— day of ———, 19—.

(*Signed*) *C. D.*

Signed by the above-named *C. D.* in my presence. And I hereby declare myself to be proctor for the said *C. D.*, and that I subscribe my name as such his proctor ; and that I have read and explained the contents of the above-written warrant of attorney to the said *C. D.*, and that he, the said *C. D.*, appeared to understand the nature and effect thereof.

(*Signed*) *G. H.*, Proctor, ——— Court.

No. 13

FORM OF DEFEASANCE TO BE WRITTEN ON WARRANT OF ATTORNEY TO CONFESS JUDGMENT (WHEN REQUIRED) [Section 32.]

MEMORANDUM. The within warrant of attorney is given to secure the payment from the within-named *C. D.* to the within-named *A. B.* of ——— rupees, with interest at ——— *per centum* per annum, on the ———day of ———, 19— (*or, if by instalments :* on the days and in manner following ; that is to say, ——— rupees, part thereof, with interest for the same, on ——— ; ——— rupees, other part thereof, with interest for the same, on ——— ; and ——— rupees, residue thereof, with interest for the same as aforesaid, on ——— ; *and if a bond was given, add :* according to the condition of a bond made by the said *C. D.*, to the said *A. B.*, and bearing date ———, *or* even date with these presents).

And it is hereby agreed that no action, execution, or other process or proceeding shall be commenced, sued out, or prosecuted against the said *C. D.*, his heirs, executors, or administrators, or against his or their lands, goods, or chattels, upon the judgment to be entered up in pursuance of the within warrant, until default shall be made in the payment of the sum above mentioned (*or* of some or any of the instalments above mentioned) and interest for the same as aforesaid (and then only for the amount of the instalment or instalments which shall then be due and unpaid, together with interest for the same, and so from time to time as each instalment becomes in arrear, *or, if all the instalments are to become due*

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on one default, and then for the whole of the said ——— rupees with interest, or such part thereof as shall not have been paid, notwithstanding the periods for the payment of the residue of the said instalments shall not have arrived). And it is hereby agreed that the said *A. B.* shall be at liberty, under any writ of execution to be issued on the said judgment, to levy the costs of registering the said judgment, suing out the execution thereon, Fiscal's fees, and all other expenses of execution, and further that no appeal or other proceedings or any advantage be taken or attempted to be taken by the said *C. D.*, his heirs, executors, or administrators for or on account of the premises or any other matter, cause, or thing whatsoever relating to, touching, or in any wise concerning the issuing or executing of any such execution aforesaid, or any other proceedings which may be had or taken on the said judgment, or to enforce the execution thereof according to the true intent and meaning of these presents.

As witness our hands the ——— day of ———, 19—.

Witness : *G. H.* *C. D.*
A. B.

No. 14

[Sections 40-46.]

FORMAL PARTS OF PLEADINGS

Formal parts of the Plaint

In the { District Court / Court of Requests } of *Colombo* (*or as the case may be*).

A. B., of ——— (*names, descriptions, and addresses of all the plaintiffs, and if they or any of them sue in any representative capacity, state the capacity—e.g.,* " as executor of *C. D.*" *or* " administrator of the estate of *E. F.*"*—or if the plaintiff is a minor or person of unsound mind appearing by his next friend or manager, say* " a minor, by *C. D.*, of ———, his next friend ") ..... Plaintiff.

Against

Y. Z., of ——— (*names, descriptions, and addresses of all the defendants as above, stating the capacity, if any, as above in which any of them are sued*) .... Defendant.

The ——— day of ———, 19—.

The plaint of the above-named plaintiff (*or* plaintiffs) (*and if the case is so, add :* appearing by *G. H.*, his proctor) states as follows :

(*Here set forth the cause of action, and if there are more than one, thus :*)

First : For a first cause of action—1. That, &c., &c., *according to forms following.*

Second : And for a second cause of action—1. That, &c., &c.

Wherefore the plaintiff (*or* plaintiffs) prays for judgment against the defendant (*or* defendants) for the sum of ——— rupees, together with interest thereon at the rate of ——— *per centum* per annum from the ———day of———, 19— (*or when the action is for the recovery of sums which became payable at different times or at varying rates of interest,* with interest at the rate of ——— *per centum* per annum

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on ——— rupees from the ——— day of ———, 19—, and at the rate of ——— on ——— rupees from the ——— day of ———, 19—, until payment in full; *or, if the action is brought to recover specific goods,* and the plaintiff prays for a return of the said goods or their value, and ——— rupees as damages for their detention; *or, if the action is brought to recover lands or houses or the like,* and the plaintiff prays judgment for the said premises and for possession thereof, and ——— rupees as damages, *or* ——— rupees per month as mesne profits, *as the case may be*); together with the costs of this action; and for such further or other relief as to the court shall seem meet.

Signature ———.

(Of plaintiff's proctor where he appears by one; if otherwise, plaintiff must sign, and an officer authorized by the court in that behalf must verify the signature.)

No. 15

FORMAL PARTS OF THE ANSWER AND REPLICATION [Sections 75 and 79.]

(Title and number of action, names, descriptions, and addresses of parties, as in the plaint.)

The ——— day of ———, 19—.

The answer of the above-named defendant (*or* defendants, *and if the case is so, add*: appearing by *G. H.*, his proctor) states as follows:

(Here set forth the defence or defences and claim in reconvention, if any, separately stating and numbering them; and where defendant prays for a declaration of title to land, conclude) And the defendant prays for judgment for the said premises.

Signature ——— *(As in Plaint.)*

(For Replication, follow this form as near as may be.)

No. 16

FORM OF SUMMONS [Sections 55-58, and 806.]

(Title.)

To the above-named defendant (*or* defendants).

Whereas the above-named plaintiff has instituted an action against you in this court, for (*state particulars of claim*), you are hereby summoned to appear in this court either in person or by proctor (*or* in person) on the ——— day of ———, 19—, at ten o'clock of the forenoon, to answer the above-named plaintiff. And you are hereby required to take notice that in default of your so appearing the action will be proceeded with and heard and determined in your absence.

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And you will bring with you or send by your proctor (*describe document required*), which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

By order of court,

(*Signed*) ————, Secretary.

The ———— day of ————, 19—.

NOTE 1.—Should you apprehend that your witnesses will not attend of their own accord, you can have a summons from this court to compel the attendance of any witness, and the production of any document you have a right to call on any witness to produce, by applying to the court at any reasonable time before trial, and depositing the necessary subsistence money.

NOTE 2.—If you admit the demand, you should pay the money into court, with the costs of the action, to avoid the summary execution of the decree which may be made against your person or property, or both, if necessary.

No. 17

[Sections 55 and 364.]

FORM OF PRECEPT TO FISCAL TO SERVE SUMMONS

(*Title.*)

To the Fiscal of the ———— Province.

Serve forthwith the summons in the above-named action, which, with duplicates, is herewith transmitted to you, upon each of the persons to whom it is directed, and leave with or tender to each such person a duplicate summons and one of the copies of (*or* concise statements presented with) the plaint, which accompany the summons. And certify to this court on or before the ———— day of ————, 19—, in what manner you have executed this precept, returning the summons attached to your certificate as an exhibit.

By order of court,

(*Signed*) ————, Secretary.

The ———— day of ————, 19—.

No. 18

[Sections 69, 70, and 71.]

FORM OF SUMMONS FOR SERVICE OUT OF CEYLON

(*Title.*)

To the above-named defendant (*or* defendants).

Whereas (*follow ordinary form of summons, substituting for the day of appearance* "within ———— days," *being the number of days directed by the court, or insert any other direction the court may have issued*).

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No. 19

SUMMONS IN AN ACTION OF SUMMARY PROCEDURE ON A LIQUID CLAIM [Section 703.]

(*Title.*)

To the above-named defendant (*or* defendants).

Whereas the above-named plaintiff has instituted an action against you in this court under Chapter LIII of the Civil Procedure Code, for ———— rupees principal and interest (*or* ———— rupees, balance of principal and interest) due to him as payee (*or* indorsee) of a bill of exchange (*or as the case may be: state the instrument on which the claim is made*), of which a copy is hereto annexed :

You are hereby summoned to obtain leave from the court within ———— days from the service hereof, inclusive of the day of such service, to appear and defend the action, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after expiration of such ———— days to obtain a decree for any sum not exceeding ———— rupees (*name the sum claimed*), together with interest thereon at the rate specified in the said (*instrument*) to the date of payment in full, and the sum of ———— rupees for costs.

Leave to appear may be obtained on an application to the court supported by affidavit showing that there is a defence to the action on the merits, or that it is reasonable that you should be allowed to appear in the action.

(*Here copy the instrument sued on, and where it is a negotiable instrument and carries endorsements, with the endorsements.*)

By order of court,

(*Signed*) ————, Secretary.

The ———— day of ————, 19 —.

No. 20

FORMS OF CONCISE STATEMENTS TO BE PRESENTED WITH PLAINT [Section 49.]

The claim of the plaintiff (*and where the plaintiff sues in a representative capacity, add :* suing as administrator of the estate and effects of *A. B.*, deceased, *or as the case may be*) is ———— rupees for money lent (and interest, *or as the case may be, showing the nature of the claim*). (*Where defendant is sued in a representative capacity, state it, as*) The defendant, *C. D.*, is sued as the administrator of the estate and effects of *X. Y.*, deceased (and the defendants *E. F.* and *G. H.*, as his co-heirs-at-law, *or as the case may be*).

(*Add, where the claim is for a debt or liquidated demand*) And ———— rupees for costs ; and if the amount claimed be paid to the plaintiff or his proctor within ———— days (*or if the summons is to be served out of the jurisdiction, insert the time for appearance limited in the order*) from the service hereof, further proceedings will be stayed.

D 30——J. N. R 7590 (4/60)

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Add, when necessary—

And for an injunction.
And for mesne profits.
And for an account of rent, or arrears of rent.
And for breach of covenant for repairs (*or as the case may be*).

The following may be used in appropriate cases:

Partnership.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant (under articles of partnership dated the ——— day of ———), and to have the affairs of the partnership wound up.

By Mortgagee.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the ——— day of ———, made between (*parties*), or by deposit of title deeds, and that the property mortgaged may be realized by sale.

By Mortgagor.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated ———, and made between (*parties*), and to redeem the property comprised therein.

Raising Portions.

The plaintiff's claim is that the sum of ——— rupees, which by a deed of settlement dated ———, was provided for the portions of the younger children of ———, may be raised.

Execution of Trust.

The plaintiff's claim is to have the trusts of an indenture dated ———, and made between (*parties*), carried into execution.

Cancellation or Rectification.

The plaintiff's claim is to have a deed dated ———, and made between (*parties*), set aside or rectified.

Specific Performance.

The plaintiff's claim is for specific performance of an agreement dated ——— day of ———, for the sale by the plaintiff to the defendant of certain hereditaments at ———.

No. 21

[Section 84.] FORM OF DECREE "NISI" DISMISSING THE ACTION IN DEFAULT OF APPEARANCE OF PLAINTIFF

(*Title.*)

This action coming on for disposal before (*name and office of Judge*) on the ——— day of ———, 19—, being the day appointed in the summons for the defendant to appear and answer (*or* for the filing of the answer *or* replication, *or* being the day fixed for the hearing of the action, *as the case may be*), and the defendant appearing (in person, *or* by proctor, *or* counsel), and the plaintiff not appearing either in

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person or by proctor or counsel, it is decreed that the action be dismissed, and that the plaintiff do pay to the defendant his costs thereof, unless sufficient cause be shown to the contrary within fourteen days from the date hereof.

(*Signed*) ————, District Judge.

The ———— day of ————, 19—.

No. 22

FORM OF DECREE "NISI" IN DEFAULT OF APPEARANCE OF DEFENDANT [Section 85.]

(*Title.*)

This action coming on for disposal before (*name and office of Judge*) on the ———— day of ————, 19—, being the day appointed in the summons for the defendant to appear and answer (*or* being the day appointed for the defendant to file answer, *or* for the filing of the replication, *or* being the day fixed for the hearing of the action, *as the case may be*), and the plaintiff appearing (in person, &c., *as above*), and the defendant not appearing either in person or by proctor or counsel, although he was duly served with the summons, together with a copy of the plaint (*or, if the case is so,* a concise statement of the nature of the claim as provided by section 49 of the Civil Procedure Code), as by the affidavit of ————, filed the ———— day of ————, appears:

It is decreed that the defendant do pay to the plaintiff the sum of ———— rupees and his costs of this action, unless sufficient cause be shown to the contrary on the ———— day of ————, 19—.

(*Signed*) ————, District Judge.

The ———— day of ————, 19—.

No. 22A

FORM OF DECREE ABSOLUTE IN A HYPOTHECARY ACTION IN DEFAULT OF APPEARANCE OF DEFENDANT [Section 85.]

(*Title.*)

This action coming on for disposal before (*name and office of Judge*) on the ———— day of ————, 19—, being the day appointed in the summons for the defendant to appear and answer (*or* being the day appointed for the defendant to file answer, *or* for the filing of the replication, *or* being the day fixed for the hearing of the action, *as the case may be*), and the plaintiff appearing (in person, &c., *as above*) and the defendant not appearing either in person or by proctor or counsel, although he was duly served with the summons, together with a copy of the plaint, (*or, if the case is so,* a concise statement of the nature of the claim as provided by section 49 of the Civil Procedure Code), as by the affidavit of ————, filed the ———— day of ———— appears:

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It is ordered and decreed ——— that the defendant ——— do pay to the plaintiff the sum of rupees ——— and cents ——— (Rs. ———), being the aggregate amount of the principal, interest, and costs due in respect of Mortgage Bond No. ———, dated the ——— day of ———, 19—, and attested by ———, Notary Public, with interest thereon at the rate of five *per centum* per annum from this date till payment in full, and the costs of this action (Rs. ———), as taxed by the officer of the court, within (*state period*) from the date of this decree.

And it is further ordered that in default of payment of the said amount, interest, and costs within such time, the premises mortgaged by the said bond, to wit: ———, and all the right, title, interest, and claim whatsoever of the ———, defendant in, to, upon, or out of the said several premises mortgaged by the defendant, be sold and the proceeds applied in and towards the payment of the said amount, interest, and costs, and if such proceeds shall not be sufficient for the payment in full of such amount, that the ——— defendant do pay to the plaintiff the amount of the deficiency, with interest thereon at the afore-mentioned rate until realization.

(*Signed*) ———, District Judge.

The ——— day of ———, 19—.

No. 23

[Sections 84-86.]

FORM OF DECREE DISCHARGING DECREE "NISI" AND DIRECTING ACTION TO PROCEED (*to be endorsed on decree "nisi"*)

The above decree *nisi* coming on for final order before (*name and office of Judge*) on this ——— day of ———, 19—, being the day appointed in the said decree for showing cause against it, and plaintiff and defendant appearing (in person, *or as the case is*), and the affidavit of ———, dated ———, having been read, and the evidence of ——— having been taken and both parties heard:

It is ordered that the above decree be discharged, and that the action do proceed in due course, and that the ——— day of ———, 19—, be fixed for the defendant to appear and answer the plaintiff's claim (*or as the case may be*). And it is further ordered (*state order as to costs of the application*).

(*Signed*) ———, District Judge.

The ——— day of ———, 19—.

No. 24

[Sections 84-86.]

FORM OF DECREE ABSOLUTE FOR DEFAULT OF SHOWING CAUSE, OR SUFFICIENT CAUSE NOT BEING SHOWN

(*to be endorsed on decree "nisi"*)

The above decree *nisi* coming on for final order before (*name and office of Judge*) on this ——— day of ———, 19—, being the day appointed in the said decree for showing cause against it (*when defendant is in default, say,* of

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which decree defendant received notice, as appears by the affidavit of ————, dated ————), and plaintiff and defendant appearing by counsel (*or as the case is, and if defendant does not appear when plaintiff is applying to discharge rule, say,* defendant not appearing, although due notice of the day for showing cause against the said decree was served upon him, as appears by the affidavit of————, dated ————): And no cause being shown to the contrary [*or where no sufficient cause is shown,* the affidavit of ————, dated ————, having been read and the evidence of ———— having been taken, and both parties (*or* counsel on both sides, *or as the case may be*) having been heard, and no sufficient cause to the contrary appearing to this court] :

The above decree is made absolute.

(*Signed*) ————, District Judge.

The ———— day of ————, 19—.

No. 25

FORM OF INTERROGATORIES [Sections 94 *et seq.*]

(*Title.*)

Interrogatories on behalf of the above-named plaintiff (*or as the case may be*) for the examination of the above-named defendant (*or as the case may be*) :

1.—Did not, *&c.*

2.—Has not, *&c.*

The defendant *A. B.* is required to answer the interrogatories numbered ————.

The defendant *C. D.* is required to answer the interrogatories numbered ————.

(*Signed*) ————, Proctor for Plaintiff.

No. 26

FORM OF ANSWER TO INTERROGATORIES [Section 99.]

(*Title.*)

The answer of the above-named defendant, *A. B.* (*or as the case may be*), to the interrogatories for his examination delivered on behalf of the above-named plaintiff (*or as the case may be*):

In answer to the said interrogatories, I, the above-named defendant, *A. B.*, make oath (*or* affirmation) and say as follows :—

1, 2, 3, 4.—(*Set forth answers to the interrogatories in paragraphs numbered consecutively.*)

5.—I object to answer the interrogatories numbered ————, on the ground that (*state ground of objection, verifying the same*).

Sworn (*or* affirmed) this ———— day of ————, 19—, before me, *&c.*

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No. 27

[Section 101.] FORM OF NOTICE TO ADMIT GENUINENESS OF DOCUMENTS

(*Title.*)

To (*set out names and places of residence of persons to be served with the notice*).

Take notice that the above-named plaintiff (*or as the case may be*) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (*as the case may be*) or his proctor at ———, on ———, between the hours of ——— and ———; and the defendant (*or as before*) is hereby required, within forty-eight hours from the hour last mentioned, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been, and that such as are specified as copies are true copies.

By order of court,

(*Signed*) ———, Secretary (*or as the case may be*).

The ——— day of ———, 19—.

(*Here annex Schedule of Documents.*)

No. 28

[Section 101.] FORM OF ADMISSION OF GENUINENESS OF DOCUMENTS

(*Title.*)

To (*names, &c., of persons to be served*).

I (*or* We, *if the case is so*), saving all just exceptions as to the admissibility thereof in evidence, hereby admit that the document mentioned in the notice of the ——— day of ———, 19—, issued from this court at the instance of [*as the case may be, or, if any are not admitted,* that such of the documents mentioned (*as above*) as are included in the schedule hereto annexed] were respectively written (*&c., as in notice*).

(*Signed*) ———, (*By party or proctor.*)

The ——— day of ———, 19—.

No. 29

[Section 104.] FORM OF NOTICE TO PRODUCE DOCUMENTS FOR INSPECTION

(*Title.*)

To (*set out name and place of residence of party to be served*).

Take notice that the above-named plaintiff (*or as the case may be*) requires you to produce for inspection by him or his

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proctor the following documents referred to in (*state as the case is*) ; that is to say (*describe documents*), and to permit such party or proctor to take copies thereof.

By order of court,

(*Signed*) ————, Secretary (*or as the case is*).

The ———— day of ————, 19—.

No. 30

FORMS OF APPOINTMENT, AND OF REFUSAL, TO INSPECT DOCUMENTS [Sections 104 and 105.]

(*Title.*)

To (*name, &c., of person to be served*).

Take notice that the plaintiff (*or as the case may be*) can inspect the documents mentioned in the notice of the ———— day of ————, 19—, issued from this court at his instance, except (*mention any document of which inspection is refused*), at my office (*or as the case may be*) on the ———— day of ————, 19—, at ———— o'clock of the ———— noon. The defendant (*or as the case may be*) objects to produce the documents herein before excepted, on the ground (*state the ground*).

(*Signed*) ————, (*By party or proctor.*)

The ———— day of ————, 19—.

No. 31

FORM OF NOTICE OF OBJECTION TO GIVE INSPECTION [Section 105.]

(*Title.*)

To (*as in last form*).

Take notice that the defendant (*or as may be*) objects to give the plaintiff (*or as may be*) inspection of the documents mentioned in the notice (*as in last form*), on the ground (*state the ground*).

———— (*Signed as before.*)

The ———— day of ————, 19—.

No. 32

FORM OF SUMMONS TO WITNESS [Sections 121-126.]

(*Title.*)

To (*name, description, and address of witness*).

You are hereby summoned to appear in this court in person on the ———— day of ————, at ———— o'clock in the forenoon, to give evidence on behalf of the plaintiff (*or* defendant) in the above-mentioned action, and to produce (*here describe with convenient certainty any document the production of which is required ; if the summons is only to*

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give evidence, or only to produce a document, it must be so expressed). And you are not to depart thence until you have been examined (*or* have produced the document) and the court has risen, or unless you have obtained the leave of the court.

By order of court,

(*Signed*) ————, Secretary.

The ———— day of ————, 19—.

NOTE. 1.—If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause the document to be produced in this court on the day and at the hour within-named.

NOTE 2.—If you are detained beyond the day within-named, a sum of ———— rupees will be tendered to you for each day's attendance beyond the day specified.

(NOTE 3.—No money having been paid to the court to cover the costs of your attendance, and no security having been given for the payment thereof, your attendance on this summons is not obligatory.)

(NOTE 4.—Money has been paid into court (*or* security has been given, *as the case may be*) for the costs of your attendance.)

No. 33

FORMS OF PLAINTS

PLAINTS IN ORDINARY CASES

(i) *For Money Lent*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ———— plaintiff lent the defendant ———— rupees repayable on demand (*or* on the ———— day of ————).

2.—That the defendant has not paid the same, except ———— rupees paid on the ———— day of ————, 19—.

[*If the plaintiff claims exemption from any law of limitation, say :*

3.—The plaintiff was a minor (*or* insane) from the ———— day of ———— till the ———— day of ————.]

4.—The plaintiff prays judgment for ———— rupees, with interest at ———— *per centum* from the ———— day of ————, 19—.

(ii) *For Money received to Plaintiff's use*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the defendant received ———— rupees (*or* a cheque on the ———— Bank for ———— rupees) from one *E. F.* for the use of the plaintiff.

2.—That the defendant has not paid (*or* delivered) the same accordingly.

3.—The plaintiff prays judgment for ———— rupees, with interest at —— *per centum* from the ———— day of ————, 19—.

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(iii). *For Price of Goods sold by a Factor*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, he and *E. F.*, since deceased, delivered to the defendant (*one thousand barrels of flour, five hundred bushels of rice, or as the case may be*) for sale upon commission.

2.—That on the ——— day of ———, 19— (*or*, on some day unknown to the plaintiff, before the ——— day of ———, 19—), the defendant sold the said merchandise for ——— rupees.

3.—That the commission and expenses of the defendant thereon amount to ——— rupees.

4.—That on the ——— day of ———, 19—, the plaintiff demanded from the defendant the proceeds of the said merchandise.

5.—That he has not paid the same.

(*Demand of judgment.*)

———

(iv) *For Money received by Defendant through the Plaintiff's Mistake of Fact*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the plaintiff agreed to buy and the defendant agreed to sell ——— bars of silver at ——— cents per ounce of fine silver.

2.—That the plaintiff procured the said bars to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 ounces of fine silver, and that the plaintiff accordingly paid the defendant ——— rupees therefor.

3.—That each of the said bars did contain only 1,200 ounces of fine silver.

4.—That the defendant has not repaid the sum so overpaid.

(*Demand of judgment.*)

———

(v) *For Money paid to a Third Party at the Defendant's Request*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, at the request (*or* by the authority) of the defendant, the plaintiff paid to one *E. F.* ——— rupees.

2.—That, in consideration thereof, the defendant promised (*or* became bound) to pay the same to the plaintiff on demand (*or as the case may be*).

3.—That (on the ——— day of ———, 19—, the plaintiff demanded payment of the same from the defendant, but) he has not paid the same.

(*Demand of judgment.*)

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(vi) *For Goods sold at a Fixed Price and delivered*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, *E. F.*, of ———, deceased, sold and delivered to the defendant (*one hundred barrels of flour, or* the goods mentioned in the schedule hereto annexed, *or* sundry goods).

2.—That the defendant promised to pay ——— rupees for the said goods on delivery (*or*, on the ——— day of ———, *some day before the plaint was filed*).

3.—That he has not paid the same.

4.—That the said *E. F.* in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5.—That on the ——— day of ———, 19—, the said *E. F.* died.

6.—That on the ——— day of ———, probate of the said will was granted to the plaintiff by the District Court of ———.

7.—The plaintiff as executor as aforesaid (*demand of judgment*).

(NOTE.—If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest.)

(vii) *For Goods sold at a Reasonable Price and delivered*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, plaintiff sold and delivered to the defendant (*sundry articles of house furniture*), but no express agreement was made as to the price.

2.—That the same were reasonably worth ———rupees.

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

(NOTE.—The law implies a promise to pay so much as the goods are reasonably worth.)

(viii) *For Goods delivered to a Third Party at Defendant's Request, at a Fixed Price*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, plaintiff sold to the defendant (*one hundred barrels of flour*), and at the request of the defendant, delivered the same to one *E. F.*

2.—That the defendant promised to pay the plaintiff——— rupees therefor.

3.—That he has not paid the same.

(*Demand of judgment.*)

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(ix) *For Necessaries furnished to the Family of Defendant's Testator, without his Express Request, at a Reasonable Price*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, plaintiff furnished to (*Mary Jones*), the wife of (*James Jones*), deceased, at her request, sundry articles of (*food and clothing*), but no express agreement was made as to the price.

2.—That the same were necessary for her.

3.—That the same were reasonably worth——— rupees.

4.—That the said (*James Jones*) refused to pay the same.

5.—That the defendant is the executor of the last will of the said (*James Jones*).

(*Demand of judgment.*)

———

(x) *For Goods sold at a Fixed Price*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the plaintiff sold to *E. F.*, of ———, deceased, (*all the crops then growing on his farm in* ———).

2.—That the said *E. F.* promised to pay the plaintiff——— rupees for the same.

3.—That he did not pay the same.

4.—That the defendant is administrator of the estate of the said *E. F.*

(*Demand of judgment.*)

———

(xi) *For Goods sold at a Reasonable Price*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, *E. F.*, of ———, sold to the defendant (*all the fruit growing in his orchard in* ———), but no express agreement was made as to the price.

2.—That the same was reasonably worth ——— rupees.

3.—That the defendant has not paid the same.

4.—That on the ——— day of ———, the District Court of ——— duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff manager of his estate.

5.—The plaintiff as manager as aforesaid (*demand of judgment*).

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(xii) *For Goods made at Defendant's Request, and not accepted*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, *E. F.*, of ———, agreed with the plaintiff that the plaintiff should make for him (*six tables and fifty chairs*), and that the said *E. F.* should pay for the same upon delivery thereof ——— rupees.

2.—That the plaintiff made the said goods, and on the ———day of ———, 19 —, offered to deliver the same to the said *E. F.* and has ever since been ready and willing so to do.

3.—That the said *E. F.* has not accepted the said goods or paid for the same.

4.—That on the ——— day of ———, 19—, the District Court of ——— duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the defendant manager of his estate.

5.—The plaintiff prays judgment for ——— rupees, with interest from the ——— day of ———, at the rate of ——— *per centum* per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

———

(xiii) *For Deficiency upon a Resale (Goods sold at Auction)*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, plaintiff put up at auction sundry (*articles of merchandise*), subject to the condition that all goods not paid for and removed by the purchaser thereof within (*ten days*) after the sale should be resold by auction on his account, of which condition the defendant had notice.

2.—That the defendant purchased (*one crate of crockery*) at the said auction at the price of ——— rupees.

3.—That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for (*ten days*) thereafter, of which the defendant had notice.

4.—That the defendant did not take away the said goods purchased by him, nor pay therefor, within (*ten days*) after the sale, nor afterwards.

5.—That on the ——— day of ———, 19—, at ———, the plaintiff resold the said (*crate of crockery*), on account of the defendant, by public auction for ——— rupees.

6.—That the expenses attendant upon such resale amounted to ——— rupees.

7.—That the defendant has not paid the deficiency thus arising, amounting to ——— rupees.

(*Demand of judgment.*)

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(xiv) *For the Purchase Money of Lands conveyed*

(*Title.*)

1.—That on the ——— day of ———, 19—, at———, the plaintiff sold (and conveyed) to the defendant (the house and compound No. ——, in the city of ———, *or* a farm known as ——— in ———, *or* a piece of land lying, &c.).

2.—That the defendant promised to pay the plaintiff ——— rupees for the said (house and compound, *or* farm, *or* land).

3.—That he has not paid the same.

(NOTE.—Where there has been no actual conveyance, say in paragraph 1 : " sold to the defendant the house, &c., and placed him in possession of the same. ")

(*Demand of judgment.*)

———

(xv) *For the Purchase Money of Immovable Property contracted to be sold, but not conveyed*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the plaintiff and defendant entered into a notarial agreement, a copy of which is hereto annexed, by which they mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff (the house No. ——— in the town of ———, *or* ——— Acres of land in ——— bounded ———) for ——— rupees.

2.—That on the ——— day of ———, 19—, at ———, the plaintiff tendered (*or* was ready and willing, and offered to execute) a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3.—That the defendant has not paid the said sum.

(*Demand of judgment.*)

———

(xvi) *For Services at a Fixed Price*

(*Title.*)

1.—That on the ——— day ———, 19—, at ———, the defendant (*hired plaintiff as a clerk, at the salary of ———rupees per year*).

2.—That from the (said day) until the ——— day of ——— 19—, the plaintiff served the defendant as his (*clerk*).

3.—That the defendant has not paid the salary.

(*Demand of judgment.*)

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(xvii) *For Services at a Reasonable Price*

(*Title.*)

1.—That between the ——— day of ———, 19—, and the ——— day of ———, 19—, at ———, plaintiff (*executed sundry drawings, designs, and diagrams*) for the defendant at his request; but no express agreement was made as to the sum to be paid for such services.

2.—That the said services were reasonably worth ——— rupees.

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

(xviii) *For Services and Materials at a Fixed Price*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, plaintiff (*furnished the paper for and printed one thousand copies of a book called*———) for the defendant at his request (and delivered the same to him).

2.—That the defendant promised to pay ——— rupees therefor.

3.—That he has not paid the same.

(*Demand of judgment.*)

(xix) *For Services and Materials at a Reasonable Price*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, plaintiff built a house (known as No. ——— in ———), and furnished the materials therefor, for the defendant at his request, but no express agreement was made as to the price to be paid for such work and materials.

2.—That the said work and materials were reasonably worth ——— rupees.

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

(xx) *For Rent reserved in a Lease*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed (*or state the substance of the contract*).

2.—That the defendant has not paid the rent of the (*month*) ending on the ——— day of ———, 19—, amounting to ——— rupees.

(*Demand of judgment.*)

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Another Form

1.—That the plaintiff let to the defendant a house No. ———, for *seven* years, to hold from the ——— day of ———, 19—, at ——— rupees a year, payable quarterly.

2.—That of such rent ——— quarters are due and unpaid.

(*Demand of judgment.*)

———

(xxi) *For Use and Occupation at a Fixed Rent*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant hired from the plaintiff (the house No. ———, ——— street), at the rent of ——— rupees, payable ——— on the first day of ———.

2.—That the defendant occupied the said premises from the ——— day of ———, 19—, to the ——— day of ———, 19—.

3.—That the defendant has not paid ——— rupees, being the part of the said rent due on the first day of ———, 19—.

(*Demand of judgment.*)

———

(xxii) *For Use and Occupation at a Reasonable Rent*

(*Title.*)

1.—That the defendant occupied (the house No. ———, ——— street) by permission of the said *X. Y.*, deceased, from the ——— day of ———, 19—, until the ——— day of ———, 19—, and no agreement was made as to payment for the use of the said premises.

2.—That the use of the said premises for the said period was reasonably worth ——— rupees.

3.—That the defendant has not paid the same.

4.—That the said *X. Y.* in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5.—That on the ——— day of ———, 19—, the said *X. Y.* died.

6.—That on the ——— day of ———, probate of the said will was granted to the plaintiff by the District Court of ———.

7.—The plaintiff as such executor as aforesaid prays judgment for ——— rupees.

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(xxiii) *For Board and Lodging*

(*Title.*)

1.—That from the ——— day of ———, 19—, until the ——— day of ———, 19—, the defendant occupied certain rooms in the house (No. ———, ——— street), by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance, and other necessaries.

2.—That, in consideration thereof, the defendant promised to pay (*or* that no agreeement was made as to payment for such meat, drink, attendance, or necessaries, but the same were reasonably worth) the sum of ——— rupees.

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

———

(xxiv) *For Freight of Goods*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, plaintiff transported in (his barge, *or otherwise*) (*one thousand barrels of flour, or* sundry goods), from ——— to ——— at the request of the defendant.

2.—That the defendant promised to pay the plaintiff the sum of (*one rupee per barrel*) as freight thereon (*or,* that no agreement was made as to payment for such transportation, but such transportation was reasonably worth ——— rupees).

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

———

(xxv) *For Passage Money*

(*Title.*)

1.—That on the ——— day of ———, 19—, plaintiff conveyed the defendant (in his ship called the ———), from ——— to ———, at his request.

2.—That the defendant promised to pay the plaintiff ——— rupees therefor (*or* that no agreement was made as to the said passage, but the said passage was reasonably worth ——— rupees).

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

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(xxvi) *On an Award*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the plaintiff and defendant having a controversy between them, concerning (*a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay*), agreed to submit the same to the award of *E. F.* and *G. H.*, as arbitrators (*or* entered into an agreement, a copy of which is hereto annexed).

2.—That on the ——— day of ———, 19—, at ———, the said arbitrators awarded that the defendant should (pay the plaintiff ——— rupees).

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

(NOTE—This will apply where the agreement to refer is not filed in court.)

———

(xxvii) *On a Foreign Judgment*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, in the State (*or* Kingdom) of ———, the ——— Court of that State (*or* Kingdom), in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff ——— rupees, with interest from the said date.

2.—That the defendant has not paid the same.

(*Demand of judgment.*)

———

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY

(xxviii) *On an Annuity Bond*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant by his bond became bound to the plaintiff in the sum of ——— rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff ——— rupees half-yearly on the ——— day of ———, and the ——— day of ———, in every year during the life of the plaintiff, the said bond should be void.

2.—That afterwards, on the ——— day of ———, 19—, the sum of ——— rupees for ——— of the said half-yearly payments of the said annuity became due to the plaintiff, and is still unpaid.

(*Demand of judgment.*)

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(xxix) *Payee against Maker*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant, by his promissory note, now overdue, promised to pay to the plaintiff ——— rupees ——— (days) after date.

2.—That he has not paid the same (except ——— rupees, paid on the ——— day of ———, 19—).

(*Demand of judgment.*)

(NOTE.—*Where the note is payable after notice for paragraphs 1 and 2 substitute*—)

1.—That on the ——— day of ———, 19—, at ———, the defendant, by his promissory note, promised to pay to the plaintiff ——— rupees ——— months after notice.

2.—That notice was afterwards given on the ——— day of ——— by the plaintiff to the defendant to pay the same ——— months after the said notice.

3.—That the said time for payment has elapsed, but the defendant has not paid the same.

(*Where the note is payable at a particular place, say*—)

1.—That on the ——— day of ———, 19—, at ———, the defendant, by his promissory note, now overdue, promised to pay to the plaintiff (*at Messrs. A. & Co.'s, Colombo*) ——— rupees ——— months after date.

2.—That the said note was duly presented for payment (*at Messrs. A. & Co.'s*) aforesaid, but has not been paid.

———

(xxx) *First Indorsee against Maker*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant, by his promissory note, now overdue, promised to pay to the order of *E. F.* (*or* to *E. F.* or order) rupees ——— (——— days after date).

2.—That the said *E. F.* indorsed the same to the plaintiff.

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

———

(xxxi) *Subsequent Indorsee against Maker*

(*Title.*)

1.—(*As in the last preceding form.*)

2.—That the same was, by the indorsement of the said *E. F.* and of *G. H.* and *I. J.* (*or* and others), transferred to the plaintiff.

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

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(xxxii) *First Indorsee against First Indorser*

(*Title.*)

1.—That *E. F.*, on the ———— day of ————, 19—, at ————, by his promissory note, now overdue, promised to pay to the defendant or order ———— rupees ———— months after date.

2.—That the defendant indorsed the same to the plaintiff.

3.—That on the ———— day of ————, 19—, the same was duly presented for payment, but was not paid (*or state facts excusing want of presentment*).

4.—That the defendant had notice thereof.

5.—That he has not paid the same.

(*Demand of judgment.*)

———

(xxxiii) *Subsequent Indorsee against First Indorser, the Indorsement being Special*

(*Title.*)

1.—That the defendant indorsed to one *E. F.* a promissory note, now overdue, made (*or* purporting to have been made) by one *G. H.*, on the ———— day of ————, 19—, at ————, to the order of the defendant, for the sum of ———— rupees (payable ———— days after date).

2.—That the same was, by the indorsement of the said *E. F.* (and others), transferred to the plaintiff (*or* that the said ———— indorsed the same to the plaintiff).

3, 4, and 5.—(*Same as 3, 4, and 5 of the last preceding form.*)

(*Demand of judgment.*)

———

(xxxiv) *Subsequent Indorsee against his Immediate Indorser*

(*Title.*)

1.—That the defendant indorsed to the plaintiff a promissory note, now overdue, made (*or* purporting to have been made) by one *E. F.*, on the ———— day of ————, 19—, at ————, to the order of one *G. H.*, for the sum of ———— rupees (payable ———— days after date), and indorsed by the said *G. H.* to the defendant.

2, 3, and 4.—(*Same as in 3, 4, and 5 of last preceding form.*)

(*Demand of judgment.*)

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(xxxv) *Subsequent Indorsee against Intermediate Indorser*

(*Title.*)

1.—That a promissory note, now overdue, made (*or* purporting to have been made) by one *E. F.*, on the ——— day of ———, 19—, at ———, to the order of one *G. H.*, for the sum of ——— rupees (payable ——— days after date) and indorsed by the said *G. H.* to the defendant, was by the indorsement of the defendant (and others) transferred to the plaintiff.

2, 3, and 4.—(*As in No.* xxxiii.)

(*Demand of judgment.*)

———

(xxxvi) *Subsequent Indorsee against Maker and First and Second Indorsers*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*, ——— rupees (——— months after date).

2.—That the said *E. F.* indorsed the same to the defendant, *G. H.*, who indorsed it to the plaintiff.

3.—That on the ——— day of ———, 19—, the same was presented (*or state facts excusing want of presentment*) to the said *C. D.* for payment, but was not paid.

4.—That the said *E. F.* and *G. H.* had notice thereof.

5.—That they have not paid the same.

(*Demand of judgment.*)

———

(xxxvii) *Drawer against Acceptor*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him ——— rupees (——— days after date, *or* sight, thereof).

2.—That the defendant accepted the said bill. (*If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.*)

3.—That he has not paid the same.

4.—That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

(*Demand of judgment.*)

(NOTE.—*Where the bill is payable to a third party for paragraphs 1, 2, 3, say*—)

1.—That on, &c., at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to *E. F.* or order ——— rupees ——— months after date.

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2.—That the plaintiff delivered the said bill to the said *E. F.* on ————.

3.—That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

———

(xxxviii) *Payee against Acceptor*

(*Title.*)

1.—That on the ———— day of ————, 19—, the defendant accepted a bill of exchange, now overdue, made (*or* purporting to have been made) by one *E. F.*, on the ———— day of ————, 19—, at ————, requiring the defendant to pay to the plaintiff ———— rupees ———— after sight thereof.

2.—That he has not paid the same.

(*Demand of judgment.*)

———

(xxxix) *First Indorsee against Acceptor*

(*Title.*)

1.—That on the ———— day of ————, 19—, the defendant accepted a bill of exchange, now overdue, made (*or* purporting to have been made) by one *E. F.*, on the ———— day of ————, 19—, at ————, requiring the defendant to pay to the order of one *G. H.* ———— rupees ———— after sight thereof.

2.—That the said *G. H.* indorsed the same to the plaintiff.

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

———

(xl) *Subsequent Indorsee against Acceptor*

(*Title.*)

1.—(*As in the last preceding form to the end of paragraph 1.*)

2.—That by the indorsement of the said *G. H.* (and others) the same was transferred to the plaintiff.

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

———

(xli) *Payee against Drawer for Non-acceptance*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the defendant, by his bill of exchange directed to *E. F.*, required the said *E. F.* to pay to the plaintiff ———— rupees (———— days after sight).

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2.—That on the ——— day of ———, 19—, the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(*Demand of judgment.*)

(xlii) *First Indorsee against First Indorser*

(*Title.*)

1.—That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made (*or* purporting to have been made) by one *E. F.*, on the ——— day of ———, 19—, at ———, requiring one *G. H.* to pay to the order of the defendant ——— rupees ——— days after sight (*or* after date, *or* at sight) thereof (and accepted by the said *G. H.* on the ——— day of ———, 19—).

2.—That on the ——— day of ———, 19—, the same was presented to the said *G. H.* for payment, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(*Demand of judgment.*)

(xliii) *Subsequent Indorsee against First Indorser, the Indorsement being Special*

(*Title.*)

1.—That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made (*or* purporting to have been made) by one *G. H.* on the ——— day of ———, 19—, at ———, requiring one *I. J.* to pay to the order of the defendant ——— rupees ——— days after sight thereof (*or otherwise*), and accepted by the said *I. J.* on the ——— day of ———, 19—. (*This paragraph may be omitted if not according to the fact.*)

2.—That the same was, by the indorsement of the said *E. F.* (and others), transferred to the plaintiff.

3.—That on the ——— day of ———, 19—, the same was presented to the said *I. J.* for payment, and was dishonoured.

4.—That the defendant had due notice thereof.

5.—That he has not paid the same.

(*Demand of judgment.*)

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(xliv) *Subsequent Indorsee against his Immediate Indorser*

(*Title.*)

1.—That the defendant indorsed to plaintiff a bill of exchange, now overdue, made (*or* purporting to have been made) by one *E. F.*, on the ——— day of ———, 19—, at ———, requiring one *G. H.* to pay to the order of *I. J.* ——— rupees ——— days after sight thereof (*or otherwise*), (accepted by the said *G. H.*) and indorsed by the said *I. J.* to the defendant.

2.—That on the ——— day of ———, 19—, the same was presented to the said *G. H.* for payment, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(*Demand of judgment.*)

———

(xlv) *Subsequent Indorsee against Intermediate Indorser*

(*Title.*)

1.—That a bill of exchange, now overdue, made (*or* purporting to have been made) by one *E. F.*, on the ——— day of ———, 19—, at ———, requiring one *G. H.* to pay to the order of one *I. J.* ——— rupees ——— days after sight thereof (*or otherwise*), accepted by the said *G. H.* and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant (and others), transferred to the plaintiff.

2.—That on the ——— day of ———, 19—, the same was presented to the said *G. H.* for payment, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(*Demand of judgment.*)

———

(xlvi) *Indorsee against Drawer, Acceptor, and Indorser*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant, *C. D.*, by his bill of exchange, now overdue, directed to the defendant *E. F.*, required the said *E. F.* to pay to the order of the defendant *G. H.* ——— rupees (——— days after sight thereof).

2.—That on the ——— day of ———, 19—, the said *E. F.* accepted the same.

3.—That the said *G. H.* indorsed the same to the plaintiff.

4.—That on the ——— day of ———, 19—, the same was presented to the said *E. F.* for payment, and was dishonoured.

5.—That the other defendants had due notice thereof.

6.—That they have not paid the same.

(*Demand of judgment.*)

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(xlvii) *Payee against Drawer for Non-acceptance of a Foreign Bill*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant by his bill of exchange, drawn in (*Colombo*), required one *E. F.*, to pay to the plaintiff in (*London*) ——— pounds sterling (*sixty days*) after sight thereof.

2.—That on the ——— day of ———, 19—, the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(5.—That the value of ——— pounds sterling, at the time of the service of notice of protest on the defendant was ——— rupees and ——— cents.)

Wherefore the plaintiff demands judgment against the defendant for ——— rupees, with (*six per centum*) compensation and interest from the ——— day of ———, 19—.

———

(xlviii) *Payee against Acceptor*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, one *E. F.*, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff ——— rupees after date (*or* ——— days after sight) thereof.

2.—That on the ——— day of ———, 19—, the defendant accepted the said bill.

3.—That he has not paid the same.

(*Demand of judgment.*)

———

(xlix) *On a Marine (Open) Policy, on Vessel lost by Perils of the Sea, &c.*

(*Title.*)

1.—The plaintiff was the owner of (*or* had an interest in) the ship ——— at the time of her loss, as hereinafter mentioned.

2.—That on the ——— day of ———, 19—, at ———, the defendants, in consideration of ——— rupees to them paid (*or* which the plaintiff then promised to pay), executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed (*or* whereby they promised to pay to the plaintiff, within ——— days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from ——— to ———, whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding ——— rupees).

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3.—That the said ship while proceeding on the voyage mentioned in the said policy was, on the ——— day of ———, 19—, totally lost by the perils of the sea (*or otherwise*).

4.—That the plaintiff's loss thereby was ——— rupees.

5.—That on the ——— day of ———, 19—, he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6.—That the defendants have not paid the said loss.

(*Demand of judgment.*)

(l) *On Cargo lost by Fire (Valued Policy)*

(*Title.*)

1.—That plaintiff was the owner of (*or* had an interest in) (*one hundred bales of cotton*) on board the ship ——— at the time of her loss as hereinafter mentioned.

2.—That on the ——— day of ———, 19—, at ———, the defendants, in consideration of ——— rupees which the plaintiff then paid (*or* promised to pay), executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed (*or* whereby they promised to pay to the plaintiff ——— rupees in case of the total loss, by fire or other causes mentioned, of the said goods, before their landing at ———; *or*, in case of partial loss, such damages as the plaintiff might sustain thereby, provided the same should not exceed ——— *per centum* of the whole value of the goods).

3.—That on the ——— day of ———, 19—, at ———, while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (*or as the case may be*).

4, 5, and 6.—(*As in paragraphs, 4, 5, and 6 of the last preceding form.*)

(*Demand of judgment.*)

(li) *On Freight (Valued Policy)*

(*Title.*)

1.—That the plaintiff had an interest in the freight to be earned by the ship ——— on her voyage from ——— to ——— at the time of her loss as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2.—That on the ——— day of ———, 19—, at ———, the defendant, in consideration of ——— rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereunto annexed (*or state its tenor as before*).

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3.—That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the ——— day of ———, 19—, totally lost by (the perils of the sea).

4.—That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage by reason of her loss as aforesaid.

5 and 6.—(*As in form No. xlix.*)

(*Demand of judgment.*)

———

(liii) *For a Loss by General Average*

(*Title.*)

1.—That the plaintiff was the owner of (*or* had an interest in) (*one hundred bales of cotton*) shipped on board a vessel called the *Y. Z.*, ——— to ———, at the time of the loss hereafter mentioned.

2.—That on the ——— day of ———, 19—, at ———, in consideration of ——— rupees (which the plaintiff then promised to pay), the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed (*or state its tenor as before*).

3.—That on the ——— day of ———, 19—, while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4.—That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of ——— rupees.

5.—That on the ——— day of ———, 19—, he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6.—The defendant has not paid the said loss.

(*Demand of judgment.*)

———

(liii) *For a Particular Average Loss*

(*Title.*)

1 and 2.—(*As in the last preceding form.*)

3.—That on the ——— day of ———, 19—, while on the high seas, the sea-water broke into the said ship, and damaged the said (*cotton*) to the amount of ——— rupees.

4 and 5.—(*As in paragraphs 5 and 6 of the last preceding form.*)

(*Demand of judgment.*)

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(liv) *On a Fire Insurance Policy*

(*Title.*)

1.—That plaintiff (was the owner of, *or*) had an interest in a (dwelling house, known as No. ————, ———— street, in the city of ————), at the time of its destruction (*or* injury) by fire as hereinafter mentioned.

2.—That on the ———— day of ————, 19—, at ————, in consideration of ———— rupees (to them paid), the defendants executed to the plaintiff a policy of insurance on the said (premises), a copy of which is hereunto annexed (*or state its tenor*).

3.—That on the ———— day of ————, 19—, the said (dwelling house) was totally destroyed (*or* greatly damaged) by fire.

4.—That the plaintiff's loss thereby was ———— rupees.

5.—That on the ———— day of ————, 19—, he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6.—That the defendants have not paid the said loss.

(*Demand of judgment.*)

———

(lv) *Against Surety for Payment of Rent*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, one *E. F.* hired from the plaintiff, for the term of ———— years, the (house No. ————, ———— street, ————) at the annual rent of ———— rupees, payable (*monthly*).

2.—That (at the same time and place) the defendant agreed, in consideration of the letting of the said premises to the said *E. F.*, to guarantee the punctual payment of the said rent.

3.—That the rent aforesaid for the month of ————, 19—, amounting to ———— rupees, has not been paid.

(*If by the terms of the agreement notice is required to be given to the surety, add*—)

4.—That on the ———— day of ————, 19—, the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5.—That he has not paid the same.

(*Demand of judgment.*)

———

PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT

(lvi) *For Breach of Agreement to convey Land*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the plaintiff and defendant entered into a notarial agreement, of which a copy is hereto annexed, by which the defendant

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agreed with the plaintiff that, in consideration of a deposit of ——— rupees then paid, and of the further sum of (*ten thousand*) rupees payable as hereinafter mentioned, he would, on the ——— day of ———, 19—, at ———, execute to the plaintiff a sufficient conveyance of (the house No. ———, ——— street, in the city of ———) free from all encumbrances; and the plaintiff agreed to pay (*ten thousand*) rupees for the same on delivery thereof.

2.—That on the ——— day of ———, 19—, the plaintiff demanded the conveyance of the said property from the defendant and tendered ——— rupees to the defendant (*or*, that all conditions were fulfilled, and all things happened and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part).

3.—That the defendant has not executed any conveyance of the said property to the plaintiff (*or* that there is a mortgage upon the said property, made by ——— to ———, for ——— rupees, registered in the office of ———, on the ——— day of ———, 19—, and still unsatisfied *or any other defect of title*).

4.—That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid, and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5.—The plaintiff prays judgment for ——— rupees compensation.

———

(lvii) *For Breach of Agreement to purchase Land*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the plaintiff and defendant entered into a notarial agreement, of which a copy is hereto annexed, by which they mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff (*forty acres of land in the village of ——— for ——— rupees*).

2.—That on the ——— day of ———, 19—, at ———, the plaintiff, being then the absolute owner of the said property (and the same being free from all encumbrances, as was made to appear to the defendant), tendered to the defendant a sufficient instrument of conveyance of the same (*or* was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument), on the payment by the defendant of the said sum.

3.—That the defendant has not paid the same.

(*Demand of judgment.*)

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(lviii) *Another Form*

(*Title.*)

1.—That by a notarial agreement dated the ———— day of ————, 19—, of which a copy is hereto annexed, it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant, and the defendant should purchase from the plaintiff (*a house and land at the price of* ———— *rupees*), upon the terms and conditions following, that is to say :—

(*a*) That the defendant should pay the plaintiff a deposit of ———— rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the ———— day of ————, 19—, on which day the said purchase should be completed.

(*b*) That the plaintiff should deduce and make a good title to the said premises on or before the ———— day of ————, 19—, and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2.—That all conditions were fulfilled, and all things happened and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3.—That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

(*Demand of judgment.*)

———

(lix) *For not delivering Goods sold*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the plaintiff and defendant mutually agreed that the defendant should deliver (*one hundred barrels of flour*) to the plaintiff (on the ———— day of ————, 19—), and the plaintiff should pay therefor ———— rupees on delivery.

2.—That on the (said) day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3.—That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

(*Demand of judgment.*)

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(lx) *For Breach of Contract to Employ*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as (*an accountant, or in the capacity of foreman, or as the case may be*), and that the defendant should employ the plaintiff as such, for the term of (*one year*), and pay him for his services ——— rupees (*monthly*).

2.—That on the ——— day of ———, 19 —, the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3.—That on the ——— day of ———, 19—, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

(*Demand of judgment.*)

———

(lxi) *For Breach of Contract to employ, where the Employment never took effect*

(*Title.*)

1.—(*As in last preceding form.*)

2.—That on the ——— day of ———, 19—, at ———, the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3.—That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

(*Demand of judgment.*)

———

(lxii) For *Breach of Contract to serve*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an (*annual*) compensation of ——— rupees, and that the defendant should serve the plaintiff as (*an artist*) for the term of (*one year*).

2.—That the plaintiff has always been ready and willing to perform his part of the said agreement (and on the ——— day of ———, 19—, offered so to do).

3.—That the defendant (entered upon) the service of the plaintiff on the above-mentioned day, but afterwards, on the ——— day of ———, 19—, he refused to serve the plaintiff as aforesaid.

(*Demand of judgment.*)

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(lxiii) *Against a Builder for Defective Workmanship*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed (*or state the tenor of the contract*).

(2.—That the plaintiff duly performed all the conditions of the said agreement on his part.)

3.—That the defendant (*built the house referred to in the said agreement in a bad and unworkmanlike manner*).

(*Demand of judgment.*)

———

(lxiv) *By the Master against the Father or Guardian of an Apprentice*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the defendant entered into an agreement, under his hand, a copy of which is hereto annexed (*or state the tenor of the contract*).

2.—That after the making of the said agreement the plaintiff received the said (*apprentice*) into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3.—That on the ———— day of ————, 19—, the said (*apprentice*) wilfully absented himself from the service of the plaintiff, and continues so to do.

(*Demand of judgment.*)

———

(lxv) *By the Apprentice against the Master*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the defendant entered into an agreement with the plaintiff and his (*father*) *E. F.*, under their hands, a copy of which is hereto annexed.

2.—That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice, to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3.—That the defendant has not (instructed the plaintiff in the business of ————, *or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment*).

(*Demand of judgment.*)

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(lxvi) *On a Bond for the Fidelity of a Clerk*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, plaintiff employed one *E. F.* as a clerk.

2.—That on the ——— day of ———, 19—, at ———, the defendant agreed with the plaintiff that if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding ——— rupees.

(*Or*, 2.—That at the same time and place the defendant bound himself to the plaintiff by a writing under his hand, in the penal sum of ——— rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void, but not otherwise.)

(*Or*, 2.—That at the same time and place the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.)

3.—That between the ——— day of ———, 19—, and the ——— day of ———, 19—, the said *E. F.* received money and other property amounting to the value of ——— rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

(*Demand of judgment.*)

———

(lxvii) *By Tenant against Landlord, with Special Damage*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant, by an instrument in writing, let to the plaintiff (the house No. ——, ——— street), for the term of ——— years, contracting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2.—That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3.—That on the ——— day of ———, during the said term, one *E. F.*, who was the lawful owner of the said house, unlawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4.—That the plaintiff was thereby (*prevented from continuing the business of a tailor at the said place, was compelled to expend ———rupees in moving, and lost the custom of G. H. and I. J. by such removal*).

(*Demand of judgment.*)

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(lxviii) *For Breach of Warranty of Movables*

(*Title.*)

1.—That on the ———— day of ————, 19—, ————, the defendant, warranted a steam-engine to be in good working order and thereby induced the plaintiff to purchase the same of him, and to pay him ———— rupees therefor.

2.—That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which would otherwise have accrued to him while the engine was under repair.

(*Demand of judgment.*)

———

(lxix) *On an Agreement of Indemnity*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the plaintiff and defendant being partners in trade under the firm of *A. B. & C. D.*, dissolved the said partnership and mutually agreed that the defendant should take and keep all the partnership property, pay all the debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2.—That the plaintiff duly performed all the conditions of the said agreement on his part.

3.—That on the ———— day of ————, 19—, a judgment was recovered against the plaintiff and defendant by one *E. F.* in the District Court of ————, upon a debt due from the said firm to the said *E. F.*, and on the ———— day of ————, 19—, the plaintiff paid ———— rupees (in satisfaction of the same).

4.—That the defendant has not paid the same to plaintiff.

(*Demand of judgment.*)

———

(lxx) *By Shipowner against Freighter for not Loading*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

(*Or*, 1.—That on the ———— day of ————, 19—, at ————, the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship ————, at ————, on the ———— day of ————, 19—, *five hundred tons of merchandise*, which she should carry to ———— and there deliver, on payment of ———— freight; and that the defendant should have ———— days for loading, ———— days for discharge, and ———— days for demurrage if required, at ———— rupees per day.)

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2.—That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive (the said merchandise, *or* the merchandise mentioned in the said agreement) from the defendant.

3.—That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore the plaintiff demands judgment for ——— rupees for demurrage and ——— rupees additional for compensation.

PLAINTS FOR COMPENSATION UPON WRONGS

(lxxi) *For Trespass on Land*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant entered upon certain land of the plaintiff, known as ——— (and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same).

(*Demand of judgment.*)

(lxxii) *For Trespass in entering a Dwelling house*

(*Title.*)

1.—That the defendant entered a dwelling house of the plaintiff called ———, and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling house, and removed, took, and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling house, and kept them so expelled for a long time.

2.—That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling house for himself and his family.

(*Demand of judgment.*)

(lxxiii) *For Trespass on Movables*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant broke open ten barrels of rum belonging to the plaintiff and emptied their contents into the street (*or* seized

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and took the plaintiff's goods, that is to say, iron, rice, and household furniture, *or as the case may be*, and carried away the same and disposed of them to his own use).

(*Or*, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.)

2.—That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expenses in feeding them and in getting them restored to him; and was also prevented from selling them at ————, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff (*otherwise, state the injury according to the facts*).

(*Demand of judgment.*)

———

(lxxiv) *For the Conversion of Movable Property*

(*Title.*)

1.—That on the ———— day of ————, 19—, plaintiff was in possession of certain goods described in the schedule hereto annexed (*or of one thousand barrels of flour*).

2.—That on that day at ————, the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

(*Demand of judgment.*)

(*The Schedule.*)

———

(lxxv) *Against a Warehouseman for Refusal to deliver Goods*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the defendant, in consideration of the payment to him of ———— rupees (*or* ———— rupees per barrel, per month, &c.), agreed to keep in his godown (*one hundred barrels of flour*), and to deliver the same to the plaintiff on payment of the said sum.

2.—That thereupon the plaintiff deposited with the defendant the said (*one hundred barrels of flour*).

3.—That on the ———— day of ————, 19—, the plaintiff requested the defendant to deliver the said goods, and tendered him ———— rupees (*or* the full amount of storage due thereon), but the defendant refused to deliver the same.

4.—That the plaintiff was thereby prevented from selling the said goods to *E. F.*, and the same are lost to the plaintiff.

(*Demand of judgment.*)

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(lxxvi) *For procuring Property by Fraud*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that (he, the defendant, was solvent, and worth ——— rupees over all his liabilities).

2.—That the plaintiff was thereby induced to sell (and deliver) to the defendant (dry goods) of the value of ——— rupees.

3.—That the said representations were false (*or state the particular falsehoods*), and were then known by the defendant to be so.

4.—That the defendant has not paid for the said goods. (*Or, if the goods were not delivered,* that the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended ——— rupees.)

(*Demand of judgment.*)

———

(lxxvii) *For fraudulently procuring Credit to be given to another Person*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant represented to the plaintiff that one *E. F.* was solvent and in good credit, and worth ——— rupees over all his liabilities (*or* that *E. F.* then held a responsible situation, and was in good circumstances, and might safely be trusted with goods on credit).

2.—That the plaintiff was thereby induced to sell to the said *E. F.* (*rice*) of the value of ——— rupees (on ——— months' credit).

3.—That the said representations were false, and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff (*or* to deceive and injure plaintiff).

4.—That the said *E. F.* did not pay for the said goods at the expiration of the credit aforesaid (*or* has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises).

(*Demand of judgment.*)

———

(lxxviii) *For polluting the Water under the Plaintiff's Land*

(*Title.*)

1.—That he is, and at all the times hereinafter mentioned was, possessed of certain land called ———, and situate in ———, and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

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2.—That on the ———— day of ————, 19—, the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3.—That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

(*Demand of judgment.*)

———

(lxxix) *For carrying on a Noxious Manufacture*

(*Title.*)

1.—That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called ————, situate in ————.

2.—That ever since the ———— day of ————, 19—, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3.—That thereby the trees, hedges, herbage, and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and livestock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4.—That by reason of the premises the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep, and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

(*Demand of judgment.*)

———

(lxxx) *For obstructing a Way*

(*Title.*)

1.—That the plaintiff is, and at the time hereinafter mentioned was, possessed of (a house in the village of ————).

2.—That he was entitled to a right of way from the said (house) over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants (with vehicles, *or* on foot), at all times of the year.

3.—That on the ———— day of ————, 19—, defendant wrongfully obstructed the said way, so that the plaintiff could not pass (with vehicles, *or* on foot, *or* in any manner) along the said way (and has ever since wrongfully obstructed the same).

4.—(*State special damage, if any.*)

(*Demand of judgment.*)

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Another Form

1.—That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from ——— to ——— so as to obstruct it.

2.—That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones (*or* into the said trench) and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

(*Demand of judgment.*)

———

(lxxxi) *For diverting a Watercourse*

(*Title.*)

1.—That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a stream known as the ———, in the village of ———, district of ———.

2.—That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3.—That on the ——— day of ———, 19—, the defendant by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4.—That by reason thereof the plaintiff has been unable to grind more than ——— sacks per day, whereas, before the said diversion of water, he was able to grind ——— sacks per day.

(*Demand of judgment.*)

———

(lxxxii) *For obstructing a Right to use Water for Irrigation*

(*Title.*)

1.—That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2.—That on the ——— day of ———, 19—, the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

(*Demand of judgment.*)

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(lxxxiii) *For Waste by a Lessee*

(*Title.*)

1.—That on the ——— day of ———, 19—, the defendant hired from plaintiff (the house No. ——, ——— street) for the term of ———.

2.—That the defendant occupied the same under such hiring.

3.—That during the period of such occupation the defendant greatly injured the premises (defaced the walls, tore up the floors, and broke down the doors; *or otherwise specify the injuries as far as possible*).

The plaintiff prays judgment for ——— rupees compensation.

(lxxxiv) *For Assault and Battery*

(*Title.*)

That on the ——— day of ———, 19—, at ———, the defendant assaulted and beat plaintiff.

The plaintiff prays judgment for ——— rupees compensation.

(lxxxv) *For Assault and Battery, with Special Damage*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant assaulted and beat him until he became insensible.

2.—That the plaintiff was thereby disabled from attending to his business for (*six weeks thereafter*), and was compelled to pay ——— rupees for medical attendance, and has been ever since disabled (*from using his right arm, or otherwise state the damage as the case may be*).

(*Demand of judgment.*)

(lxxxvi) *For Assault and False Imprisonment*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant assaulted the plaintiff and imprisoned him for ——— days (*or* hours). (*State special damage, if any, thus*—)

2.—That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment (*or otherwise, as the case may be.*)

(*Demand of judgment.*)

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(lxxxvii) *For Injuries caused by Negligence on Railroad*

(*Title.*)

1.—That on the ——— day of ———, 19—, the defendants were common carriers of passengers by railway between ——— and ———.

2.—That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3.—That while he was such passenger at ——— (*or* near the station of ——— *or* between the stations of ——— and ———), a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured (*having his leg broken, his head cut, &c., and state the special damage, if any, as* ———) and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as (*a salesman*).

(*Demand of judgment.*)

(*Or thus :* 2.—That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, *&c., as in paragraph 3.*)

(lxxxviii) *For Injuries caused by Negligent Driving*

(*Title.*)

1.—The plaintiff is a shoemaker, carrying on business at ———. The defendant is a merchant of ———.

2.—On the (*23rd* ———, 19—,) the plaintiff was walking eastward along ——— street, in *Colombo,* at about *3* o'clock in the afternoon. He was obliged to cross ——— street, which is a street running into ——— street at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of ——— street into ——— street. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3.—By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims ——— rupees damages.

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(lxxxix) *For Libel, the Words being libellous in themselves*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the defendant published in a newspaper, called the ———— (*or* in a letter addressed to *E. F.*), the following words concerning the plaintiff :

(*Set forth the words used.*)

2.—That the said publication was false and malicious.

(*Demand of judgment.*)

[NOTE.—*If the libel was in a language not the language of the court, set out the libel* verbatim *in the foreign language in which it was published, and then proceed thus* :—" Which said words being translated into the ———— language, have the meaning and effect following, and were so understood by the persons to whom they were so published ; that is to say, (*here set out a literal translation of the libel in the language of the court*)."]

———

(xc) *For Libel, the Words not being libellous in themselves*

(*Title.*)

1.—That the plaintiff (is, and) was on and before the ———— day of ————, 19—, a merchant doing business in the city of ————.

2.—That on the ———— day of ————, 19—, at ————, the defendant published in a newspaper, called the ———— (*or* in a letter addressed to *E. F., or otherwise how published*), the following words concerning the plaintiff :

(" *A. B.* of this city has modestly retired to foreign lands. It is said that creditors to the amount of ———— rupees are anxiously seeking his address.")

3.—That the defendant meant thereby that (the plaintiff had absconded to avoid his creditors, and with intent to defraud them).

4.—That the said publication was false and malicious.

(*Demand of judgment.*)

———

(xci) *For Slander, the Words being actionable in themselves*

(*Title.*)

1.—That on the ———— day of ————, 19—, at ————, the defendant falsely and maliciously spoke, in the hearing of *E. F.* (*or* sundry persons), the following words concerning the plaintiff : (" He is a thief ").

2.—That, in consequence of the said words, the plaintiff lost his situation as ———— in the employ of ————.

(*Demand of judgment.*)

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(xcii) *For Slander, the Words not being actionable in themselves*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant falsely and maliciously said to one *E. F.* concerning the plaintiff : (" He is a young man of remarkably easy conscience. ").

2.—That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3.—That in consequence of the said words (the said *E. F.* refused to employ the plaintiff as a clerk).

(*Demand of judgment.*)

(xciii) *For Malicious Prosecution*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant obtained a warrant of arrest from ———, a (Magistrate of the said city, *or as the case may be*), on a charge of ———, and the plaintiff was arrested thereon, and imprisoned for ——— (days *or* hours, and gave bail in the sum of ——— rupees to obtain his release).

2.—That in so doing the defendant acted maliciously and without reasonable or probable cause.

3.—That on the ——— day of ———, 19—, the said Magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4.—That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him ; (*or* that in consequence of the said arrest, the plaintiff lost his situation as a clerk to one *E. F., or* that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expenses in obtaining his release from the said imprisonment and in defending himself against the said complaint).

(*Demand of judgment.*)

PLAINTS IN ACTIONS FOR SPECIFIC PROPERTY

(xciv) *By the Absolute Owner for the Possession of Immovable Property*

(*Title.*)

1.—That *X. Y.* was the absolute owner (of the estate, *or* the share of the estate, called ———, situate in the district of ———, of the estimated value of ——— rupees, *or* of the house No. ———, ——— street, in the town of *Colombo,* the estimated value of which is ——— rupees).

2.—That on the ——— day of ———, 19—, *Z.* illegally dispossessed the said *X. Y.* of the estate (*or* share *or* house).

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3.—That the said *X. Y.* has since died intestate, leaving the plaintiff, the said *A. B.*, his heir him surviving.

4.—That the defendant withholds the possession of the estate (*or* share *or* house) from the plaintiff.

The plaintiff prays judgment:

(1) For the possession of the said premises;

(2) For ——— rupees compensation for withholding the same.

(*Another Form*)

1.—On the ——— day of ———, the plaintiff, by an instrument in writing, let to the defendant a house and premises (No. *52*, ———, in the ———) for a term of *five* years from the ——— day of ———, at the monthly rent of *three hundred rupees.*

2.—By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3.—The said instrument contained a clause of re-entry entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4.—On the ——— day of ———, 19—, a month's rent became due, and on the ——— day of ———, 19—, another month's rent became due; on the ——— day of ———, 19—, both had been in arrear for twenty-one days, and both are still due.

5.—On the same ——— day of ———, 19—, the house and premises were not and are not now in good or tenantable repair and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims:

(1) Possession of the said house and premises;
(2) ——— rupees for arrears of rent;
(3) ——— rupees compensation for the defendant's breach of his covenant to repair;
(4) ——— rupees for the occupation of the house and premises from the ——— day of ———, 19—, to the day of recovering possession.

(xcv) *By the Tenant*

(*Title.*)

1.—That one *E. F.* is the absolute owner of (a piece of land in the town of ———, bounded as follows:———), the estimated value of which is ——— rupees.

2.—That on the ——— day of ———, 19—, the said *E. F.* let the said premises to the plaintiff for ——— years, from ———.

3.—That the defendant withholds the possession thereof from the plaintiff.

(*Demand of judgment.*)

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(xcvi) *For Movable Property wrongfully taken*

(*Title.*)

1.—That on the ——— day of ———, 19—, plaintiff owned (*or* was possessed of) *one hundred barrels of flour*, the estimated value of which is ——— rupees.

2.—That on that day, at ———, the defendant took the same.

The plaintiff prays judgment:

(1) For the possession of the said goods, or for ——— rupees in case such possession cannot be had;
(2) For ——— rupees compensation for the detention thereof.

(xcvii) *For Movables wrongfully detained*

(*Title.*)

1.—That on the ——— day of ———, 19—, plaintiff owned (*or state facts showing a right to the possession*) the goods mentioned in the schedule hereto annexed (*or describe the goods*), the estimated value of which is ——— rupees.

2.—That from that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3.—That before the commencement of this suit, to wit, on the ——— day of ———, 19—, the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment:

(1) For the possession of the said goods, or for ——— rupees in case such possession cannot be had;
(2) For ——— rupees compensation for the detention thereof.

(*The Schedule.*)

(xcviii) *Against a Fraudulent Purchaser and his Transferee with Notice*

(*Title.*)

1.—That on the ——— day of ———, 19—, at ———, the defendant *C. D.*, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that (he was solvent and worth ———rupees over all his liabilities).

2.—That the plaintiff was thereby induced to sell and deliver to the said *C. D.* (*one hundred boxes of tea*), the estimated value of which is ——— rupees.

3.—That the said representations were false, and were then known by the said *C. D.* to be so. (*Or*, That at the time of making the said representations the said *C. D.* was insolvent, and knew himself to be so.)

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4.—That the said *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration (*or* who had notice of the falsity of the representation).

The plaintiff prays judgment:

(1) For the possession of the said goods, or for ——— rupees in case such possession cannot be had;

(2) For ——— rupees compensation for the detention thereof.

PLAINTS IN ACTIONS FOR SPECIAL RELIEF

(xcix) *For Rescission of a Contract on the Ground of Mistake*

(*Title.*)

1.—That on the ——— day of ———, 19—, the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at ———, contained (*ten acres*).

2.—That the plaintiff was thereby induced to purchase the same at the price of ——— rupees, in the belief that the said representation was true, and signed an instrument of agreement of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3.—That on the ——— day of ———, 19—, the plaintiff paid the defendant ——— rupees as part of such purchase-money.

4.—That the said piece of ground contained in fact only (*five acres*).

The plaintiff prays judgment:

(1) For ——— rupees, with interest from the ——— day of ———, 19—;

(2) That the said agreement of purchase be delivered up and cancelled.

(c) *For an Injunction restraining Waste*

(*Title.*)

1.- That plaintiff is the absolute owner of (*describe the property*).

2.—That the defendant is in possession of the same under a lease from the plaintiff.

3.—That the defendant has (*cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale*) without the consent of the plaintiff.

The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

(*Pecuniary compensation might also be prayed.*)

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(ci) *For Abatement of a Nuisance*

(*Title.*)

1.—That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of (the house No.———, ———— street).

2.—That the defendant is, and at all the said times was, the absolute owner of a (plot of ground in the same street ————).

3.—That on the ———— day of ————, 19—, the defendant erected upon his said plot a slaughter-house, and still maintains the same ; and from that day until the present time has continually caused cattle to be brought and killed there (and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff).

4.—That (the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same).

The plaintiff prays judgment that the said nuisance be abated.

———

(cii) *For an Injunction against the Diversion of a Watercourse*

(*Title.*)

(*As in form* lxxxi.)

The plaintiff prays judgment that the defendant be restrained by injunction from diverting the water as aforesaid.

———

(ciii) *For Restoration of Movable Property, threatened with Destruction, and for an Injunction*

(*Title.*)

1.—That plaintiff is, and at all the times hereinafter mentioned was, the owner of (*a portrait of his grandfather which was executed by an eminent painter*), and of which no duplicate exists (*or state any facts showing that the property is of a kind that cannot be replaced by money*).

2.—That on the ———— day of ————, 19—, he deposited the same for safe keeping with the defendant.

3.—That on the ———— day of ————, 19—, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4.—That the defendant refuses to deliver the same to the plaintiff, and threatens to conceal, dispose of, cut, or injure the same if required to deliver it up.

5.—That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the (*painting*).

The plaintiff prays judgment :

(1) That the defendant be restrained by injunction from disposing of, injuring, or concealing the said (*painting*) ;

(2) That he return the same to the plaintiff.

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(civ) *Interpleader*

(*Title.*)

1.—That before the date of the claims hereinafter mentioned, one *G. H.* deposited with the plaintiff (*describe the property*) for (safe keeping).

2.—That the defendant, *C. D.*, claims the same (under an alleged assignment thereof to him from the said *G. H.*).

3.—That the defendant, *E. F.*, also claims the same (under an order of the said *G. H.* transferring the same to him).

4.—That the plaintiff is ignorant of the respective rights of the defendants.

5.—That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the court shall direct.

6.—That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment :

(1) That the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;
(2) That they be required to interplead together concerning their claims to the said property
(3) That some person be authorized to receive the said property pending such litigation ;
(4) That upon delivering the same to such (person), the plaintiff be discharged from all liability to either of the defendants in relation thereto.

(cv) *Execution of Trusts*

(*Title.*)

1.—That plaintiff is one of the trustees under an instrument of settlement bearing date on or about the ———— day of ————, made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant (*or* an instrument of assignment of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and other the creditors of *E. F.*).

2.—The plaintiff has taken upon himself the burden of the said trust, and is in possession of (*or* of the proceeds of) the movable and immovable property conveyed (*or* assigned) by the before-mentioned deed.

3.—The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4.—The plaintiff is desirous to account for all the rents and profits of the said immovable property (and the proceeds of the sale of the said, *or* of part of the said, immovable property, *or* movable, *or* the proceeds of the sale of, *or* part of, the said movable property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust) ; and he prays that the court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the court for the benefit of the said *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the court may direct, or that the said *C. D.* may show good cause to the contrary.

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(cvi) *Realization of Mortgage*

(Title.)

1.—By a writing obligatory dated the ———— day of ————, 19—, the defendant bound himself to pay to the plaintiff (his heirs, &c.) the principal sum of ———— rupees, together with interest thereon at the rate of ———— *per centum* per annum (on demand, *or as the case may be*).

2.—For securing the payment of the said principal and interest the defendant mortgaged with the plaintiff, his heirs, &c., the following property (*describe*).

3.—(*Where the bond is not payable on demand, allege notice.*)

4.—There is now due from the defendant to the plaintiff the sum of ———— rupees for principal and interest on the said writing.

5.—The plaintiff prays that the court will order the defendant to pay him the said sum of ———— rupees, with such further interest as may accrue between the filing of the libel and the day of payment, and also the costs of this action, on some day to be named by the court, and in default that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest, and costs; and that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of ———— *per centum* per annum until realization; and that for that purpose all proper directions may be given, and accounts taken by the court.

———

(cvii) *Redemption*

(Title.)

Alter form cvi *thus:*

Transpose parties and also the facts in paragraphs 1 and 2.

For paragraph 4 substitute—

4.—There is now due from the plaintiff to the defendant, for principal and interest on the said writing, the sum of ———— rupees, which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before the filing of this libel, had notice.

For paragraph 5 substitute—

5.—The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to release the same to him upon the payment of the said sum of ———— rupees and interest, with such costs (if any) as the court may order, upon a day to be named by the court, and that the court will give all proper directions for the preparation and execution of such release and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

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(cviii) (*a*) *Specific Performance*

(Title.)

1.—By an agreement dated the ——— day of ———, and signed by the above-named defendant, *C. D.*, he, the said *C. D.*, contracted to buy of (*or* sell to) plaintiff certain immovable property therein described and referred to, for the sum of ——— rupees.

2.—Plaintiff has applied to the said *C. D.* specifically to perform the said agreement on his part, but he has not done so.

3.—Plaintiff has been and still is ready and willing specifically to perform the agreement on his part, of which the said *C. D.* has had notice.

4.—The plaintiff prays that the court will order the said *C. D.* specifically to perform the said agreement, and to do all acts necessary to put plaintiff in full possession of the said property (*or* to accept a conveyance and possession of the said property) and to pay the costs of the action.

[*N.B.—In action for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3 and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as, that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.*]

———

(cix) (*b*) *Specific Performance*

(Title.)

1.—That on the ——— day of ———, 19—, the defendant was absolutely entitled to certain immovable property described in the agreement hereto annexed.

2.—That on the same day the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3.—That on the ——— day of ———, 19—, the plaintiff tendered ——— rupees to the defendant, and demanded a conveyance of the said property.

4.—That on the ——— day of ———, 19—, the plaintiff again demanded such conveyance.

5.—That the defendant has not executed such conveyance. (*Or*, That the defendant refused to convey the same to the plaintiff.)

6.—That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment:

(1) That the defendant execute to plaintiff a sufficient conveyance of the said property (*following the terms of the agreement*) ;

(2) For ——— rupees compensation for withholding the same.

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(cx) *Partnership*

(*Title.*)

1.—He, the plaintiff, and the said *C. D.*, the defendant, have been for the space of ———— years (*or* months) last past carrying on business together at ————, within the jurisdiction of this court, under certain articles of partnership in writing, signed by them respectively (*or* under a certain deed sealed and executed by them respectively, *or* under a verbal agreement between them, the said plaintiff and defendant).

2.—Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3.—The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles (*or* deed, *or* agreement).

4.—The plaintiff prays the court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the court, and the assets thereof realized, and that each party may be ordered to pay into court any balance due from him upon such partnership account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the action may be paid out of the partnership assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles (*or* deed, *or* agreement), or that if the said assets shall prove insufficient, he, the plaintiff, and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities, and costs. And to give such other relief as the court shall think fit.

[*N. B.—In actions for winding up of any partnership, omit the prayer for dissolution: but insert a paragraph stating the fact of the partnership having been dissolved.*]

No. 34

[Sections 57 and 471.]

FORM OF ORDER FOR THE PERSONAL APPEARANCE OF A PLAINTIFF, OR OF THE DIRECTOR OR SECRETARY OR OTHER PRINCIPAL OFFICER OF A CORPORATION OR COMPANY

(*Title.*)

To ————, of ————, plaintiff in the above-named action (*or* director, *or* secretary, *or other principal officer,* of the ———— company *or* corporation).

You are hereby summoned to attend in person in this court in the action above specified at ———— o'clock of the forenoon on the ———— day of ————, 19—.

(*Signed*) ————, (*Name and office of Judge.*)

The ———— day of ————, 19—.

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No. 35

FORM OF LIST OF DOCUMENTS PRODUCED BY PARTIES AT THE HEARING [Section 113.]

(*Title.*)

No.	Description of Document	Date (if any) which it bears	Signature of Party or Proctor

---

No. 36

FORM OF RECEIPT BOOK FOR RETURNED EXHIBITS [Section 116.]

Description of exhibit	By whom presented	No. of action in which presented	Date on which time for appeal elapsed or appeal disposed of	Cost of copy paid	Signature of person to whom exhibit returned	Date of return	Signature of officer by whom exhibit returned
Enter description merely, and not substance of exhibit.							(*Should be signed by officer in charge of this register.*)

No. 37

FORM OF PROCLAMATION TO BE ISSUED WHEN SUMMONS CANNOT BE SERVED [Section 131]

In the District Court of ——— (*or as the case may be*).

PROCLAMATION

(*Title.*)

To all to whom these presents shall come, greeting.

Whereas it appears by the return made by the Fiscal of ——— to a certain summons issued in the above-named action at the instance of the above-named (plaintiff *or* defendant), whereby one (*name of witness*) was required to appear and testify on behalf of the (plaintiff *or* defendant) in the said action [*or* to produce (*any document required, describing it*)], that the said Fiscal has not been able to serve

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a copy of the said summons on the said (*witness*): And whereas it appears to the satisfaction of this court that the said (*witness*) has absconded (*or* is keeping out of the way for the purpose of avoiding such service as aforesaid), and that he is a necessary and material witness on behalf of the said (plaintiff *or* defendant) at the trial of the above-named action [*or* that the production of the said (*document*) is necessary and material, &c.], without whose testimony (*or* without which) the said (plaintiff *or* defendant) cannot safely proceed to trial: It is hereby proclaimed that the said (*witness*) is required to attend at this court on the ——— day of ———, 19—, at ——— o'clock of the forenoon, to give evidence (*or* to produce, *as before*) on behalf of the said (plaintiff *or* defendant) under pain of sequestration of the movable and immovable property of the said ——— in case of his default, and of such further proceedings as may be found necessary.

By order of court,

(*Signed*) ———, Secretary (*or as the case may be*).

The ——— day of ———, 19—.

No. 38

[Section 131.] FORM OF MANDATE OF SEQUESTRATION AFTER PROCLAMATION

(*Title.*)

To the Fiscal of ———.

Whereas it appears by the return made by you (*or* by the Fiscal of ———, *as the case may be*) to a certain summons issued in the above-named action at the instance of the above-named (plaintiff *or* defendant), whereby one (*name of witness*) was required to appear and testify on behalf of the (plaintiff *or* defendant) in the said action (*or* to produce *any document, describing it*) that you (*or* the said, &c., *as the case may be*) have (has) not been able to serve a copy of the said summons on the said (*witness*): And whereas it has been proved to the satisfaction of this court that the said (*witness*) has absconded (*or* is keeping out of the way for the purpose of avoiding such service as aforesaid), and that he is a necessary and material witness on behalf of the said (plaintiff *or* defendant) at the trial of the above-named action [*or* that the production of the said (*document*) is necessary and material, &c.], without whose testimony (*or* without which) the said (plaintiff *or* defendant) cannot safely proceed to trial: And whereas in consideration of the premises a proclamation was on the ——— day of ———, 19—, issued by this court requiring the attendance of the said (*witness*) at this court for the purpose aforesaid on the ——— day of ———, 19—, at ——— o'clock of the forenoon, and the said (*witness*) has not attended at such time and place in accordance with the terms of such proclamation: You are therefore commanded to seize and sequester the houses, lands, goods, moneys, securities for money, and debts of the said (*witness*) to the value of (*insert value not exceeding the amount of cost of sequestration and of the fine imposable under section 133*), wheresoever and in whose custody or possession soever the same may be within this district, and to retain and secure the same until the said

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(*witness*) shall appear and abide by the order of this court or until you receive further directions from this court herein: and to give due notice in writing to all persons in whose possession or power such property of the said (*witness*), whether movable or immovable, shall be, of this sequestration, and requiring them to reserve and retain the same, and all issues, rents, profits, and interest accruing therefrom, to abide the order of this court. And you are further commanded on the ——— day of ——— next to inform this court what property you shall have so seized and sequestered, with the true value of the same, and in whose possession the same respectively was at the time of such seizure: and have you there this mandate.

By order of court,

(*Signed*) ———, Secretary (*or as the case may be*).

The ——— day of ———, 19—.

ENDORSEMENT ON THE ABOVE FOR FURTHER SEQUESTRATION

To the Fiscal of ———.

Seize and sequester property of the within-named defendant to the further amount of ——— rupees, in manner and form as you were hereby before directed.

(*Signed*) ———, District Judge.

No. 39

FORM OF WARRANT OF ARREST AGAINST A WITNESS FOR DISOBEDIENCE TO A SUMMONS [Section 137.]

(*Title.*)

To the Fiscal of ———.

Whereas it appears by your return to a certain summons issued in the above-named action at the instance of (plaintiff *or* defendant), whereby one (*name of witness*) was required to appear and testify on behalf of the (plaintiff *or* defendant) in the said action (*or* to produce *any document required, describing it*), that the said (*witness*) named therein was duly served with a copy thereof, but the said (*witness*) has failed to appear in obedience thereto (*or*, having appeared has departed in contravention of the provisions of section 136 of the Civil Procedure Code): You are therefore to seize and arrest the said (*witness*) and bring him before this court forthwith, in order that he may undergo the penalties legally awarded against him for such contempt and disobedience, and further perform and abide by such order as the court shall make in this behalf: and have you there this warrant.

(*Signed*) ———, District Judge (*or as the case may be*).

The ——— day of ———, 19—.

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No. 40

[Section 178.] FORM OF NOTICE TO PARTIES OF THE DAY FIXED FOR THE EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION

(*Title.*)

To (plaintiff *or* defendant).

Whereas application has been made to this court by the (defendant *or* plaintiff) in the above-named action that the examination of ———, of ———, a witness required by him in the said action, may be taken immediately; and it has been shown to the satisfaction of this court that the said witness is about to leave the court's jurisdiction (*or state any other good and sufficient cause*): Take notice that the examination of the said (*witness*) will be taken by the court on the ——— day of ———, 19—, at ——— o'clock.

By order of court,

(*Signed*) ———, Secretary.

The ——— day of ———, 19—.

No. 41

[Section 188.] FORM OF DECREE

(*Title.*)

This action coming on for final disposal before (*name and office of Judge*) on the ——— day of ———, 19—, (in the presence of ——— on the part of the plaintiff and ——— on the part of the defendant), it is ordered and decreed (*specify in precise terms the order made in the judgment*).

(And it is further ordered that the said ——— do pay to the said ——— his costs of this action (*in Courts of Requests stating the amount*) as taxed by the officer of the court, with interest thereon at the rate of ——— from the date of taxation to the date of realization.)

(*Where the decree is for delivery of immovable property, describe the property in accordance with the requirements of section 190.*

Where the decree is for delivery of movable property, specify the amount to be paid as an alternative if delivery cannot be had.

In case of specific performance, state the amount of damages to be paid if the contract is not performed.

Where defendant is allowed a set-off, state what is due to plaintiff and defendant, and decree recovery of the balance.

Where mesne profits pending or prior to action are claimed, vary decree according to sections 195, 196.

Where the action is to enforce a right of pre-emption, or to realize a mortgage, carry out the directions of sections 200, 201.

In any case where a decree or order has the effect of postponing the final determination of a case, specify therein the date of further hearing.)

(*Signed*) ———, (*Name and office of Judge*).

The ——— day of ———, 19—.

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No. 42

FORM OF APPLICATION FOR EXECUTION OF A DECREE BY SEIZURE AND SALE OF MOVABLE PROPERTY

[Sections 224 and 225.]

In the District Court of ————.

I, *A. B.*, plaintiff, hereby apply for execution of the decree herein below set forth :

Number of Action	Names of Parties	Date of Decree	Whether any Appeal preferred	Adjustment made, if any	Previous Application, if any, and Result	Amount of Debt, Compensation, Interest, or other Relief granted by Decree	Amount of Costs, if any, awarded	Against whom to be enforced	Mode in which the Court's Assistance is required
1	2	3	4	5	6	7	8	9	10
No. 175, D. C., Colombo	*A.B., plaintiff, against C. D., defendant*	*21st Sept., 1938*	*No*	—	—	*Rs. 250 principal (interest at—per centum from date of decree to payment)*	*Rs. 25·75 costs as awarded in the decree, Rs. 10·50 subsequently incurred* ———— *Rs. 36·25*	*The defendant, C. D.*	*I pray that the total amount of Rs.——(together with interest on the principal sum up to date of payment), and the costs of taking out this execution, be realized by (indicate manner of relief required).*

I, *A. B.*, hereby declare that what is stated herein is true to the best of my information and belief.

(*Signed*) *A. B.*

This ———— day of ————, 19—.

No. 43

FORM OF WRIT OF EXECUTION AGAINST PROPERTY

[Section 225.]

(*Title.*)

To the Fiscal of the ———— Province.

Levy and make of the houses, lands, goods, debts, and credits of the above-named ————, by seizure, and, if necessary, by sale thereof, the sum of ———— rupees, which the said ———— has recovered against the said ———— by a judgment of the court bearing date the ———— day of ————, 19—, and have that money before this court on the ———— day of ————, 19—, to render to the said ————, and inform this court for what sum or sums, and to what person or persons, you have sold the property respectively : and have you there this mandate.

By order of court,

(*Signed*) ————, Secretary.

The ———— day of ————, 19—.

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No. 44

[Section 229.] FORMS OF PROHIBITORY NOTICES

(*In the case of a debt not secured by a negotiable instrument.*)

To (*defendant*) and to (*defendant's debtor*).

Whereas (*defendant*) has failed to satisfy a decree passed against him on the ——— day of———, 19—, in (*title, &c., of case*), in favour of ——— for ——— rupees :

I hereby give you notice that you, the said defendant, are hereby prohibited and restrained until the further order of the court from which execution in the said action issued from receiving from the said (*debtor*) a certain debt alleged to be now due from him to you, namely (*particularize it*) : and that you, the said ———, are hereby prohibited and restrained until such further order from making payment of the said debt or any part thereof to any person whomsoever.

(*Signed*) ———, Fiscal.

The ——— day of ———, 19—.

No. 45

(*In the case of a share in a public company, &c.*)

To (*defendant*) and to manager (&c.), ——— company.

Whereas ——— has failed to satisfy a decree (*recital as in No. 44*) : I hereby give you notice that you, the defendant, are hereby prohibited and restrained until the further order of the court (*as before*) from making any transfer of ——— shares in the aforesaid company, namely, ———, or from receiving payment of any dividends thereof : and that you, the said ———, manager of the said company, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

(*Signed*) ———, Fiscal.

No. 46

(*In case of movable property not in the possession of the judgment-debtor.*)

To (*defendant*) and to (*person in possession*).

Whereas (*recital as in No. 44*) : I hereby give you notice that you, the said defendant, are hereby prohibited and restrained until the further order (*as before*) from receiving from the said ——— the following property now in his possession ; that is to say (*name it*), to which you, the said defendant, are entitled subject to any claim of the said ———, and that you, the said ———, are hereby prohibited and restrained until (*as before*) from delivering such property to any person whomsoever.

(*Signed*) ———, Fiscal.

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No. 47

FORM OF NOTICE WHERE PROPERTY IS IN CUSTODY OF A COURT OR PUBLIC OFFICER [Section 232.]

(*Title.*)

Sir,—The plaintiff in the above-named action having applied under section ——— of the Civil Procedure Code for seizure of certain moneys (*or as the case is*) now in your hands (*state how the moneys, &c., are in the hands of the person addressed, and on what account, &c.*), I request that you will hold the said (moneys), and any interest or dividend becoming payable thereon, subject to the further order of the court from which writ of execution in the said action issued.

I have, &c., ——— Fiscal.

The ——— day of ———, 19—.

No. 48

FORM OF NOTICE TO A COURT REQUESTING STAY OF EXECUTION OF ITS DECREE [Section 234.]

(*Title.*)

To (*name and office of Judge*).

Whereas *A. B.*, plaintiff in the above-named action, obtained a decree against *C. D.*, defendant in the said action, in this court on the ——— day of ———, 19—, for the payment of ——— rupees; and whereas application has been made to this court for the seizure in execution of the said decree of a decree obtained in your court by the said defendant against ——— in (*title of action*): you are hereby requested to stay the execution of your said decree (until this notice shall be cancelled by this court, *or as the case may be*).

By order of court,

(*Signed*) ———, Secretary.

The ——— day of ———, 19—.

No. 49

FORM OF PROHIBITORY NOTICE TO HOLDER OF A DECREE SOUGHT TO BE SEIZED [Section 235.]

(*Title.*)

To (*defendant*).

Whereas in execution of the decree passed against you in the above-named action application has been made for the seizure of the decree passed against ——— in (*title, &c., of action*) of which you are the holder: you are hereby prohibited from transferring or charging the said decree in any way.

By order of court,

(*Signed*) ———, Secretary.

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No. 50

[Section 237.] FORM OF PROHIBITORY NOTICE IN CASE OF IMMOVABLE PROPERTY

To (*defendant*).

Whereas you have failed to satisfy a decree passed against you on the ——— day of ———, 19—, in (*title, &c., of case*), in favour of ———, for ——— rupees (*here set out the particulars required by the section*), I hereby give you notice that you, the said defendant, are hereby prohibited and restrained until the further order of the court from which execution in the said action issued from in any way transferring, alienating, or charging the property specified in the schedule hereto annexed, and that all persons are prohibited from receiving the same or any part thereof by purchase, gift, or otherwise.

(*Signed*) ———, Fiscal.

The ——— day of ———, 19—.

(*The Schedule.*)

No. 51

[Section 259.] FORM OF CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE, LEASE, OR SELL PROPERTY

(*Title.*)

Whereas in execution of the decree passed in the above-named action notice of the sale of certain immovable property of the judgment-debtor, ———, has been given, and the court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by (mortgage, lease, *or* private sale, *as the case may be*) of the under-mentioned property or part thereof:

This is to certify that the court doth hereby authorize the said judgment-debtor to make the proposed (mortgage, lease, *or* sale) within a period of ——— from the date of this certificate:

Provided that all moneys payable under such (mortgage, lease, *or* sale) shall be paid into this court and not to the said judgment-debtor; and provided, further, that no such (mortgage, lease *or* sale) shall become absolute until the same shall have been confirmed by this court.

(*Signed*) ———, Judge.

The ——— day of ———, 19—.

(*Details of property referred to.*)

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No. 52

FORM OF FISCAL'S CERTIFICATE WHERE THERE HAS BEEN A RESALE AT A LOSS, OR A FAILURE TO PAY THE DEPOSIT

[Sections 260-267.]

(*Title.*)

I, *A. B.*, Fiscal of the ——— Province, hereby certify that the under-mentioned property was, on the ——— day of ———, 19 —, duly put up for sale under writ No. ——— of this court in execution of the decree in the above-named action.

One ——— was duly declared to be the purchaser of the said property at the said sale at the price of ——— rupees.

(The said ———, on being so declared to be such purchaser, failed to pay down the deposit of 25 *per centum* on the amount of his purchase-money to the officer conducting the sale, and to give good and sufficient security to the satisfaction of such officer for the payment of the residue, in manner by law required ; and one ———, being the next highest bidder at the said sale, was thereupon duly declared to be the purchaser of the said property at the price of ——— rupees.

The said ——— thereupon became liable to pay the difference between the said several sums of ——— rupees and ——— rupees, amounting to ——— rupees.)

Or,

(The said ——— duly paid the deposit of 25 *per centum* on the amount of the said purchase-money to the officer conducting the sale, and entered into good and sufficient security to the satisfaction of such officer for payment of the residue, in manner by law required, but the said ——— has failed to pay such residue, although thirty full days have elapsed since the day of sale.

In consequence of the failure aforesaid the said property was, on the ——— day of ———, 19—, again put up for sale under the said writ, and resold, and one ——— was duly declared to be the purchaser at such resale at the price of ——— rupees.

The said ——— thereupon became liable to pay the difference between the said several sums of ——— rupees and ——— rupees, amounting to the sum of ——— rupees.)

(*Conclude :*) Demand in writing was duly made upon the said ——— for the payment of the said sum of ——— rupees, on the ——— day of ———, 19—, but although one week has elapsed since the date of such demand the said ——— has not paid the said sum of ——— rupees.

(*Signed*) ———, Fiscal, ——— Province.

The ——— day of ———, 19—.

(*Schedule of property.*)

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No. 53

[Section 278.] FORM OF NOTICE TO PERSON IN POSSESSION OF MOVABLES SOLD IN EXECUTION

(*Title.*)

To (*person in possession*).

Whereas ———— has become the purchaser at a sale by auction in execution of the above-named action of (*property*) now in your possession, I hereby give you notice that you are prohibited and restrained from delivering possession thereof to any person except the said ————.

(*Signed*) ————, Fiscal.

The ———— day of ————, 19—.

No. 54

[Section 279.] FORM OF NOTICE PROHIBITING PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY PERSON BUT THE PURCHASER

To (*judgment-debtor*) and to (*judgment-debtor's debtor*).

Whereas ———— has become the purchaser at a sale (&c.) of a certain debt due from you, ————, to you, ————, that is to say (*state particulars*) : I hereby give you notice that you the said ————, are hereby prohibited from receiving payment of the said debt, and you the said ———— from making payment of the same to any person except the said (*purchaser*).

(*Signed*) ————, Fiscal.

The ———— day of ————, 19—.

(*Where the property sold in execution consists of shares, this form must be followed, but the notice will be directed to the person in whose name the shares are standing, and to the manager of the company, and will be prohibitory of transferring the shares or receiving or making payment of dividends thereon.*)

No. 55

[Section 283.] FORM OF ORDER CONFIRMING SALE OF LAND

(*Title.*)

Whereas the under-mentioned property was on the ———— day of ————, 19—, sold by the Fiscal, ————, in execution of the decree in the above-named action : and whereas thirty days have elapsed since the receipt of the said Fiscal's report of the said sale, and no application has been made to set aside the same (*or that objections made have been disallowed*) : It is ordered that the said sale be and the same is hereby confirmed. ("*Mutatis mutandis*", *where the sale is set aside.*)

(*Signed*) ————, (*Name and office of Judge.*)

The ———— day of ————, 19—.

(*Schedule.*)

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No. 56

FORM OF FISCAL'S CONVEYANCE TO PURCHASER AFTER CONFIRMATION OF SALE BY COURT [Section 286.]

To all to whom these presents shall come, greeting.

Whereas by virtue of a writ of execution issued from the ——— Court of ———, bearing date the ——— day of ———, 19—, directed to the Fiscal (*or* Deputy Fiscal *as the case may be*) of the ——— Province, whereby he was directed (*insert directions of the writ*), *A. B., Esquire,* (*Fiscal*) of the said Province, did cause to be seized and taken the property hereinafter described, which, after due notice and publication in manner by law prescribed, 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 to the said (*Fiscal*) 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 purchase (*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 *A. B.*, Fiscal of the ——— Province, in consideration of the said sum of ——— rupees so paid by (*or* credited to) the said (*purchaser*) as aforesaid, the receipt whereof the said *A. B.* 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, all that (*name and description of the land by metes and bounds*), containing ———, and described in the diagram or map annexed to (*some title deed delivered to the purchaser, or if there is none, then*) these presents, and marked ———, 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—.

Witnesses :

Annexures. ———, Fiscal.

(*In cases where the sale has been effected in execution of a decree specifically directing a sale, the conveyance will be in accordance with the terms of the decree.*)

No. 57

FORM OF ORDER OF DELIVERY OF POSSESSION TO A PURCHASER WHERE PROPERTY IN OCCUPANCY OF JUDGMENT-DEBTOR [Section 287.]

(*Title.*)

To the Fiscal, ——— Province.

Whereas ——— has become the purchaser of (*land*) at a sale in execution of the decree in the above-named action,

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and whereas the said (*land*) is in the possession of ————, you are hereby ordered to put the said (*purchaser*) into possession of the said (*land*), and, if need be, to remove any person bound by the decree who may refuse to vacate the same.

(*Signed*) ————, (*Name and office of Judge.*)

The ———— day of ————, 19—.

PAYMENTS TO FISCALS, &c.

No. 58

[Section 296.] FORM OF NOTE FROM FISCAL TO GOVERNMENT AGENT

No. of note : ————.
No. of action : ————.
Name of payer : ————.
Rs. ————.
Date of payment : ————.

————

Signature of Government Agent.

No. of Note : ————.
No. of action : ————.

To the Government Agent of ————.
Please to receive from ———— Rs. ————.

Fiscal's Office, ————.

No. 59

[Section 296.] FORM OF REGISTER OF SUCH NOTES

No.	No. of Action	District Court	Plaintiff	Defendant	Payer	On what Account	Amount	Date of Issue	Date when Receipt sent back

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No. 60

FORM OF WARRANT FOR ARREST OF A JUDGMENT-DEBTOR

[Section 298.]
[§ 5, 4 of 1940.]

(*Title.*)

To the Fiscal of the ——— Province.

Rs. c.
Principal .. ——
Interest .. ——
Costs .. ——
Execution ——
Total .. ——

Whereas ——— was adjudged by a decree in the above-named action, dated the ——— day of ———, 19—, to pay to the above-named plaintiff the sum of ——— rupees, as noted in the margin:

And whereas the said sum of ——— rupees has not been paid to the said plaintiff in satisfaction of the said decree:

And whereas the court is satisfied (*here specify the grounds on which the warrant is issued*):

These are to command you to arrest the said defendant, and unless the said defendant shall pay to you the said sum of ——— rupees, together with ——— rupees for the cost of executing this process, to bring the said defendant before this court as soon as practicable after his arrest.

You are further commanded to return this warrant on or before the ——— day of ———, 19—, with an endorsement showing the day on and the manner in which it has been executed or the reason why it has not been executed.

(*Signed*) ———,
(*Name and office of Judge.*)

The ——— day of ———, 19—.

No. 60A

FORM OF NOTICE ON JUDGMENT-DEBTOR TO SHOW CAUSE WHY HE SHOULD NOT BE COMMITTED TO JAIL

[Section 299.]
[§ 5, 4 of 1940.]

(*Title.*)

To (*Judgment-debtor*).

Rs. c.
Principal .. ——
Interest .. ——
Costs .. ——
Total .. ——

Whereas you were adjudged by a decree in the above-named action, dated the ——— day of ———, 19—, to pay to the plaintiff above named the sum of ——— rupees, as noted in the margin:

And whereas the said sum of ——— rupees has not been paid to the said plaintiff in satisfaction of the said decree:

And whereas the court is satisfied (*here specify the grounds on which the notice is issued*):

Take notice that you are hereby required to appear before the court on the ——— day of ———, 19—, at ——— o'clock in the forenoon to show cause, if any, why you should not be committed to jail in execution of the decree entered in the above-named action.

(*Signed*) ———,
(*Name and office of Judge.*)

The ——— day of ———, 19—.

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No. 60B

[Section 303.]
[§ 5, 4 of 1940.]

FORM OF WARRANT FOR ARREST OF A JUDGMENT-DEBTOR UNDER SECTION 303

(*Title.*)

Rs. c.	
Principal .. ——	
Interest .. ——	
Costs .. ——	
Execution ——	
Total .. ——	

To the Fiscal of the ———— Province.

Whereas ———— was adjudged by a decree in the above-named action, dated the ———— day of ————, 19—, to pay to the above-named plaintiff the sum of ———— rupees, as noted in the margin :

And whereas the said sum of ———— rupees was not paid to the said plaintiff in satisfaction of the said decree :

And whereas the court was satisfied (*here specify the grounds on which the notice under section 299 was issued*) :

And whereas the said ———— was required by a notice issued by this court, dated the ———— day of ————, 19—, to appear before the court on the ———— day of ————, 19—, at ———— o'clock in the forenoon to show cause (if any) why he, the said ————, should not be committed to jail in execution of the decree entered in the above-named action :

And whereas the said ———— failed to appear before this court on the day and at the time specified in the notice :

These are to command you to arrest the said ————, and unless he, the said ————, shall pay to you the said sum of ———— rupees, together with ———— rupees for the cost of executing this process, to bring the said ———— before this court as soon as practicable after his arrest.

You are further commanded to return this warrant on or before the ———— day of ————, 19—, with an endorsement showing the day on and the manner in which it has been executed or the reason why it has not been executed.

(*Signed*) ————,
(*Name and office of Judge.*)

The ———— day of ————, 19—.

No. 61

[Section 311.]
[§ 5, 4 of 1940.]

FORM OF WARRANT OF COMMITTAL TO JAIL

(*Title.*)

To the Fiscal of the ———— Province.

Receive into your custody the body of ———— who has been committed to jail in execution of a decree of this court dated the ———— day of ————, 19—, entered in the above-named action, for the sum of ———— rupees, together with this warrant, and him safely keep in prison for a period of six months unless he shall in the meantime be discharged by order of this court.

(*Signed*) ————,
(*Name and office of Judge.*)

The ———— day of ————, 19—.

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No. 62

FORM OF WRIT FOR DELIVERY OF A SPECIFIC MOVABLE [Section 320.]

(*Title.*)

To the Fiscal of the ——— Province.

Whereas by a judgment of this court dated the ——— day of ———, 19—, in the above-named action, the said (*plaintiff*) recovered against the said (*defendant*) (*or* the said defendant was ordered to deliver to the said plaintiff) the following (*specify movable property*) : These are to command you that without delay you cause the said (*articles*) to be delivered to the said (*plaintiff*), or to such person as he shall authorize to receive the same. And in what manner you shall have executed this writ make appear to this court immediately after the execution thereof, and have you there, &c.

(*Signed*) ———.

The ——— day of ———, 19—.

No. 63

FORM OF WRIT FOR DELIVERY OF IMMOVABLE PROPERTY [Section 323.]

(*Title.*)

To the Fiscal, ———.

Whereas (*recite "mutatis mutandis" as in last form*) : These are to command you that without delay you enter the same and cause the said ——— to have possession of the said land and premises, &c. And in what manner (*conclude as in last form*).

No. 64

FORM OF NOTICE WHERE A SUM OF MONEY IN COURT IS CLAIMED [Section 350.]

To (*names of parties and claimants*).

Take notice : That whereas the sum of ——— rupees (recovered under a writ of execution issued from this court on the ——— day of ———, 19—, has been carried to the separate account of the plaintiff in the above-named action, *or as the case may be*) and is now in court standing to the credit of the said plaintiff, and whereas the said (*name or names of claimants*) has (have) given notice to this court of a claim on their behalf to the said sum of ——— rupees (*or* to ——— rupees, part of the said sum of ——— rupees) on the ground (*state ground*) :

This court will, on the ——— day of ———, 19—, at ——— o'clock of the forenoon, proceed to hear and entertain the said claim, and determine the respective rights of the parties in the said sum.

By order of court,

(*Signed*) ———, Secretary.

The ——— day of ———, 19—.

34——J. N. R 7590 (4/60)

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No. 65

[CH. XXIV.] FORM OF PETITION IN AN ACTION OR APPLICATION OF SUMMARY PROCEDURE

In the District Court of ————. ————, 19—.

(*Where the application is not incidental to a pending action, set out, as in a plaint, name and description, &c., of parties, thus :*)

Between *A. B.*, &c., petitioner, and *C. D.*, &c., respondent.

(*Where the application is incidental to a pending action say*—)

In the matter of an action between (*set out the title*) and (in the matter of *A. B.*, deceased, *or as the case may be*).

The humble petition of the above-named (plaintiffs, *or as the case may be*) showeth as follows :

(*Set out a plain and concise statement of the facts constituting the ground of application and its circumstances, and of the petitioner's right to make it, e.g. :*)

1.—That the said *A. B.*, of ————, lately deceased, was one of the plaintiffs in the above-named action.

2.—That the said *A. B.* died on the ———— day of ————, 19—, (*and go on to show that the right of action survives to the remaining plaintiff alone*).

(Your petitioner therefore humbly prays for an order that the above-named action do proceed at the instance of the said petitioner, or for such other order in the premises as to this court seems meet. And your petitioner will ever, &c.)

[*Annex to the petition any affidavits, &c. (see section 376), requisite to furnish prima facie proof of the material facts set out.*]

———

No. 66

[Section 377.] FORM OF (*a*) ORDER "NISI" OR (*b*) INTERLOCUTORY ORDER ON A PETITION IN AN ACTION OF SUMMARY PROCEDURE

(*Title.*)

This matter coming on for disposal before (*name and office of Judge*) on the ———— day of ————, 19—, after reading (the affidavit of ————, *or as the case may be*) and hearing the evidence of ———— (*as the case is*) (*recite petition and exhibits, &c., adduced in support*).

(*a*) [It is ordered that (*state the order, as* that the said action do proceed at the instance of the said ————), unless sufficient cause be shown to the contrary on the ———— day of ————, 19—.]

(*b*) [It is ordered that the ———— day of ————, 19—, be and the same is hereby appointed for the determination of the matters in the said petition contained, and that the said (*respondent*) be heard in opposition to the prayer of the same if he appear before this court on the said day.]

In the alternative (*a*)—

[It is further ordered that the (*respondent*) do pay to the (*petitioner*) his costs of, and occasioned by, this application.]

———— (*Signed, &c., as in No. 41.*)

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No. 67

FORM OF ORDER REFUSING PETITION WHERE GROUNDS ADDUCED INSUFFICIENT TO SHOW PRIMA FACIE CASE [Section 380.]

(*Proceed as in No. 66, and the order will be*—)

It is ordered that the prayer of the said petition be and the same is hereby refused.

No. 68

FORM OF ORDER DISMISSING PETITION WHERE PETITIONER DOES NOT APPEAR [Section 382.]

(*Proceed as in No. 66, reciting the order made under* (b) *of section 377, and continue*—)

And the said (*petitioner*) not having appeared either in person or by counsel before this court in support of his said petition :

It is ordered that the said petition be and the same is hereby dismissed. [It is further ordered that the said (*petitioner*) do pay to the said (*respondent*) his costs of, and occasioned by, this application.]

No. 69

FORM OF ORDER WHERE RESPONDENT DOES NOT APPEAR [Section 383.]

(*Proceed as in No. 66, reciting the order made under section 377, and continue*—)

And the petitioner having appeared (in person, *or* by proctor, *or* by counsel) in support of his said petition, and the respondent not having appeared either in person or by proctor or counsel, although the said recited order was duly served upon him as appears by the (oath *or* affidavit) of ————.

(*Then, if the order is an order "nisi" under section 377* (*a*)—)

The above order is made absolute.

(*But if the order was an interlocutory order under section 377* (b)—)

It is ordered (*state the order : and where costs have been prayed in the petition, and the court thinks right to allow them, further order as to costs*).

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No. 70

[Sections 384, 386, and 387.]

FORM OF ORDER WHERE BOTH PARTIES APPEAR

(*Proceed as in No. 66, reciting the order under section 377, and continue*—) And both parties appearing (in person, *or as may be*) and (the affidavit of ———— having been read) and (the evidence of ———— taken) and both parties heard : It is ordered on the application of (*petitioner*) that this matter be adjourned to the ———— day of ————, 19—, to enable the said (*petitioner*) to adduce additional evidence in support of his said petition, or that the questions or issues of fact arising in this matter be tried and determined.

The questions or issues of fact to be so tried and determined on such day are :

1.—Whether, &c.

2.—Whether, &c.

(*Formal conclusion as in No. 41.*)

No. 71

[Section 398.]

FORM OF SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT

(*Title.*)

To ————, of ————.

Whereas the above-named ———— has, as plaintiff, instituted the above-named action in this court against the above-named ————, who has since deceased, and has made an application to the court alleging you to be the legal representative of the said deceased ————, and desiring that you be made defendant in his stead : You are hereby summoned to attend (in person, *or* by proctor, *or in either way*) in this court at ———— o'clock of the forenoon on the ————day of————, 19—, to defend the said action, and in default of your so appearing the said action will be heard and determined in your absence.

By order of court,

(*Signed*) ————, Secretary.

The ———— day of ————, 19—.

No. 72

[Section 406.]

FORM OF APPLICATION FOR PERMISSION TO WITHDRAW FROM AN ACTION

(*Title.*)

I, ————, plaintiff in the above-named action, hereby request the permission of the court to withdraw from the said action, with liberty to bring a fresh action in the same matter ; on the ground (*state sufficient grounds for withdrawing*).

(*Signed*) ————, Plaintiff.

The ———— day of ————, 19—.

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No. 73

FORM OF NOTICE OF PAYMENT INTO COURT [Section 410.]

(*Title.*)

To (*plaintiff*).

Take notice that the defendant in the above-named action has paid into court ———— rupees, and that that sum is enough to satisfy the plaintiff's claim (*or* the plaintiff's claim for————).

(*Signed*) ————, Party (*or* Proctor).

The ———— day of ————, 19—.

No. 74

FORM OF SECURITY FOR DEFENDANT'S COSTS WHERE PLAINTIFF RESIDES OUT OF JURISDICTION OF THE COURT [Section 416.]

(*Title.*)

Know all men by these presents that we, *A. B.*, of ————, and *C. D.*, of ————, are jointly and severally held and firmly bound to *E. F.* (*here insert name of secretary of court, or as the case is*) in the penal sum of ———— rupees (*the sum mentioned in the order*) to be paid to the said *E. F.*, or his successors in the said office of (*as the case is*), for which payment to be well and faithfully made we bind ourselves and each of us, our and each of our heirs, executors, and administrators firmly by these presents, hereby renouncing, &c.

Dated this ———— day of ————, 19—.

Whereas by an order of the said ———— Court of ————, dated the ———— day of ————, 19—, made in the above-named action, wherein ———— is plaintiff and ———— is defendant, it was, on the application of the said defendant (*or as the case may be*), ordered (*recite the mandatory part of the order*) : And whereas the above-bounden *A. B.* and *C. D.* have, at the request of the said (*person required to give security*), agreed to enter into the above-written obligation subject to the condition hereinafter contained :

Now the condition of the above-written obligation is such, that if the above-bounden *A. B.* and *C. D.*, or either of them, their or either of their heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to ————, the defendant in the said action, all such costs as the said court shall think fit to award to the said defendant in the said action, then the above-written obligation to be void, or else to remain in full force and virtue.

A. B.
C. D.

Signed by the above-bounden *A. B.* and *C. D.* in the presence of

X. Y., of ——.
Y. Z., of ——.

(*Use the same form with alterations where defendant resides out of the jurisdiction.*)

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No. 75

[Section 438.] FORMAL PARTS OF AN AFFIDAVIT IN AN ACTION

In the Supreme Court of the Island of Ceylon.

(*or*)

In the { District Court / Court of Requests } of *Colombo* (*or as the case may be*).

(*Title.*)

I, *A. B.* (*full name and description of deponent, and if a married woman, full name and description of her husband*), of (*place of residence*) (*and if a party, say so, and in what capacity*), make oath and say (*or if deponent is not a Christian,* solemnly, sincerely, and truly affirm and declare) as follows :—

1.————.

2.————.

Sworn (*or* affirmed) [*or if there are more than one deponent,* sworn (*or* affirmed) by the deponents *A. B.*] at ————, this ———— day of ————, 19— :

Before me (*name and office of person administering the oath or affirmation*).

No. 76

[Section 443.] FORM OF APPLICATION FOR PERMISSION TO SUE AS A PAUPER

(*Head in the action and insert all the particulars required in plaints ; then continue—*)

I, *A. B.*, of ————, plaintiff above named, hereby apply to be allowed to sue as a pauper in the action above specified.

Annexed is a full and true schedule of all the movable and immovable property (other than my necessary wearing apparel and the subject-matter of the said action) belonging to me, with the estimated value thereof.

(*Subscribe as in the case of a plaint.*)

(*The Schedule.*)

(*Annex affidavits of the applicant and of two headmen or other respectable inhabitants of the place where plaintiff resides, verifying his poverty and containing the other particulars required by section 444.*)

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No. 77

FORM OF CERTIFICATE OF PROCTOR REFEREE [Section 447.]

(*Title.*)

I do hereby certify that I have, in accordance with the terms of the reference made to me in the matter above specified, made due inquiry of the plaintiff therein as to the grounds of his proceeding, and the evidence by which he proposes to support it, and have duly examined such documents and other evidence as he has produced to me.

I am of opinion that the said plaintiff has (*or* has not, *as the case may be*) a good cause of action against the defendant for, &c.

(*Signed*) *A. B.*, Proctor, ———— Court.

The ———— day of ————, 19—.

No. 78

NOTICE TO PARTY PERMITTED TO SUE OR DEFEND "IN FORMA PAUPERIS" OF MOTION BY THE OPPOSITE PARTY THAT HE BE DISPAUPERED [Section 454.]

(*Title.*)

To ————, of ———— (plaintiff *or* defendant in the above-named action).

Whereas you have been admitted to sue (*or* defend) as a pauper in the above-named action, and whereas the defendant (*or* plaintiff) has moved this court that you may be dispaupered, on the ground (*state ground, see section 454*): This is to give you notice that the said motion will be heard and determined in this court on the ———— day of ————, 19—, at ———— o'clock of the forenoon.

(*Signed*) ————, Judge.

Given, &c.

No. 79

FORM OF NOTICE TO ATTORNEY-GENERAL, MINISTER, PARLIAMENTARY SECRETARY, OR PUBLIC OFFICER OF THE INSTITUTION OF AN ACTION [Section 461.]

To the Hon. the Attorney-General (*or the Minister or Parliamentary Secretary or public officer concerned*).

Take notice that I, *A. B.*, of ————, am about to institute an action against you as representing the Crown (*or, in the case of a Minister or Parliamentary Secretary or public officer,* in your official capacity as ————) for (*state the cause of action and the relief claimed*).

(*Signed*) *A. B.*

The ———— day of ————, 19—.

(*Where the notice is issued by a proctor, alter the wording accordingly.*)

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No. 80

[Section 503.] FORM OF AUTHORITY TO SUE OR DEFEND GIVEN BY A MEMBER OF A NAVAL, MILITARY OR AIR FORCE

I, *A. B.*, presently of ————, being a (*rank*) in Her Majesty's (*ship, regiment or air force, as the case may be*), actually serving Government in such capacity, and unable to obtain leave for the purpose of (prosecuting *or* defending) a certain action brought (by *or* against) me (against *or* by) one ————, of ————, in the ———— Court of ————, for (*state what for*), do hereby authorize *C. D.*, of ————, to (sue *or* defend) for me and on my behalf in the said action, and for that purpose to make every appearance and application, and do every act which I might if present make or do, or be required or authorized by law to make or do, therein.

(*Signed*) *A. B.*

The ———— day of ————, 19—.

In the presence of

(*Signed*) *E. F.* (*the Commanding Officer, or if the party himself is the Commanding Officer, then the next subordinate in rank to him. Where the party is in staff employ, the witness must be the head of the office.*)

Witnesses :

No. 81

[Section 516.] FORM OF AFFIDAVIT TO BE PRODUCED WITH WILL

(*Formal parts as in No. 75.*)

1.—I knew and was well acquainted with *A. B.*, of ————, who died on the ———— day of ————, 19—, at ————.

2.—The said *A. B.* duly executed his last will dated the ———— day of ————, 19—.

3.—The said *A. B.* deposited his said will in my custody (*or, if the case is so, state the circumstances under which the deponent found the will*).

4.—The said testator has left property within the jurisdiction of this (*or any other, as the case may be*) court of the nature and value shown in the Schedule hereto annexed (*or* has left no property in Ceylon).

5.—I produce the said will.

(*Formal conclusion.*)

(*The Schedule.*)

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No. 82

FORM OF APPLICATION BY WAY OF SUMMARY PROCEDURE FOR PROBATE OR FOR ADMINISTRATION WITH THE WILL ANNEXED

[Sections 518-525.]

In the matter of the will of *A. B.*, deceased.

C. D., of ————, petitioner.

vs.

(*For respondent, name any person likely or competent to oppose the application.*)

(*Formal parts as in No. 65.*)

1.—*A. B.*, late of ————, died on the ———— day of ————, 19—.

2.—The said *A. B.* duly executed his last will dated the ———— day of ————, 19— (now deposited in this court, *or*, and the said will is appended hereto, *or as the case is—see section 524*).

3.—To the best of your petitioner's knowledge the heirs of the said *A. B.*, deceased, are :

4.—Full and true particulars of the property left by the deceased, so far as your petitioner has been able to ascertain the same, are contained in the schedule hereto annexed.

5.—Your petitioner claims as (executor, creditor, &c., *as the case is*).

Your petitioner therefore humbly prays for an order declaring the said will proved, and that he may be declared executor of the said will, and that probate thereof may be issued to him accordingly (*or, where the case is so, for a grant of administration with copy of the will annexed, &c.*). (*If a limited grant is asked for, set out to that effect.*)

(*Formal conclusion.*)

(*The Schedule.*)

(*Support paragraphs 2 and 5 by affidavit or oral evidence. Where no respondent is named, state the reasons to be that no opposition is apprehended, and support with an affidavit ; and if the testator died out of Ceylon, state that the applicant has obtained an order appointing the court to have sole testamentary jurisdiction.*)

No. 83

FORM OF APPLICATION FOR ADMINISTRATION WHERE THERE IS NO WILL

[Section 530.]

(*Formal parts.*)

(*Proceed as in last form, substituting a statement that the will cannot be found, or that there is none, for paragraph 2.*)

Your petitioner therefore humbly prays for an order declaring that he is entitled as such (creditor, *or as the case is*) to administer the estate of the said intestate, and directing that letters of administration of the said estate be granted to him accordingly. (*If a limited grant is asked for, set out to that effect.*)

(*Formal conclusion.*)

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No. 84

[Sections 526-529.] FORM OF ORDER "NISI" DECLARING WILL PROVED, &c.

(*Title.*)

This matter coming on for disposal before (*name and office of Judge*), on the ——— day of ———, 19— (in the presence of ——— on the part of the petitioner, and ——— on the part of the respondent), (and the affidavit of ———, dated ———, having been read, and the evidence of ——— taken), (and all parties heard) :

It is ordered that the will of ———, deceased, dated ——— (and now deposited in this court, *or as the case is*), be and the same is hereby declared proved, unless (*the respondent or any person on whom the court directs the order to be served*) shall, on or before the ——— day of ———, show sufficient cause to the satisfaction of this court to the contrary.

It is further declared that the said (*petitioner*) is the executor named in the said will, and that he is entitled to have probate of the same issued to him accordingly (*or declare the petitioner's status where he is not executor, and state that he is entitled to administration with copy of the will annexed*), unless, &c.

(*Signed, &c.*) ———.

(*Where there is no respondent, the order may be absolute in the first instance.*)

(*Where there is no will, this form can be adapted. In either case the order is to be served on the respondent or on any other person on whom the court directs service. Where the grant is to be limited, say so, and how far.*)

No. 85

[Section 534.] FORM OF ORDER MAKING ABSOLUTE OR DISCHARGING THE PRECEDING ORDER

(*Title.*)

This matter coming on for final determination before ——— on ———, in the presence of ——— (and the affidavits of ——— having been read and the evidence of ——— taken), (and all parties heard):

It is ordered [that the order of this court made on the ——— day of ———, 19—, be made absolute, and that probate of the will of ——— be issued to ——— (*or as the case may be*], *or* (that the order ——— be discharged, and the petition of ——— be and the same is hereby dismissed).

(And it appearing to this court that ——— (*respondent or objector*) has established his right thereto, it is further ordered that (*probate or administration, as the case may be*) be issued to the said ——— accordingly.)

(*Signed, &c.*) ———.

(*When the grant is to be limited, say so, and how far.*)

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No. 86

FORM OF PROBATE [Section 519.]

(*Title.*)

In the District Court of ————.

Be it known to all men that on the ———— day of ————, 19—, the last will and testament of ————, deceased, a copy of which is hereunto annexed, was exhibited, read, and proved before this court, and administration of all the property and estate, rights and credits, of the deceased was and is hereby committed to (*name and description*), the executor in the said last will and testament named; the said ———— being first sworn (*or* affirmed) faithfully to execute the said will by paying the debts and legacies of the deceased testator as far as the property will extend and the law will bind, and also to exhibit into this court a true, full, and perfect inventory of the said property on or before the ———— day of ————, 19—, and to file a true and just account of ———— executorship on or before the ———— day of ————, 19—.

Given under my hand and the seal of the court this ———— day of ————, 19—.

(*Signed*) ————, District Judge.

(*When probate is limited, insert the limitation.*)

No. 87

FORM OF LETTERS OF ADMINISTRATION (WITH THE WILL ANNEXED AND OTHERWISE) [Sections 519, 530, &c.]

In the District Court of ————.

To (*widow, widower, next of kin, secretary of the court, creditor, &c., as the case may be*).

Whereas ———— of ————, deceased, lately departed this life (leaving a will which has been duly proved in this court, a copy whereof is hereunto annexed; and whereas no executor is named in that will, *or* without leaving any will):

You are therefore fully empowered and authorized by these presents to administer and faithfully dispose of the property and estate, rights and credits, of the said deceased, and to demand and recover whatever debts may belong to ———— estate, and to pay whatever debts the said deceased did owe (and also the legacies contained in the said will), so far as such property and estate, rights and credits, shall extend, you having been already sworn (*or* affirmed) well and faithfully to administer the same and to render a true and perfect inventory of all the said property and estate, rights and credits, to this court on or before the ———— day of ————, 19—, next, and also a true and just account of your administration thereof on or before the ———— day of ————, 19—. And you are therefore by these presents deputed and constituted administrator (with a copy of the will annexed) of all the property and estate, rights and credits, of the said deceased. (You are nevertheless hereby prohibited from selling any immovable property of the estate unless you shall be specially authorized by the court so to do.)

(*Signed, &c.*) ————.

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No. 88

[Section 538.] FORM OF OATH BY EXECUTOR OR ADMINISTRATOR REFERRED TO IN THE TWO PRECEDING FORMS

You swear (*or the form of affirmation*) that you believe the writing now produced to you, bearing date ————, and marked ————, to be the last will and testament of deceased. (That you are the executor named therein, *where the case is so.*) That you will faithfully execute the said will (*or* that you will administer and faithfully dispose of the property and estate, rights and credits of ————, deceased) by paying the debts (and legacies) of the deceased as far as the property will extend and the law bind, and by demanding and recovering whatever debts may belong to ———— estate. That you will exhibit into this court a true, full, and perfect inventory of all the property, movable and immovable, and all the rights and credits of the deceased, on or before the ———— day of ————, 19—, and that you will file a true account of your executorship (*or* administration) on or before the ———— day of ————, 19—.

Sworn (*or* affirmed) , *&c.*

No. 89

[Section 541.] FORM OF AFFIDAVIT WHERE DECEASED IS INTESTATE

(*Formal parts as in No. 75.*)

1.—I am (*widow, next of kin, &c.*) of ————, late of ————, deceased, and knew and was well acquainted with the said ———— during his lifetime.

2.—The said ———— died on the ———— day of ————, 19—, at ————, without having made a will, and leaving property within the jurisdiction of ———— court of the nature and value shown in the schedule hereto annexed.

(*Formal conclusion.*)

(*Schedule.*)

No. 90

[Sections 521, 538, and 541.] FORM OF SECURITY BOND TO BE GIVEN BY EXECUTOR OR ADMINISTRATOR WHEN REQUIRED

In the District Court of ————.

Know all men by these presents that we (executor *or* administrator), and ———— and ———— (*sureties*), are held and firmly bound unto ————, Secretary of the District Court of ———— (*or* to the Secretary of the District Court of ———— for the time being), the said ———— in the sum of ———— rupees, and the said ———— and ———— in the sum of ———— rupees each, to be paid to the said (secretary *or* secretary for the time being), for which payment well and truly to be made we and each of us do hereby bind ourselves, our heirs, executors, and administrators firmly by these presents, hereby renouncing ————.

Whereas by order of the said court of the ———— day of ————, 19—, it is ordered that (probate of the will *or*

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letters of administration of the property and estate of ————, deceased) be granted to the said (executor *or* administrator) on his giving security for the due (execution *or* administration) thereof :

And whereas the estate of the said deceased has been appraised and valued at the sum of ———— rupees :

Now the condition of this obligation is such, that if the above-bounden (executor *or* administrator) do render into this court a true and perfect inventory of all the property and estate, rights and credits, of the said deceased, which have or shall come to the possession or knowledge of the said ————, or of any other person for him, on or before the ———— day of ————, 19—, and shall well and truly administer the same ; that is to say, shall pay all and singular the debts of the said deceased which (he) did owe at (his) decease fairly and justly according to their respective degrees, or in equal proportion if the estate should prove insufficient to satisfy all the debts in full (and shall then pay the legacies contained in the said will annexed to the said letters of administration) so far as the said property will extend and the law charge (him) and further shall render to this court a true and just account of (his) said administration on or before the ———— day of ————, 19—, and shall deliver and pay over the rest and residue of the said property and estate, rights and credits, which shall be found remaining upon the said administration, to the person or persons lawfully, entitled to the same : Then this obligation to be void and of none effect, otherwise to remain in full force.

(*Dated and signed by all the obligors.*)

No. 91

FORM OF LETTERS "AD BONA COLLIGENDA" [Section 546.]

In the District Court of ————.

To ———— and ————.

Whereas it has been verified to this court that ————, late of ————, died leaving property within the jurisdiction of this court : You and each of you are hereby empowered and authorized to take, collect, demand, and receive all and every the said property, and the rents, issues, and profits thereof, and safely to keep the same until administration thereof be granted in due form of law to such person or persons as shall appear entitled to the same, or until you receive further orders from this court in the premises.

By order of court,

————, Secretary.

The ———— day of ————, 19—.

No. 92

FORM OF VERIFICATION OF INVENTORY AND VALUATION [Section 538.]

I, *A. B.*, of ————, executor of the last will of ————, deceased (*or* administrator of the estate, *&c., if so*), make

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oath and say (*or* solemnly, sincerely, and truly affirm and declare) as follows :

1.—To the best of my knowledge, information, and belief, the above-written inventory contains a full, true, and correct account of all the property, movable and immovable, and rights and credits of the said ————, deceased, so far as I have been able with due diligence to ascertain the same.

2.—I have made a careful estimate and valuation of all the property, the particulars of which are set forth and contained in the said inventory, and to the best of my judgment and belief the several sums respectively set opposite to the several items in the said inventory fully and fairly represent the present values of the items to which they are so respectively set opposite.

No. 93

[Section 535.] FORM OF " CAVEAT "

In the District Court of ————.

Let nothing be done in the estate and effects of ————, late of ————, deceased, who died on the ———— day of ————, 19—, at ————, unknown to (Mr. ————, of ————, proctor for parties having interest, *or as the case may be*).

————

(*Signed by the party, and dated.*)

No. 94

[CH. XL.] FORM OF CERTIFICATE OF CURATORSHIP AND GUARDIANSHIP

In the District Court of ————.

In the matter of the estate of *A. B.*, a minor.

1.—Whereas this court has, under the provisions of Chapter XL of the Civil Procedure Code, appointed you, ————, of ————, to be curator of the estate of ————, a minor, until the said ———— shall have attained the age of twenty-one years :

You are hereby entrusted with the charge of the property of the said ———— ; you may exercise the same powers in the management of the estate as might have been exercised by the said ———— if not a minor ; and you may collect and pay all just claims, debts, and liabilities due to or by the estate of the said ————.

(2.—You are authorized to retain from the estate of the said ————, ———— rupees a month assigned by this court as a suitable remuneration for the trouble and responsibility connected with the discharge of your trust).

3.—You are to keep regular accounts of all moneys received or disbursed by you on account of the estate, and to preserve all vouchers and other documents necessary to prove the correctness of such accounts.

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4.—In the event of this certificate being recalled under the provisions of section 591 of the said Code, you will be required to make over the property in your hands to your duly appointed successor, and to account to such your successor for all sums of money or other property received or disbursed by you.

5.—In the event of your desiring to resign your trust, this court will give you a discharge therefrom on your accounting to your duly appointed successor for all sums of money or other property received or disbursed by you, and on your making over the property in your hands to such your successor.

(6.—You are also hereby appointed guardian of the person of the said ————, and are authorized to retain from the estate of the said ———— the sum of ———— rupees a month assigned by this court as a suitable remuneration for the trouble and responsibility connected with the discharge of your trust.)

7.—You are bound to provide for the education of the said ———— in a suitable manner under the general superintendence and control of this court.

8.—You are authorized to expend the sum of ———— rupees a month fixed by this court as an allowance for the maintenance and education of the said ————. (*Here may be inserted, if the court is satisfied of its expediency, a direction to raise the allowance out of corpus.*)

9.—You may, for any sufficient cause, be removed from your trust by this court.

(*Signed*) ————, District Judge.

(*When some person other than the curator is appointed guardian of the person, the above form must be modified. The heading will be the same; the recital will be that the appointee is entrusted with the charge of the person and maintenance (and education) of the minor; paragraph 2 of the last form must be adapted thus:* "You are authorized to receive from the curator," &c.; *paragraphs 7, 8, and 9 may be used as they stand. In this event the preceding form may be easily adapted.*)

No. 95 [CH. XLII.]

FORM OF DECREE FOR SEPARATION "A MENSA ET THORO"

(*Begin as in an ordinary decree, see No. 41, and continue*—)

And it appearing to the court that the defendant has been guilty of (*state act justifying separation*) so as to render it unsafe and improper under existing circumstances for the plaintiff to cohabit with him or be under his dominion and control: It is thereupon ordered and decreed that the plaintiff and defendant be separated from bed and board for ever: Provided, however, that the parties may at any time hereafter, by their joint and mutually free and voluntary act, apply to this court for leave to be discharged from this decretal order. And it is hereby declared that it will be criminal and an act void in law for either of them, during the life of the other, to contract matrimony with any other

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person. [And it is further decreed that the plaintiff, according to the prayer of plaint, be entitled to, and charged with the custody, care, and education of (*mention the children*) in the pleadings mentioned :

Provided always that this order for the custody, care, and education of the said infant (infants) may at any time hereafter be modified, varied, or annulled upon sufficient cause shown.] [And it is further decreed that the defendant do pay to the plaintiff (*set out amount of alimony decreed, and manner of payment, &c.*) to be applied towards the maintenance of the plaintiff and her said ————, and that this allowance is to continue until further order, and be subject to variation as future circumstances may require.] And it is further ordered (*state order as to costs*).

(*Signature, &c.*)————.

No. 96

[Section 607.] FORM OF DECREE OF NULLITY OF MARRIAGE

(*Proceed as in last form, and continue—*)

And it appearing to this court that on the ———— day of ————, 19—, a pretended marriage was had and solemnized between the said *A. B. C.* and *E. F. G.*, otherwise called *E. F. C.*, but that at the time of the solemnization of the said pretended marriage (she, the said *E. F. G.*, otherwise called *E. F. C.*, was insane and incapable of entering into such a contract, *or state other grounds making the marriage a nullity*) :

It is thereupon pronounced, declared, and decreed that the said pretended marriage so had and solemnized between the said (*names as before*) was and is wholly and absolutely null and void to all intents and purposes whatsoever : And that the said *A. B. C.* was, and is, free from all bond of marriage with the said *E. F. G.*, otherwise called *E. F. C.* (*State order as to costs.*)

(*Signature, &c.*) ————.

No. 97

[CH. XLII.] FORM OF DECREE FOR DIVORCE "A VINCULO MATRIMONII"

Use the necessary parts of the foregoing forms. The decree will be : That the bonds of matrimony heretofore entered into between the said ———— and ———— be and are hereby set aside, dissolved, and annulled, and that the woman may resume her maiden name (and be restored to the rights, &c., of a feme-sole).

The form given under No. 95 may be adapted for the orders as to custody, &c., of children, alimony, costs, &c.

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No. 100*

FORM OF WARRANT OF ARREST BEFORE JUDGMENT [Section 650.]

(*Title.*)

To the Fiscal of ————.

Arrest and seize ————, the above-named defendant, and keep him safely, so that you have his body before this court forthwith to answer the above-named plaintiff in an action to recover (*as the case may be*), whereof the said plaintiff has filed his plaint in this court, unless and until the said defendant shall give you good and sufficient security to the amount of ———— rupees (*or* shall deposit, &c., *see section 650*) to appear and answer the said plaintiff's claim, and to abide by and perform the judgment of this court, or to surrender himself or be surrendered to be charged in execution for the same ; and on his giving such security you are hereby authorized to discharge the said defendant. And have here this mandate on the return day thereof.

(*Signed*) ————.

Memorandum.—This warrant is to be executed within one calendar month from the date thereof, including the day of such date, and not afterwards.

No. 101

FORM OF SECURITY, &C., TO BE GIVEN BY DEFENDANT ARRESTED BEFORE JUDGMENT [Section 651.]

(*Title.*)

Know all men by these presents that we ———— and ———— &c. (*making the Fiscal the obligee and proceeding according to the forms Nos. 74 and 90*).

The condition, &c., is, that if the above-bounden ———— do appear before the ———— Court of ————, on the ———— day of ————, 19—, to appear and answer and abide by and perform the judgment, &c. (*describe claim*), then this obligation, &c.

No. 102

FORM OF BAIL ON APPEARANCE [Section 651.]

Bond, as in last preceding, making the secretary of the court obligee. The condition is to appear and answer, &c., in terms of section 651.

* Forms Nos. 98 and 99 omitted as sections 645 and 646 have been repealed by Act No. 7 of 1949.

D 35——J. N. R 7590 (4/60)

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No. 103

[Section 651.] FORM OF WARRANT OF COMMITMENT

(*Title.*)

To the Fiscal of ————.

Receive into your custody the body of ————, taken under a warrant of arrest at the suit of ————, and keep him safely until he give good and sufficient security in the sum of ———— rupees to abide by and perform the judgment of this court in the premises, and pay all such sum or sums of money as shall be decreed, or surrender himself or be surrendered to be charged in execution for the same.

(*Signed, &c.*) ————.

No. 104

[Section 653.] FORM OF MANDATE OF SEQUESTRATION

(*Title.*)

Whereas it appears that ———— is fraudulently alienating his property, &c. (*set out the necessary averments*), and the plaintiff above named has verified his demand to the satisfaction of this court; you are therefore commanded (*proceed as in No. 38, with the necessary modifications*).

No. 105

[Section 654.] FORM OF SECURITY TO BE GIVEN BY PLAINTIFF

Bond in ordinary form, the secretary being obligee; the condition is to pay all sums of money awarded by the court to defendant as costs, damages, or otherwise sustained by reason of arrest or sequestration.

No. 106

[Section 676.] FORM OF AUTHORITY TO PROCTORS TO APPLY FOR REFERENCE TO ARBITRATION

(*Title.*)

Whereas we ———— (plaintiff and defendant) are desirous that (*here state the particular matter sought to be referred*) in the action above specified, should be referred to the final decision of the arbitrator (*or* arbitrators) herein below named, namely, (*names*) :

Therefore we, the said ———— and ————, do hereby specially authorize our proctors, that is to say, ———— on the part of the said plaintiff, and ———— on the part of the said defendant, to apply to the said court for an order of reference accordingly.

Witness our hands, this, &c. ————, Plaintiff.

Witnesses. ————, Defendant.

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No. 107

FORM OF ORDER OF COURT REFERRING MATTER TO ARBITRATION [Section 677.]

(*Title.*)

Upon (&c.), it is ordered, by and with the consent of all parties, that (*state the matter*) in difference between them in this action (including all dealings and transactions between all parties) be referred to the final determination of ———— and ————, who are to make their award in writing and submit the same to this court, together with all proceedings, depositions, and exhibits in this action, within ———— from the date hereof. And it is further ordered, by and with the like consent, that if the said arbitrators are unable to agree upon any award in the premises within the time so fixed for the making of their award (*state whether any particular umpire is to be appointed, or that the arbitrators are empowered to appoint an umpire, or as the case may be; and in case an umpire is appointed, limit the time for his award*). And it is further ordered, by and with, &c., that the said arbitrators (*or* umpire) shall be at liberty to examine the parties and their witnesses upon oath or affirmation which they (*or* he) are (is) empowered to administer, and shall have all such powers or authorities as are vested in arbitrators (and umpires) under the Civil Procedure Code, including therein power to call for all books of account they (*or* he) may consider necessary. And it is further, &c., that the costs of this action, together with the costs of this reference up to and including the award of the said arbitrators (*or* umpire), and the enforcement thereof, do abide the result of the finding of the said arbitrators (*or* umpire). And it is further, &c., that the said arbitrators (*or* umpire) be at liberty to appoint a competent accountant to assist them (*or* him) in the investigation of the several matters so referred as aforesaid, and that the remuneration of such accountant and other charges attending the same be in the discretion of the said arbitrators (*or* umpire).

(*Signed as an order.*)

No. 108

FORM OF ORDER OF REFERENCE ON THE ABOVE [Section 677.]

(*Title.*)

To ———— and ————.

Whereas the above-named plaintiff and defendant have agreed to refer all matters in difference between them (*or state the particular matter*) in the above-named action to your arbitration and award: You are hereby appointed arbitrators accordingly to determine all the said matters in difference between the parties, and with power to determine which party shall pay the costs, &c. (*Direct the delivery of the award as in preceding form; give power to appoint an umpire in cases of difference, specifying particular umpire if necessary; give power to appoint an accountant as in preceding form, and continue:*) Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this court on your application, and you are empowered to administer to such witnesses oath or affirmation.

Given, &c.

————, Judge

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No. 109

[Section 680.] FORM OF NOTICE TO ARBITRATORS TO APPOINT AN UMPIRE

(*Title.*)

To (*arbitrators*).

Whereas by an order of court made in the above-named action on the ——— day of ———, 19—, you were appointed arbitrators for the decision of the matters therewith referred to you, and were by the terms of the said order of reference empowered to appoint an umpire in the event of your failing to agree upon an award within the time therein limited, and such time has elapsed and no umpire has yet been appointed by you :

This is to give notice that I hereby require you to appoint an umpire forthwith.

(*Signed and dated*) ———, Party Plaintiff (*or* Defendant).

No. 110

[Section 685.] FORM OF NOTICE OF FILING OF AWARD

(*Title.*)

To (*parties*).

This is to give you notice that the arbitrators (*or* umpire) appointed in the above action have (has) this day filed their (his) award in this court.

Given, &c.

———, Judge.

No. 111

[Section 712.] FORM OF CITATION

(*Title.*)

To ———.

Whereas one *A. B.* (executor of the last will of ———, deceased, *or* administrator of the estate and effects of ———, deceased), has presented a petition to this court praying that you may be cited to attend an inquiry whether (*set out shortly the substance of the application*); and whereas the said *A. B.* has satisfied this court that there are reasonable grounds for such inquiry : You are hereby cited and required personally to be and appear before this court on the ——— day of ———, 19—, at ——— o'clock of the forenoon, then and there to answer (*set out what the subject of the inquiry is*).

(*Signed, &c.*) ———, District Judge.

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No. 112

FORM OF ORDER TO BE ANNEXED TO, OR ENDORSED ON, THE PRECEDING [Section 713.]

(*Title.*)

On reading and filing the petition of *A. B.*, dated ———— (and on reading the affidavit, &c., and hearing the evidence, &c.): It is ordered that a citation returnable on the ———— day of ————, 19—, at ———— o'clock of the forenoon, do issue to ————, requiring him to (*set out as in last form*).

(*Signed, &c.*) ————, District Judge.

No. 113

FORM OF AFFIDAVIT OF FAILURE TO RETURN INVENTORY [Section 718.]

(*Formal part as in No. 75.*)

1.—(*Allege residence and interest in estate.*)

2.—That (probate was granted of the will *or* letters of administration issued of the estate and effects) of ————, deceased, by a decree of this court dated, &c., to one ————, of ————.

3.—That more than ———— has elapsed since the said appointment, and the said ———— has not returned any inventory of the property and effects of the said ———— (*or* any sufficient inventory, &c., *specifying the defects*).

(*Formal conclusion.*)

No. 114

FORM OF PETITION FOR PAYMENT OF DEBT [Section 720.]

(*Title.*)

The petition of *A. B.* showeth as follows:—

1.—Your petitioner resides at ———— in ————, and is a creditor of the estate of ————, deceased, late of ————, (probate of whose will was, *or* letters of administration to whose estate and effects were) duly issued to one ————, of ————, by a decree of this court dated the ———— day of ————, 19—, and more than twelve months have elapsed since such (grant *or* letters).

2.—That the said ———— has filed an inventory of the property and effects of the said ————.

3.—(*Allege claims, as, e.g.:*) On the ———— day of ————, 19—, your petitioner, in an action brought by him in the ———— Court of ———— against the said ———— as (executor *or* administrator) of the said ————, upon a debt then justly due to him from the estate of the said deceased, recovered a judgment duly given by the said court against the said ———— as such (executor, &c.) for the sum of ———— rupees. And no part of the same has been paid (except ————).

4.—Your petitioner is informed and believes that the said ———— has sufficient assets in hand applicable to the payment of your petitioner's claim (*or* to pay one ——th thereof),

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and that the same can be so applied without injuriously affecting the rights of others entitled to priority or equality of payment with your petitioner.

5.—Your petitioner has applied to the said ———— for payment of his said claim, and the same has not been paid.

Wherefore, &c., that a decree be made requiring the said ———— to (render an account of his proceedings and) pay the said claim, and that the said ———— be cited to show cause why he should not pay the same.

(*Conclusion.*)

No. 115

[Section 720.] FORM WHERE APPLICANT IS A LEGATEE

Proceed as in last preceding form, substituting in paragraph 1: "Legatee named in the will of ————" *for* "creditor of the estate of ————"; *and add* "and by the said will a legacy of ———— rupees was bequeathed to your petitioner." *Omit paragraph 3. In paragraphs 4 and 5 for* "claim" *substitute* " legacy (*or* distributive share)"; *and in the prayer make the corresponding alterations.*

No. 116

[Section 721.] FORM OF CITATION ON PRECEDING APPLICATIONS

(*Title as in No. 111.*)

Proceed as in No. 111. The citation is "to show cause why a decree should not be made directing you as (executor *or* administrator, &c.) of ————, deceased, to pay the claim of ————against the estate of the said deceased in the sum of rupees ————."

No. 117

[Section 721.] FORM OF DECREE ON THE PRECEDING CITATION

(*Title.*)

A. B., of ————, having presented to this court a petition dated the ———— day of ————, 19—, asking that a decree be made herein directing the said ———— (executor, &c.) to pay (*state claim; and if petition was by a creditor, add statement of issue and return of service of citation*). And it having been proved to the satisfaction of this court by the said petition and the affidavit of, &c., that the assets of the said deceased in the hand of the said ———— exceed the debt (*and where the petitioner is a creditor:* and that the petition may be granted without injuriously affecting the rights of others entitled to priority or equality of payment or satisfaction): It is decreed that the said ————, the (executor, &c.) of the said ————, deceased, pay to the said *A. B.* (the full) amount of his said claim, to wit, ———— rupees, with interest thereon at ———— *per centum* per annum from the ———— day of ————, 19—, the whole amounting to rupees ————.

(*Signed*) ————, District Judge.

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No. 118

FORM OF ACCOUNT TO BE FILED BY EXECUTOR OR ADMINISTRATOR

[Section 723 *et seq.*]

(*Title.*)

(*The only difference between a voluntary account and an account ordered by the court will be that the former will be headed* "In the matter of the voluntary account of ————, executor (*or* administrator, &c.) of ————, deceased," *and the latter* "In the matter of the judicial settlement of the account of", &c.)

To the District Court of ————.

I, *A. B.*, of ————, do hereby render the following account of my proceedings as executor of the will (*or* administrator, &c.) of ————, late of ————, deceased (*if not brought down to date, add* "to and including the ———— day of ———— last").

On the ———— day of ————, 19—, (*recite grant of probate or administration*) were issued to me.

I subsequently caused an inventory of the property and estate of the deceased to be filed in this court, which property amounts as therein set forth, by appraisement, to ———— rupees.

Schedule A hereto annexed contains (*here enumerate the schedules. As many schedules and in such order and relation as will best exhibit clearly all transactions had, whatever they may be, should be annexed; such as statement of property sold, with prices and manner of sale; statement of debts collected and not collected; property unsold and perished by loss, &c.; moneys paid for funeral and other expenses; and in referring to them show that things done have been properly done, and give the reasons why certain things have not been done*).

On or about the ———— day of ————, 19—, I caused a notice for claimants to present their claims against the said estate (*show manner of notice and publication*).

Schedule ———— contains a statement of all the claims of creditors presented and allowed, or disputed by me (&c.).

(*Go on to show that there are schedules containing statements of payments to legatees, names of persons entitled as widow, next of kin, legatees, &c., and finally:*)

Schedule ———— hereto annexed contains a statement of all other facts affecting my administration of the said estate, and my rights and those of others interested therein.

	Rs.
I charge myself as follows:	
With amount of inventory	
With amount of increase as shown by Schedule A	
I credit myself as follows:	
With amount of loss on sales as shown by Schedule B	
With debts not collected as shown by ————	

Leaving a balance of ———— rupees to be distributed to those entitled thereto, subject to the deductions of the amount of my compensation and the expenses of this accounting. The said schedules, which are severally signed by me, are part of this account.

(*Signed, &c.*) ————.

(*Schedules in order, each signed.*)

(*Affidavit as in next form.*)

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No. 119

[Section 733.] FORM OF AFFIDAVIT OF ACCOUNTING PARTY

(*Title and formal parts,* "In the matter", &c., *as in last form.*)

I, *A. B.*, (executor, *or as may be*) of ————, deceased, being (&c.), say that the charge made in the foregoing account of proceedings and schedules annexed, for moneys paid by me to creditors, legatees, and next of kin, and for necessary expenses, are correct; that I have been charged therein all the interest for moneys received by me and embraced in the said account, for which I am legally accountable; that the moneys stated in the said account as collected were all that were collectible according to the best of my knowledge, information, and belief, on the debts stated in such account at the time of this settlement thereof; that the allowances in the said account for the decrease in the value of any assets and the charges therein for the increase in such value are correctly made; and that I do not know of any error in the said account or anything omitted therefrom which may in any wise prejudice the rights of any party interested in the said estate. And I further say that the sums under twenty rupees charged in the said account for which no vouchers or other evidences of payment are produced, or for which I may not be able to produce vouchers or other evidences of payment, have actually been paid and disbursed by me as charged, and that the said account contains to the best of my knowledge and belief a full and true statement of all my receipts and disbursements on account of the estate of the said deceased, and of all moneys and other property belonging to the said estate which have come into my hands, or which have been received by any other person by my order or authority for my use, and that I do not know of any error or omission in the account to the prejudice of any creditor of, or person interested in the estate of, the said deceased.

(*Formal conclusion.*)

No. 120

[Section 726.] PETITION FOR JUDICIAL SETTLEMENT OF EXECUTOR'S ACCOUNT

(*Adapt form No. 114, adding :*)

That ———— has elapsed since issue of (probate, &c.), but the said (executor, &c.) has not rendered any account of his proceedings as such.

No. 121

Section 727.] FORM OF ORDER ON EXECUTOR, &C., TO RENDER ACCOUNT

(*Title of the action,* "and in the matter of the judicial settlement of the account ————", &c.)

A citation having been heretofore issued on the petition of ————, requiring ———— to show cause before this court on ————, at ————, &c., why he should not render his account as (executor, &c.) of ————, late of ————,

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deceased, and the said citation having been returned on that day together with proof of due service on the said ————, and the said ———— having failed to appear (*or* to show cause to the contrary and to present a petition that his account be judicially settled) : It is ordered that the said ———— render an account of his proceedings as (&c.) to this court on the (&c. at &c.), and file the same herein on or before that time ; and that the said ———— personally be and appear before this court at that time and attend from time to time for the purpose of the said account as the court may order ; and that in case of disobedience to this order an attachment may issue against him.

(*Signed, &c.*) ————, District Judge.

No. 122

FORM OF EXECUTOR'S PETITION FOR A JUDICIAL SETTLEMENT [Section 729.]

(*Title.*)

To the District Court, &c. (*formal heading*).

1.—More than one year since (*recite issue of probate or administration to petitioner*).

2.—The persons interested in the estate of the said deceased as creditors, wife (husband), next of kin (legatees), or otherwise, and their places of residence, to the best of the knowledge, information, and belief of your petitioner, are as follows, to wit : (*Set out. If necessary, negative the existence of any more ; and where an address cannot be ascertained, show that it is so*).

Wherefore (&c.) that his account of his proceedings as such ———— may be judicially settled, and that the creditors or persons claiming to be creditors of the deceased, and the said wife (husband), next of kin (legatees), [and the said ———— as executor (*or otherwise*) of the said ————] (and your petitioner's co-executor, C. D.) be cited to attend such settlement.

(*Formal conclusion.*)

(*Signed, &c.*) ————.

No. 123

FORM OF CITATION ON SUCH APPLICATION [Section 729.]

(*Adapt No. 111. The citation is :* "to attend the final judicial settlement of the account of the proceedings of ———— as ————, &c., of the said deceased ————.")

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No. 124

[Section 730.] FORM OF ANSWER BY PARTY CONTESTING AN ACCOUNT

(*Title as in form of account.*)

A. B., a creditor (*or* a legatee, *or otherwise*) of the said ————, deceased, contesting the ———— account filed by ————, executor, (*or as the case may be*) of, &c., alleges that the said account is erroneous in the following particulars :

(*Here set forth objections, e.g., thus :*)

1.—That the item of ———— rupees for ———— is extravagant, &c.

2.—That the item of ———— rupees is without vouchers, &c. (*as the case may be*).

3.—That the said account should be surcharged by the following items :

(1) That it does not include (*and so on*).

4.—The item of ———— rupees is erroneous (*and so on with regard to all the items to which objection is taken*).

Lastly.—Your contestant further reserves the right and privilege of making the foregoing objections more definite and certain, and of interposing other and further objections to the said account, or to any of the acts of the said (executor, &c.).

————

(*Signature and address of contestant.*)

The ———— day of ————, 19—.

———

No. 125

[Section 740.] FORM OF DECREE ON FINAL SETTLEMENT OF ACCOUNT

(*Title, &c.*, "and in the matter", &c.)

A. B., (executor *or* administrator, &c.), of ————, late of ————, deceased, having heretofore made application to this court for a judicial settlement of his final account as such ———— (*or, where the application was made by someone else, recite accordingly*), and a citation having been thereupon issued (*recite terms of citation*), and the said citation having been returned and filed with proof of the due service thereof on (*names*), and the said (executor) having appeared on the return day of the said citation, and the said (executor) having rendered his account under oath (*or* affirmation) before this court ; and the said account having been filed together with the vouchers in support thereof, and no objection having been

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made to the said account (*or recite fact of objections*), and the said matter having been duly adjourned to this day, this court, after having examined the said account and vouchers, now finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof made by the said court, as finally settled and adjusted by the court to be recorded with and taken to be a part of the decree in this matter, to wit :

A summary statement of the account of *A. B.*, (executor, *&c., set out*) made by this court as finally and judicially settled and allowed.

	Rs.
The said (executor) is chargeable as follows :	
With amount of inventory	
With amount of increase as per Schedule A ..	_____
	_____
He is credited as follows :	
With amount of loss on sales as per Schedule B &c. &c. &c.	_____
Leaving a balance of	_____
The said balance consists of :	
_____	
_____	_____
	_____

And it appearing that the said (executor) has fully accounted for all the moneys and property of the said deceased which have come into his hands as such ————, and his final account having been adjusted by the said court and a summary settlement of the same having been made as above recorded : It is hereby ordered and decreed :

That the said account be and the same is hereby finally and judicially settled and allowed as filed and adjusted.

And it is further ordered and decreed that out of the balance so found, as above, remaining in the hands of the said (executor), he retain the sum of ———— rupees for the compensation to which he is entitled on this account ; and that he pay into the court the sum of ———— rupees for the expenses of this accounting.

(*Other recitals and directions will have to be inserted according to circumstances.*)

And it appearing that after retaining the amounts above specified a balance of ———— rupees will remain in the hands of the said (executor) : It is therefore further ordered and decreed that the said (&c.) distribute the said remaining balance of ———— rupees as follows, namely :—That he pay (*&c., setting out how the balance is to be distributed*).

And it is further ordered and decreed that the said (&c.) pay the remainder of the said balance, being the sum of ———— rupees, to ———— (the residuary legatee named in the said will).

(*Formal conclusion.*)

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No. 126

[Section 756.] FORM OF NOTICE TO RESPONDENT THAT APPELLANT WILL TENDER SECURITY IN APPEAL, &c.

(*Head with the title of the action in the lower court.*)

To (*respondent*).

Take notice that the petition of appeal presented by me in the above-named action on the ——— day of ———, 19—, against the (order *or* decree) of the ——— Court of ———, dated the ——— day of ———, 19—, in the said action, having been received by the said court, counsel on my behalf will, on the ——— day of ———, 19—, at ——— o'clock of the forenoon, or so soon thereafter as, &c. [being within ——— days from the day of the date of such (order)], move to tender security by (*mention how*) for any costs which may be incurred by you in appeal in the premises, and will on the said day deposit in court a sufficient sum of money to cover the expenses of serving notice of appeal on you.

(*Signed*) ———, Party Appellant.

The ——— day of ———, 19—.

No. 127

[Section 756.] FORM OF NOTICE OF APPEAL TO BE SERVED ON RESPONDENT OR HIS PROCTOR

(*Head as in last form.*)

To (*party respondent or his proctor*).

You are required to take notice that the petition of appeal of the ——— from the (order) of this court dated, &c., in the above-named action having been received, and the security tendered by him for your costs of appeal in the said matter having been accepted, and a sufficient sum of money to cover the expenses of serving this notice on you having been deposited in this court, the petition of appeal of the said ———, copy of which is hereto annexed, will be forthwith forwarded to the Supreme Court for hearing in due course.

By order of court,
(*Signed*) ———.

The ——— day of ———, 19—.

No. 128

[Section 756.] FORM OF SECRETARY'S CERTIFICATE IN APPEAL

Case instituted	Order made	Decision in whose favour	Petition of Appeal filed	Security given on	Whether Plaintiff or Defendant appeared *in forma pauperis*

I, *A. B.* (*secretary*, &c.), do hereby certify that the above statement is correct.

———, (*Signed and dated*).

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No. 129

FORM OF SECURITY BOND IN APPEAL [Section 757.]

(*Follow the ordinary form of bond, making the secretary, &c., obligee, and making the condition :* " to pay all costs which shall be incurred and taxed in prosecution of the said appeal if the said appellant shall be decreed to pay the same.")

No. 130

FORM OF SECURITY BOND WHERE EXECUTION IS STAYED [Section 761.]

(*Follow the last form, making this condition :* "That if the above-bounden, &c., shall duly prosecute the appeal which he has instituted against, &c., and shall well and truly perform and abide by the judgment which shall ultimately be pronounced by the Supreme Court on the said appeal, and shall pay any sum or sums of money which the said Supreme Court shall decree to be paid by the said appellant, and shall pay all costs, as well those incurred and taxed in the said ———— Court as those which shall ", &c., *as in last form.*)

No. 132 *

FORM OF SUMMONS TO PERSONS ACCUSED OF CONTEMPT OF COURT [Section 793.]

In the ———— Court of ————.

Whereas your attendance is necessary to answer to a charge of contempt committed against the authority of this court in that you (having duly attended the same in obedience to a summons requiring you to testify on behalf of one ———— in (*title of case, &c.*), departed from the said court in contravention of the provisions of section 136 of the Civil Procedure Code (*or as the case may be*), as appears from (*state how*): You are hereby required to appear in person before this court on the ———— day of ————, 19—, at ———— o'clock of the forenoon, to answer to the said charge.

(*Signed and dated*) ————, Judge.

No. 133

FORM OF WARRANT IN THE LIKE CASE [Section 794.]

(*Heading as in last form.*)

To ————, Fiscal, &c.

Whereas ————, of ————, has been summoned to attend in person before this court on the ———— day of ————, 19—, at ———— o'clock of the forenoon, to answer to a charge of contempt of the authority of this court, and this court has reason to believe that the attendance of the said ———— cannot be secured to answer such charge on the said day without the issue of a warrant in that behalf :

* Form No. 131 omitted as section 783 has been repealed by Ordinance No. 31 of 1909.

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You are hereby directed to arrest the said ——— and him safely keep in custody, and to produce him before this court on the said ——— day of ———, 19—, at ——— o'clock of the forenoon accordingly.

(*Endorse on this warrant :* If the said ——— shall at any time after such his arrest give you good and sufficient security either by his own bond or that of some other person in the sum of ——— rupees to attend before this court on the said ——— day of ———, and to continue so to attend until otherwise directed by the court, he may be released.)

No. 134

[Section 797.] FORM OF CONVICTION FOR CONTEMPT

In the ——— Court, &c.

A. B., being this day before this court on a charge of having committed contempt of the authority thereof in that he on the ——— day of ——— (*state charge*), and it appearing (after reading in evidence the minute recorded by the court, &c., *or as the case may be, and where the fact is so*, and after hearing the evidence of ———, of ———) that (*state here the material facts of behaviour, language, &c., which under the circumstances amount to contempt*) :

The said *A. B.* is therefore hereby convicted of the offence of having committed contempt of the authority of this court, and he is sentenced therefore to undergo (*state term of imprisonment, or* to pay a fine of ——— rupees, &c.).

(*Signed and dated*) ———, Judge.

No. 135

[Section 809.] FORM OF ADMISSION BY THE DEFENDANT

The ——— day of ———, 19—.

The defendant appears and admits the claim, and consents to judgment being entered for the plaintiff as prayed for in his plaint.

Signed in my presence : ———, Defendant.

———, Chief Clerk.

No. 136

[Section 825.] FORM OF SUMMONS TO WITNESS

In the Court of Requests of ———.

No. ———. ———, of ———, Plaintiff.

Against

———, of ———, Defendant.

To ———, of ———.

You are required to appear before this court on the ——— day of ——— next, at ——— o'clock in the forenoon, to give evidence in the above case (and to bring with you the following documents, to wit, ———).

———, Chief Clerk.

Dated this ——— day of ———, 19—.

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SECOND SCHEDULE

[Section 214.]

Part I

District Courts

SCALE OF COSTS AND CHARGES TO BE PAID TO PROCTORS IN THE DISTRICT COURTS AS WELL BETWEEN PARTY AND PARTY AS BETWEEN PROCTOR AND CLIENT

Where the cause of action, title to land or property, value of estate or subject-matter of the action is ..	Class I Under Rs. 200	Class II Rs. 200 and under Rs. 750	Class III Rs. 750 and under Rs. 3,000	Class IV Rs. 3,000 and under Rs. 5,000	Class V Rs. 5,000 and under Rs. 10,000
	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.
Conference with client and receiving instructions to sue, defend, intervene or interplead, to obtain or to oppose the grant of letters of administration or letters of guardianship or probate, or to take any other proceedings provided for under this Ordinance ..	1 75	2 50	4 0	5 0	6 0
Proxy to proctor for any of the above purposes ..	0 50	0 75	1 0	1 0	1 25
Letter of demand ..	0 75	1 25	1 75	1 75	1 75
Every necessary attendance on client in the progress of an action or proceeding ..	0 75	1 0	1 50	2 0	3 0
Every necessary attendance on advocate	0 75	1 0	1 50	2 0	3 0
Every necessary attendance on the Judge, secretary, Fiscal, Justice of the Peace, adverse party or his proctor or advocate, Registrar of Lands, or any other person in the progress of an action or proceeding	0 50	0 75	1 0	1 0	1 0
Drawing plaint, answer, replication, plea, or any other pleading, petition, or application	1 25	2 50	3 75	5 0	6 0

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Where the cause of action, title to land or property, value of estate or subject-matter of the action is ..	Class I Under Rs. 200	Class II Rs. 200 and under Rs. 750	Class III Rs. 750 and under Rs. 3,000	Class IV Rs. 3,000 and under Rs. 5,000	Class V Rs. 5,000 and under Rs. 10,000
	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.
Preparing written instructions for counsel to draw or settle the above and attendance therewith	1 0	1 50	2 0	2 50	3 0
Attending court and filing plaint, answer, replication, plea, or any other pleading, petition, or application ..	1 0	2 50	3 75	4 0	4 0
Making and serving copy of same or translation thereof for service, per folio * ..	0 25	0 50	0 50	0 50	0 50
Making copies of documents to be filed with pleading, or for service on parties, per folio* ..	0 12½	0 12½	0 12½	0 12½	0 12½
Drawing summons, notice, subpœna, writ, or other process, order of court, decree, or judgment	0 50	0 75	1 0	1 25	1 50
Making copy or translation thereof	0 12½	0 25	0 37½	0 37½	0 37½
Attending secretary to get the same signed	0 75	1 0	1 25	1 25	1 25
Attending court to search for return to summons or notice..	0 75	1 0	1 75	1 75	1 75
Attending court without advocate to support or oppose application or motion for judgment or any other special motion or application ..	2 0	3 0	4 0	5 0	7 50
Attending court to support or oppose all necessary or ordinary applications or motions..	1 0	1 50	2 0	2 50	3 0
Drawing affidavit and fair copy, per folio *	0 50	0 50	0 50	0 50	0 50

* A folio to consist of 120 words.

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Where the cause of action, title to land or property, value of estate or subject-matter of the action is ..	Class I Under Rs. 200	Class II Rs. 200 and under Rs. 750	Class III Rs. 750 and under Rs. 3,000	Class IV Rs. 3,000 and under Rs. 5,000	Class V Rs. 5,000 and under Rs. 10,000
	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.
Drawing probate, letters of administration, interrogatories, cross interrogatories, commissions, special case, injunctions, sequestrations, proclamation bonds, reference, citations, inventories, accounts, bills of costs, and fair copy, per folio *	0 50	0 50	0 75	1 0	1 25
Drawing brief for advocate and fair copy, per folio * ..	0 25	0 50	0 50	0 50	0 50
Making copy of pleadings and documents to accompany brief, per folio * ..	0 12½	0 12½	0 12½	0 12½	0 12½
Where two or more advocates are engaged, for drawing second brief (no charges for further brief), per folio * ..	0 12½	0 25	0 25	0 25	0 25
Attending court with advocate on trial, if cause argued or heard	5 0	10 0	10 0	12 50	15 0
Attending court with advocate on trial, if cause adjourned, postponed, or struck off ..	1 25	2 50	2 50	3 75	3 75
Attending court without advocate on trial, and conducting cause	5 0	10 0	10 0	12 50	15 0
Attending court without advocate on trial, if cause adjourned, postponed, or struck off	1 25	2 50	2 50	3 75	3 75
Where judgment is deferred, attending court to hear it ..	0 75	1 25	1 75	1 75	1 75
Attending arbitration, without advocate, each sitting (no fees after sixth sitting) ..	2 50	3 75	5 0	5 0	5 0
Attending arbitrator with advocate, each sitting (no fees after sixth sitting) ..	1 25	2 50	3 75	4 0	5 0

* A folio to consist of 120 words.

D 36——J. N. R 7590 (4/60)

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Where the cause of action, title to land or property, value of estate or subject-matter of the action is ..	Class I Under Rs. 200	Class II Rs. 200 and under Rs. 750	Class III Rs. 750 and under Rs. 3,000	Class IV Rs. 3,000 and under Rs. 5,000	Class V. Rs. 5,000 and under Rs. 10,000
	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.
Attending commissioner to examine or cross-examine witnesses on local examination of accounts or for any other purpose with advocate ..	1 25	2 50	3 75	4 0	5 0
Attending commissioner as above without advocate ..	2 50	3 75	5 0	5 0	6 0
Perusing and considering papers, exhibits, or documents furnished or used in any action or proceeding by the adverse party, or furnished by a party to his own proctor for the purpose of being used as evidence in any action or proceeding	Such sum as the secretary shall consider fair and reasonable subject to review and appeal as provided in this Ordinance.				
Examining witnesses preparatory to trial or for instructions for brief	1 0	1 50	2 0	2 50	3 0
For every necessary letter vouched by letter-book, exclusive of postage ..	0 25	0 50	0 50	0 50	0 50
Serving copy of bill of costs ..	0 25	0 37½	0 50	0 50	0 50
Attending taxation ..	0 75	1 50	2 50	2 50	2 50

Maps, surveys, plans, or models, when necessary, such sum as the secretary shall deem reasonable, subject to review and appeal.

Witnesses' expenses, as the court may determine.

All necessary instructions, applications, and motions, and all necessary attendance at consultations, and copies of documents, and all fees and charges not otherwise provided for (including as between proctor and client perusing and writing letters), such sum as the secretary shall deem reasonable, subject to review and appeal.

In all actions involving over Rs. 10,000, the taxable charges to be one-sixth higher than in Class V.

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Part II

SCALE OF FEES TO BE PAID TO ADVOCATES IN THE DISTRICT COURTS

Where the cause of action, title to land or property, value of estate or subject-matter of the action is ..	Class I Under Rs. 200	Class II Rs. 200 and under Rs. 750	Class III Rs. 750 and under Rs. 3,000	Class IV Rs. 3,000 and under Rs. 5,000	Class V Rs. 5,000 and upwards
	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.
Retainer	10 50	10 50	21 0	21 0	21 0
Advising action, defence, or appeal	10 50	10 50	21 0	21 0	21 0
Drawing, perusing, settling, and signing any pleading, application, or petition ..	10 50	10 50	21 0	21 0	21 0
Drawing, perusing, and settling special case	10 50	21 0	31 50	31 50	31 50
Drawing, perusing, and settling interrogatories, decree, &c. ..	10 50	10 50	21 0	21 0	21 0
Consultation fee ..	10 50	10 50	21 0	21 0	21 0
Supporting or opposing any special motion or application	10 50	21 0	21 0	21 0	21 0
Brief fee on trial or argument ..	21 0	42 0	52 50	52 50	105 0
Brief fee where trial or argument is resumed	10 50	21 0	21 0	21 0	31 50

N.B.—(1) The fee of a junior advocate will not be allowed where two advocates are engaged in Classes I and II.

(2) No fees will be allowed for a third advocate in any class.

(3) The brief fee of a junior advocate, where two advocates are engaged, will be half of the senior advocate's brief fee.

The secretary may allow any charges or fees as he shall deem reasonable (not otherwise provided for) on special application being made to him, subject to review and appeal as provided in this Ordinance.

Part III

Courts of Requests

SCALE OF COSTS AND CHARGES TO BE PAID TO PROCTORS IN THE COURTS OF REQUESTS AS WELL BETWEEN PARTY AND PARTY AS BETWEEN PROCTOR AND CLIENT

	Rs. c.
A.—In money cases which have not been contested :	
Rs. 20 and not exceeding Rs. 50	5 0
Above Rs. 50 and not exceeding Rs. 100 ..	10 0
Above Rs. 100 and not exceeding Rs. 200 ..	15 0
Above Rs. 200 and not exceeding Rs. 300 ..	20 0

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	Rs.	c.
B.—In money cases which have been contested :		
Rs. 20 and not exceeding Rs. 50	10	0
Above Rs. 50 and not exceeding Rs. 100 ..	15	0
Above Rs. 100 and not exceeding Rs. 200 ..	20	0
Above Rs. 200 and not exceeding Rs. 300 ..	25	0
C.—In all land cases :		
Not exceeding Rs. 50	10	0
Above Rs. 50 and not exceeding Rs. 100 ..	20	0
Above Rs. 100 and not exceeding Rs. 200 ..	30	0
Above Rs. 200 and not exceeding Rs. 300 ..	40	0

ADVOCATES' FEES

Retainer and brief fee in all cases above Rs. 50 and not exceeding Rs. 200	10 50 to	21	0
Retainer and brief fee in all cases above Rs. 200	21 0 to	31	50

Surveys and plans when necessary, such sum as the Commissioner shall deem reasonable, subject to appeal.

Witnesses' expenses, as the Commissioner may determine.

For interpleader, summary, or other incidental proceedings, such costs as the Commissioner in his discretion may allow, subject to appeal.

Part IV

Supreme Court

IN APPEAL

ADVOCATES' FEES

	Rs.	c.		Rs.	c.
Appeals from Courts of Requests :					
Brief fee on argument	10	50	to	21	0
Appeals from District Courts or Supreme Court :					
Retainer	—			10	50
Consultation fee	10	50	to	31	50
Making or opposing any special motion..	10	50	to	31	50
Brief fee	21	0	to	105	0
Drawing, perusing, settling, and signing any application or petition ..	10	50	to	31	50

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PROCTORS' FEES AS WELL BETWEEN PARTY AND PARTY AS BETWEEN PROCTOR AND CLIENT

Appeals from District Courts :	Classes I and II Rs. c.	Class III Rs. c.	Classes IV and V Rs. c.
Proxy	0 75	1 0	1 50
Instructing advocate to make or oppose any special motion, or for advice on appellant's or respondent's case	5 0	7 50	10 0
Drawing brief for advocate, or any bond, affidavit, petition, or application, and fair copy, per folio* ..	0 25	0 50	0 50
Close copy of pleadings, evidence, and documents to accompany brief, per folio*	0 12½	0 12½	0 12½
Attending court ..	5 0	7 50	10 0
Every necessary attendance on Registrar ..	2 50	2 50	2 50
Drawing bill of costs ..	2 25	2 25	2 25
Serving copy with notice of taxation	0 75	0 75	0 75

The Registrar may allow any charges or fees not specially provided for, as he shall deem reasonable, on special application being made, subject to an appeal to the court.

* A folio to consist of 120 words.

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CHAPTER 102

SMALL TENEMENTS

Ordinances Nos. 11 of 1882, 3 of 1887, 3 of 1890.

AN ORDINANCE TO PROVIDE FOR THE MORE SPEEDY AND EFFECTUAL RECOVERY OF THE POSSESSION OF TENEMENTS UNLAWFULLY HELD OVER AFTER THE DETERMINATION OF THE TENANCY.

[*1st January, 1883.*]

Short title.

1. This Ordinance may be cited as the Small Tenements Ordinance.

Interpretation.

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

"tenement" shall mean a house or other building or any part thereof rented, or which may be rented, exclusively of all taxes, rates, and assessments, at a sum not exceeding twenty rupees a month, other than a tenement held, or occupied under a tenure registered under the provisions of the Service Tenures Ordinance ;

"town" shall mean—

(*a*) the area within the administrative limits of a Municipal Council,

(*b*) any urban area within the administrative limits of an Urban Council,

(*c*) any town brought under the operation of the Town Councils Ordinance, and also

(*d*) such other towns which shall be determined upon by the Minister,[1] and the limits of which, for the purposes of this Ordinance, shall, by Order,[1] be published in the Gazette.

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Where the tenant or occupier of a tenement refuses to give up possession after determination of tenancy, the landlord may apply to the Court of Requests for writ of possession; and if tenant does not appear on rule *nisi* served upon him, or fails to show cause, the court shall issue writ to give possession to landlord.

3. Whenever the term or interest of the tenant of any tenement situated in any town shall have ended, or shall have been duly determined by legal notice to quit, and such tenant, or (if such tenant do not actually occupy the premises or occupy only a part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the tenement or of such part thereof respectively, it shall be lawful for the landlord to file in the Court of Requests of the division in which such tenement is situated an application praying for the recovery of possession, and such application shall be supported by an affidavit of the landlord or his agent, setting forth the holding, the end, or other determination of the tenancy, with the time or manner thereof, and where the title of the applicant shall have accrued since the letting of the premises, the right by which he claims the possession. Thereupon the court shall cause a copy of the application and affidavit aforesaid and a rule *nisi* to be served on the tenant or occupier to appear on a day certain to be named by the court, not less than three or more than seven clear days after the service of the said rule, and show cause why he should not deliver up possession of the tenement to the said applicant or his agent; and if the tenant or occupier shall not appear at the time appointed, or, appearing, shall not show good and valid cause to the contrary, the rule *nisi* shall be made absolute with costs, and the court shall forthwith issue (and if need be reissue) a writ of possession to the Fiscal of the district requiring and authorizing him, within a period therein to be named, not less than three or more than seven clear days from the date of the issue or reissue of such writ, to give possession of the tenement to such landlord or his agent; and such writ shall be sufficient to the said Fiscal to enter upon the tenement with such assistants as he shall deem necessary and to give possession accordingly. And the costs incurred in the suing out and execution of such writ shall be recovered from the tenant or occupier:

Provided always that nothing herein contained shall be deemed to protect any person, by whom any such writ shall be sued out, from any action or proceeding

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which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession, where such person had not at the time of suing out the same as aforesaid lawful right to the possession of the said tenement.

Mode of service of rule *nisi*, and the return thereto.

4. The rule *nisi* aforesaid shall be served by the Fiscal, or any officer appointed by him, on the tenant or occupier personally, or by leaving the same with some adult person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid :

Provided that if the person or persons so holding over, or any or either of them, cannot be found, and the place of abode of such person or persons shall either not be known or admission thereto cannot be obtained for serving such rule *nisi*, the posting of the rule *nisi* on some conspicuous part of the tenement so held over shall be deemed to be good service upon such person or persons respectively, anything in the Fiscals Ordinance to the contrary notwithstanding, and the Fiscal shall return to the court the mode of the service of the said rule *nisi* and the circumstances under which such service was made.

Procedure where tenant raises a valid defence, necessitating postponement of the hearing.

5. If, in showing cause to the rule *nisi* aforesaid, the tenant shall, upon affidavit, deny the legal determination of the tenancy, or shall profess to hold the tenement in his own right or under any other person than the applicant, or raise any other valid defence, necessitating, in the opinion of the court, a postponement of the hearing, the court shall immediately settle and record the issue or issues raised, and, having regard to the circumstances of the case, appoint as early a day as possible for the hearing of evidence, and the parties shall take immediate notice of the same. The chief clerk of the said court shall thereupon issue subpœnas to such witnesses as may be required by the parties, commanding their attendance at the time and place specified. No further postponement of the hearing shall be allowed except by consent of parties, or

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for any reason save the absence of a material witness. And in every affidavit for founding a motion for such postponement, the facts which the said witness knows and is able to prove shall be set forth, as also that he is not kept away by collusion. On the day appointed the court shall hear and determine the issues raised, and give judgment thereon, anything in any other enactment to the contrary notwithstanding.

How execution of writ of possession may be stayed.

6. In every case in which the person by whom any such writ of possession shall be sued out of the court had not at the time of suing out the same lawful right to the possession of the tenement, the suing out of the writ aforesaid shall be deemed a trespass by him against the tenant or occupier of the tenement, although no entry shall be made by virtue of the writ of possession. And in case any such tenant or occupier will become bound with two sufficient securities in such sum as to the court shall seem reasonable, regard being had to the rent already due and which may become due, and to the probable cost of the action herein mentioned, to sue in a court of competent jurisdiction, within two months from the date of such bond, the person by whom such writ was sued out, and to pay all the costs incidental to such action in case a judgment shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action or become nonsuit therein, execution upon the writ shall be stayed until judgment shall have been given in such action ; and if, upon the trial of such action of trespass, judgment shall pass for the plaintiff, such judgment shall supersede the said writ.

Appeal to Supreme Court.

7. Any party who shall be dissatisfied with any final judgment, or any order having the effect of a final judgment, may appeal to the Supreme Court against any such judgment or order, and all such appeals shall be filed within five days (exclusive of Sundays and holidays) of the order or judgment complained of, and be governed in all other respects by the same rules as are applicable to appeals from judgments of Courts of Requests.

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Forms to be used.

8. The precedents contained in the Schedule of forms shall be followed as near as is material in the procedure enacted by this Ordinance.

Minister may extend the provisions of this Ordinance to places other than towns.

9. It shall be lawful for the Minister,[1] by Order[1] in the Gazette, from time to time to extend all or any of the provisions of this Ordinance, anything in this Ordinance to the contrary notwithstanding, to any place in Ceylon other than a town, and to define in such Order[1] the limits of such place ; and the Minister[1] may repeal such Order,[1] and may from time to time by like Order[1] alter or vary the limits of any such place.

[Section 8.]

SCHEDULE

No. 1

[Section 3.]

APPLICATION FOR A RULE "NISI"

In the Court of Requests of ————.

In the matter of the application of *A. B.*, of ————, for a rule *nisi* under the Small Tenements Ordinance.

Between *A. B.* ..... Landlord,

No. ——. and

C. D. ..... Tenant.

The application of *A. B.* in person (*or* by ————)

Showeth :—That he files hereto his (*or E. F.'s*) affidavit dated ————, and prays that *C. D.*, of ————, the tenant above named, may be cited to show cause why he should not deliver peaceful possession of the tenement (*describe it particularly*) to *A. B.*

Signature of A. B. (*or his proctor*).

Date : ————.

No. 2

AFFIDAVIT SUPPORTING APPLICATION FOR RULE "NISI"

In the Court of Requests of ————.

In the matter of the application of *A. B.*, of ————, for a rule *nisi* under the Small Tenements Ordinance.

Between *A. B.* ..... Landlord,

No. ——. and

C. D. ..... Tenant.

I, ————, of ————, make oath and say—

1. That I am the landlord of (*or* the agent of the landlord of) tenement No. ————, which is a house (*or other building*) situated in ————, and bounded as follows :

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2. That I (*or E. F.* acting for and on behalf of *A. B.*) put *C. D.* in occupation of the said tenement on or about ————, upon these terms, to wit, (*state the terms, if any*).

(*If the title of A. B. accrued since the letting of the premises, the special circumstances of such a case must be set forth.*)

3. That I (*or E. F.* acting for and on behalf of *A. B.*) gave notice to *C. D.* on or about ———— to quit the tenement aforesaid on ———— (*or state in what other way the tenancy expired and when such determination took place*).

4. That notwithstanding that the tenancy as aforesaid was determined on or about ————, the said *C. D.* has forcibly held over possession, and refuses to give up possession.

No. 3

RULE "NISI"

In the Court of Requests of ————.

In the matter of the application of *A. B.*, of ————, for a rule *nisi* under the Small Tenements Ordinance.

Between *A. B.* ..... Landlord,

No. ——. and

C. D. ..... Tenant.

The ———— day of ————, 19—.

Upon reading the annexed application of ————, and the affidavit of ————, it is ordered that ———— do on the ———— day of ———— next, at ———— o'clock (*or "instant"*) appear and show cause why he should not deliver peaceful possession of the tenement (*describe it particularly as in the application*) to————.

Upon the motion of ————. By order of court,

————

Chief Clerk.

No. 3A

FISCAL'S RETURN

By virtue of this order I have caused the said *C. D.* to be summoned as therein directed, as will appear from the affidavit of ————, dated ————, hereto annexed.

————

Fiscal.

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No. 3B

AFFIDAVIT OF SERVICE REFERRED TO IN THE FISCAL'S RETURN

In the Court of Requests of ————.

In the matter of the application of *A. B.*, of ————, for a rule *nisi* under the Small Tenements Ordinance.

Between *A. B.* ..... Landlord,

No. ——. and

C. D. ..... Tenant.

I, ————, make oath and say—

1. That I was deputed by the Fiscal of the ———— to serve the rule *nisi* ordered in the aforesaid case on the ———— day of ————. 19—.

2. That I am personally known to and am acquainted with *C. D.*, the tenant above named.

3. That I served the said rule *nisi* upon the said *C. D.* personally on the ———— day of ————, at (*mention the place where the service took place*).

(*If personal service could not be effected, state the reason why it could not be done, and what efforts were made to effect such service, and then proceed to state particulars of the service upon the adult person residing apparently in C. D.'s house. If C. D. cannot be found, or evades service, &c., state full particulars, so that the court may see reason to order the posting of the rule "nisi" on some conspicuous part of the tenement.*)

Sworn to, &c.

——

No. 4

WRIT OF POSSESSION

In the Court of Requests of ————.

In the matter of the application of *A. B.*, of ————, for a rule *nisi* under the Small Tenements Ordinance.

Between *A. B.* ..... Landlord,

No. ——. and

C. D. ..... Tenant.

To the Fiscal of the ———— Province.

Whereas by an order of this court dated ————, *A. B.* recovered (*or C. D.* was ordered to deliver to *A. B.*) possession of all that (*describe the tenement recovered as in the order*): This is to command you to enter the same and within —— days thereof to cause the said *A. B.* to have possession of the said tenement with its appurtenances; and in what manner you have executed this writ, make appear to this court immediately after the execution hereof, and have you there this writ.

By order of court,

————

Date :————. Chief Clerk.

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No. 5

FORM OF BOND TO STAY EXECUTION OF WRIT OF POSSESSION [Section 6.]

In the Court of Requests of ————.

In the matter of the application of *A. B.*, of ————, for a rule *nisi* under the Small Tenements Ordinance.

Between *A. B.* ..... Landlord,

No. ——. and

C. D. ..... Tenant.

Know all men by these presents that we, *C. D.*, *E. F.*, and *G. H.*, of ————, are jointly and severally held and firmly bound unto ————, chief clerk for the time being of the said court, in the sum of Rs. ————, to be paid to such chief clerk as aforesaid or to his assigns; for which payment to be well and truly made we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Whereas the said *C. D.*, at present in occupation of the tenement which is the subject-matter of the proceeding aforesaid, has applied to the said court to stay execution of writ of possession which was sued out in the said proceeding on ————:

Now the condition of this bond is such that if the said *C. D.* shall within two months from the date hereof sue in a separate action in a court of competent jurisdiction *A. B.* above-named for trespass in wrongfully suing out the writ of possession aforesaid, and shall pay all the costs arising from such action in case a decree shall be entered in favour of the said *A. B.*, or the said *C. D.* shall not prosecute his action or shall become nonsuit therein, then the said bond shall be void, or otherwise shall be in full force.

Witness our hands at ————, this ———— day of ————, 19—.

Signed in my presence,

————

C. D.
E. F.
G. H.

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CHAPTER 103

PUBLIC SERVANTS (LIABILITIES)

Ordinance No. 2 of 1899, *Act* No. 10 of 1951.

AN ORDINANCE TO PROTECT PUBLIC SERVANTS FROM LEGAL PROCEEDINGS IN RESPECT OF CERTAIN LIABILITIES.

[*6th March, 1899.*]

Short title.

1. This Ordinance may be cited as the Public Servants (Liabilities) Ordinance.

Actions not to lie against public servants in certain cases.

2. (1) No action shall be maintained against a public servant—

(*a*) upon any promise, express or implied, to repay money paid or advanced to him or to another person at his request ;

(*b*) upon any promise, express or implied, to be answerable for the debt or default of another person ; or

(*c*) upon any bond, bill of exchange, promissory note, or other security made, drawn, accepted, endorsed, or given by him.

(2) This section does not apply to the case of a public servant who at the date when the liability sought to be enforced is contracted is in receipt of a salary in regard to his fixed appointment of more than five hundred and twenty rupees a month.

[§ 2, 10 of 1951.]

(3) This section does not apply to a liability contracted by a person prior to the date when he became a public servant.

(4) This section does not apply to any liability contracted before the commencement of this Ordinance.

(5) This section does not apply to any liability contracted by a public servant to "The Public Service

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Mutual Provident Association", incorporated under the Public Service Mutual Provident Association Ordinance.

(6) Nothing in this section contained shall affect the right of the holder of any security to bring an action to realize the same.

Proceedings in contravention of this Ordinance to be void.

3. All proceedings and documents in or incidental to an action in contravention of this Ordinance shall be void, and where complaint is made by a public servant or by the head of his department that such public servant is dealt with in contravention of this Ordinance by any process, execution, or order issued out of any court, and is made to that court or any court superior to it, the court or some Judge thereof shall examine into the complaint and shall, if necessary, discharge such public servant without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in an action in such court.

Interpretation.

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

"action" includes legal proceedings and process of every description other than criminal, and includes proceedings in insolvency;

"public servant" means a person employed in the service of the Government of Ceylon, or of any Municipal Council or Urban Council or Town Council.

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