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SESSIONAL PAPER XXIV—1955

Report of the Civil Courts Commission

PART II

DRAFT CODE OF CIVIL PROCEDURE 1954

(An Act to Consolidate and Amend the Law Relating to the Procedure of the Civil Courts)

AUGUST, 1955

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COMPARATIVE TABLE OF SECTIONS AND RULES OF THE NEW CODE AND CORRESPONDING SECTIONS IN THE CODE OF 1889, TOGETHER WITH REFERENCES TO PARALLEL PROVISIONS IN THE INDIAN CODE AND THE ENGLISH R. S. C.

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(3)	9	18	
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(*b*)	121		
6		32	
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(*b*)	131 (2)		
(*c*)	133		
(*d*)		I. S. 32 (*d*)	
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9		51	
10	218 Prov. 1 and 2	60	
(*g*)		60 (1) (*b*)	
(*h*)[3]	218 (*g*)		
(*m*)[4]			
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(*b*)	302	56	
12	318	58	
13 (1)	362		
(2)	362		
(3)	362 Prov. 1		
(4)	362 Prov. 2		
(5)	362 Prov. 2		
14	363		
15	357		
16	359		
17	360		
18	361		
19			
20 (*a*)			
(*b*)			
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22	366	55	
23	369		
24 (1)		62	
(2)			
(3)			
(4)	367		
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26	441	O .33, r. 1	
27	449	O .33, r. 8	O .16, r. 28
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(2)	456 (3)	79	
29[7]	462	82	
30 (1)	461	80	
(2)	461		
(3)	461		
(4)			
(5)			
(6)			

[1] Courts Ordinance, Sections 63 and 75.
[2] S. A. Act 46 of 1935, Section 102.
[3] Ordinance No. 43 of 1949.
[4] Navy Act, Section 53, Ordinance 34 of 1950.
Army Act, Section 30, Ordinance 17 of 1949.
Air Force Act, Section 30 of Ordinance 41 of 1949.
[5] Judicial Commission Report, para 50.
[6] Legal Aid and Advice Act, First Schedule.
[7] Crown Proceedings Act, 1947, Section 25.

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New Section	*Old Section*	*Indian Code*	*English R. S. C.*
31	..	..	..
32	..	..	..
Expln.[1]	..	..	..
33 (1)	.. 466 (1)	.. 83	..
(2)	.. (2)	..	..
Expln.	.. (2)	..	..
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(2)	.. (2)	..	..
35 (1)	.. 468 (1)	.. 85	..
(2)	.. (2)	..	..
36 (1)	.. 469 (1)	.. 86	..
(2)	.. (2)	..	..
(3)	.. (3)	..	..
37	.. 516, 517	..	..
38	.. 542, 543	..	..
39 (1)	.. 547	..	..
(2)	..	..	..
40	.. 713 (3)	..	..
	.. 717 (1)	..	..
	.. 718 (3)	..	..
41 (*a*)	.. 651 Prov.	.. 94	..
(*b*)	.. 653	..	..
(*c*)	.. 662, 663	..	..
(*d*)	.. 671 (*a*)	..	..
(*e*)	.. 717 (2)	..	..
42 (*a*)	.. 109	..	..
(*b*)	.. 137 (1) and (2)	..	..
(*c*)	.. 137	..	..
(*d*)	.. 140	..	..
(*e*)	.. 294, 295	..	..
(*f*)	.. 372	..	..
(*g*)	.. 656	..	..
(*h*)	.. 663	..	..
(*i*)	.. 713 (3)	..	..
(*j*)	.. 717	..	..
(*k*)[2]	..	..	..
(*l*)	..	..	..
(*m*)	..	..	.. O .31, r. 23
(*n*)	..	..	..
(*o*)	..	..	..
43[3]	..	..	..
44	.. 792	..	..
45	.. 800	..	..
46[4]	..	.. 96	..
47[5]	.. 833A	..	..
48	..	.. 96 (3)	..
49	.. 753	..	..
50[6]	..	.. 99	..
51	.. 834	.. 135	..
52	.. 142	.. 135	..
53	..	.. 135A	..
54[7]	..	..	..
55	.. 839	.. 151	..
56	.. 189	.. 152	..
57	.. 121	.. 121	..
58 (1)[8]	.. 1	.. 122	..
(2)[9]	..	.. 128	..
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(2)	..	..	..
(3)	..	..	..
(4)	..	..	..
(5)	..	.. 124	

[1] 15 and 16, George VI : 1 Elizabeth II : Chapter XVIII, Section 1 (*a*).
[2] Judicial Commission Report, para 84.
[3] Courts Ordinance, Section 57 ; Oaths Ordinance, Section 11.
[4] Courts Ordinance, Section 36.
[5] Courts Ordinance, Section 78.
[6] Courts Ordinance, Section 36.
[7] Interpretation Ordinance, Section 3.
[8] Courts Ordinance, Section 49.
[9] Judicature Act, 1925, Section 99.

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New Section	*Old Section*	*Indian Code*	*English R. S. C.*
60 (1)[1]	..	..	..
(2)	..	..	..
61 ..	4	..	..
62 (1)[2]	4 Prov.	4 (1)	..
(2)	..	4 (2)	..
63	5	..	..
(1)	..	..	..
(2)	..	..	..
(3)	..	..	..
(4)	..	..	..
(5)	..	..	..
(6)	..	2 (1)	..
(7)	..	..	..
(8)	456 (4)	..	..
(9)	..	..	..
(10)	..	..	..
(11)	..	..	..
(12)	..	..	..
(13)	..	..	..
(14)	..	..	..
(15)	..	..	..
(16)	394 (2)	..	..
(17)	555	..	..
(18)	596	..	..
(19)	..	..	..
(20)	..	..	..
(21)	..	..	..
(22)[3]	..	..	..
(23)	..	..	..
(24)	..	..	..
(25)	..	2 (18)	..
(26)	..	..	..
(27)	..	..	..
64	..	..	..
65	..	..	..

[1] Court of Criminal Appeal, Ordinance, Section 19 (3).
[2] Independence Act, 1947, Section 3.
[3] Fiscal's Ordinance, Section 17.

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TABLE SHOWING THE RULES OF THE NEW CODE AND PARALLEL SECTIONS OF THE OLD CODE

New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 1, r. 1	6		
2	7		
3	8		
4	10		
O. 2, r. 1 (1)	11	O. 1, r. 1	O. 16, r. 1
1 (2)		O. 1, r. 2	O. 16, r. 1
2	12		
3			
4		O. 1, r. 7	O. 16, r. 7
5	13	O. 1, r. 10	O. 16, r. 2
6 (1)	14	O. 1, r. 3	O. 16, r. 4
6 (2)	14	O. 1, r. 4	O. 16, r. 4
6 (3)		O. 1, r. 5	O. 16, r. 5
7	15	O. 1, r. 6	O. 16, r. 6
8 (1)	16	O. 1, r. 8	O. 16, r. 9
8 (2)			
8 (3)			
8 (4)			
8 (5)	16		
9 (1)	16	O. 1, r. 8	O. 16, r. 9
9 (2)			
10	19	O. 1, r. 8 (2)	
11 (1)	17	O. 1, r. 9	O. 16, r. 11
11 (2)			
12 (1)	18 (1)	O. 1, r. 10	O. 16, r. 11
12 (2)			
12 (3)	18 (2)		
12 (4)	19		
12 (5)	18 (2)		
13	21	O. 1, r. 10 (4)	
O. 2, r. 14	19	O. 1, r. 10 (5)	
15	19		
16	20	O. 1, r. 11	
17	22	O. 1, r. 13	
O. 3, r. 1			O. 16A, r. 1
Illus. (*a*)			
(*b*)			
(*c*)			
(*d*)			
r. 2			
3			O. 16A, r. 2 (1)
4			
5 (1)			O. 16A, r. 3
5 (2)			
6			O. 16A, r. 5
7			O. 16A, r. 6
8[1]			
9			O. 16A, r. 8
10			O. 16A, r. 7 (1)
11 (1)			O. 16A, r. 9
11 (2)			
12			O. 16A, r. 10
13 (1)			O. 16A, r. 11
13 (2)			
14 (1)			O. 16A, r. 12
(1) (*a*)			
(1) (*b*)			
(1) (*c*)			
14 (2)			
(3)			
(4)			
Illus.			
O. 3, r. 15			O. 16A, r. 13
16			O. 16A, r. 7 (3)

[1] U. S. R. 14.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 4, r. 1 (1)	24	O. 3, r. 1	
1 (2)			
r. 2	25	O. 3, r. 2	
2 (*a*)	25 (*a*)		
2 (*b*)	25 (*b*)		
2 (*c*)	25 (*c*)		
2 (*d*)	25 (*d*)		
2 (*e*)	25 (*e*)		
r. 3 (1)	27 (1)	O. 3, r. 4	
3 (2)			
3 (3)	27 (1) (2)		
3 (4)	27 (3)		
3 (5)	27 (3)		
4	28		
5	29	O. 3, r. 5	
6	30	O. 3, r. 6	
6 (*a*)			
6 (*b*)	30		
	para 2		
7 (1)	30A, (1)		
7 (2)	30A, (2)		
7 (3)	30A, (3)		
7 (4)	30A, (4)		
8 (1)	26 (1)		
8 (2)	26 (2)		
O. 5, r. 1	33		
2 (1)	34 (1)	O. 2, r. 2	
2 (2)	34 (2)		
2 (3)	34 (2)		
2 (4)	34 (3)		
Illus.	34		
O. 5, r. 3 (1)	36 (1)	O. 2, r. 3	O. 18, r. 1
3 (2)	36 (2)		
4	35 (1)	O. 2, r. 4	O. 18, r. 2
5	35 (2)	O. 2, r. 5	O. 18, r. 5
6	36, 37, 38	O. 2, r. 6	O. 18, rr. 8, 9
7	22, 46 (2) (*f*)	O. 2, r. 7	
O. 6, r. 1		O. 6, r. 1	
2		O. 6, r. 2	O. 19, r. 4
3		O. 6, r. 3	O. 19, r. 5
4 (1)		O. 6, r. 4	O. 19, r. 6
4 (2)			
5		O. 6, r. 5	O. 19, r. 7
6		O. 6, r. 6	O. 19, r. 14
7		O. 8, r. 2	O. 19, r. 15
8		O. 6, r. 8	O. 19, r. 20
9		O. 6, r. 9	O. 19, r. 21
10		O. 6, r. 10	O. 19, r. 22
Proviso.			
r. 11			O. 19, r. 22 (*a*)
12		O. 16, r. 11	O. 19, r. 23
13		O. 6, r. 12	O. 19, r. 24
14		O. 6, r. 13	O. 19, r. 25
15		O. 6, r. 16	O. 19, r. 27
16 (1)	93	O. 6, r. 17	O. 28, r. 1
16 (2)			
16 (3)			
16 (4)			
16 (5)			
17		O. 6, r. 18	O. 28, r. 7
18	46, 75	O. 6, r. 14, 15	O. 19, r. 4
19 (1)	39, 40, 75, 373, 374		
19 (2)			
20	77		
O. 7, r. 1	40, 45, 373	O. 7, r. 1	
2			
3	40, para 2	O. 7, r. 2	
4	40, para 2	O. 7, r. 2	
5 (1)	41	O. 7, r. 3	
(2)[1]			

[1] Civil Procedure Rules 1909 Vol. I. S. L. page 9.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 7, r. 6	50	O. 7, r. 14 (1)	
7 (1)	49 (1)		
7 (2)	49 (2)		
8	54 (1)	O. 7, r. 18	
9	42	O. 7, r. 4	
10	43	O. 7, r. 5	
11	44	O. 7, r. 6	
12	53	O. 7, r. 16	
O. 8, r. 1	75		
1 (*a*)			
1 (*b*)			
1 (*c*)			
1 (*d*)			
1 (*e*)			
2		O. 8, r. 5	O. 19, r. 13
3		O. 8, r. 3	O. 19, r. 17
4		O. 8, r. 4	O. 19, r. 19
5			O. 19, r. 19
Illus. (*a*)			O. 21, r. 2
Illus. (*b*)			O. 21, r. 3
Illus. (*c*)			O. 21, r. 3
Illus. (*d*)			
O. 8, r. 6	76		O. 21, r. 5
7		O. 8, r. 8	O. 24, r. 1
8 (1)			O. 24, r. 2
8 (2)			
O. 9, r. 1 (1)	79		
1 (2)			
2	79		
3			
4			
5			O. 21, r. 15
O. 10, r. 1	91 (1)		
2 (1)			O. 52, r. 1
2 (2)			O. 52, r. 3
2 (3)			
2 (4)			
3			O. 52, r. 6
4			O. 52, r. 7
O. 11, r. 1	92		
O. 12, r. 1 (1)		O. 4, r. 2	O. 4, r. 2
		O. 12, r. 11	O. 12, r. 11
1 (2)			
1 (3)			
Expl.[1]			O. 4, r. 1
r. 2			
3 (1)			
3 (2)	78, 79		O. 67, r. 4
3 (3)			
4			
5 (1)			O. 67, r. 7
5 (2)			
5 (3)			
6			O. 12, r. 12
O. 13, r. 1	39		
2			
3	39		
O. 13, r. 4			
5	46 (2)		
Proviso.			
r. 6	47		
r. 7	48		
r. 8	55		
r. 9 (1)	55	O. 5, r. 2	
9 (2)	49 (2)		

[1] J. C. R., p. 17, App. IV.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 13, r. 10	55		
11			
12			
13			
14 (1)			
14 (2)			
15 (1)			
15 (2)			
15 (3)			
16 (1)			
16 (2)			
Illus.			
17 (1)			
17 (2)			
17 (3)			
O. 14, r. 1 (1)	55	O. 5, r. 2	
(2)			
2	55	O. 5, r. 6	
3 (1)	49, 55	O. 5, r. 2	
(2)			
4	59		
O. 14, r. 5 (1)	60	O. 5, rr. 15, and 20	
5 (2)	60		
5 (3)	60		
5 (4)	60		
5 (5)	61		
6	63	O. 5, r. 11	
7	64		
8	64 (*a*)		
9			O. 9, r. 1
10	64	O. 30, r. 3	O. 48A, r. 3
11 (1)	65	O. 5, r. 13	
(2)			
12	66	O. 5, r. 14	
13	457		
14	471	O. 29, r. 2	
15	68	O. 5, r. 24	
16	459	O. 5, r. 27	
17[1]			
18	506	O. 5, r. 28	
19			
20 (1)		O. 5, r. 19	
(2)	506 (2)		
(3)	506 (3)		
(4)			
(5)			
21			
22 (1)	69		
(2)	70		
23	67		
O. 15, r. 1	72	O. 9, r. 1	
2 (1)	73		
(2)	78		
3 (1)	77		
(2)	77		
(3)	77		
4	74		
5			
6 (1)	80		
6 (2)			
(3)			
O. 16, r. 1 (1)	84, 823		
(2)	84 (4)		
2 (1)		O. 9, r. 9	
(2)	84 (1) and (2)		
3	85		
4	86		

[1] Report of the Judicial Commission, 1936, para. 52.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 16, r. 5 (1)	88 (1)		
(2)			
(3)	88 (1)		
6 (1)	87 (1)		
(2)	87 (2)		
(3)	87 (3)		
7	89		
8	90		
O. 17, r. 1 (1)			
(2)			
(3)			
(4)			
(5)			O. 8, r. 2
2			O. 12, rr. 8A and 11
			O. 12, r. 12
3			O. 12, r. 8A
4 (1)			
(2)			O. 12, r. 9
5 (1)			
(2)			O. 12, r. 18
6 (1)			
(2)			O. 12, r. 18
(3)			O. 12, r. 22
7			O. 21, r. 6
8			O. 19, r. 2
9 (1)	78		
(2)			O. 23, r. 1
10 (1)			
(2)			
(3)			
11			
12 (1)			
(2)			
(3)			
13 (1)			
(2)			
O. 17, r. 14			
r. 15 (1)			
(2)			
(3)			
r. 16 (1)			
(2)			
(3)			
(4)			
O. 18, r. 1			
r. 2 (1)			O. 13, r. 5
(2)			
(3)			
r. 3 (1)			O. 13, r. 7
(2)			
(3)			
r. 4 (1)			
(2)			
(3)			
r. 5			
r. 6 (1)			O. 13, r. 4
(2)			
r. 7			
r. 8			
r. 9			
r. 10			
r. 11			O. 27, r. 15
O. 19, r. 1 (*a*)			O. 27, r. 13
(*b*)			
r. 2			
r. 3 (1)			
(2)			
r. 4			
r. 5 (1)			
(2)			
(3)			

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 19, r. 6			
r. 7 (1)			
(2)			
(3)			
(4)			
r. 8			
r. 9 (1)			
(2)			
(3)			
O. 19, r. 11			
r. 12 (1)			
(2)			
r. 13			
r. 14			
r. 15			O. 30, r. 8
r. 16			
O. 20, r. 1 (*a*)	51		
(*b*)			
r. 2	52		
r. 3	54 (1)		
r. 4	54 (2)		
r. 5 (1)	104 (1)		
(2)			
(3)			
r. 6 (1)			
(2)			
(3)			
O. 21, r. 1		O. 10, r. 1	O. 31, r. 1
r. 2		O. 11, r. 4	O. 31, r. 4
r. 3	94 (2)		
r. 4		O. 11, r. 2	O. 31, r. 2
r. 5			O. 31, r. 1
r. 6			O. 31, r. 1A
r. 7	96	O. 11, r. 3	O. 31, r. 3
r. 8	97	O. 11, r. 5	O. 31, r. 5
r. 9	94 (1)		
r. 10	94 (1)		
r. 11	99	O. 11, r. 8	O. 31, r. 8
r. 12			
r. 13	98	O. 11, r. 6	O. 31, r. 6
r. 14	100	O. 11, r. 11	O. 31, r. 11
r. 15		O. 11, r. 22	O. 31, r. 24
r. 16 (1)	101 (1)	O. 11, r. 2	O. 32, r. 2
(2)	101 (3)		
(3)	101 (4)		
(4)	101 (2)		
O. 21, r. 17 (1)	102 (1)	O. 11, r. 12	O. 31, r. 12
(2)	(2)		
(3)	(2)	O. 11, r. 13	O. 31, r. 13
r. 18	103	O. 11, r. 14	O. 31, r. 14
r. 19 (1)	104 (1)	O. 11, r. 15	O. 31, r. 15
(2)	(2)		
r. 20 (1)	107	O. 11, r. 18 (2)	O. 31, r. 18 (2)
(2)	107		
(3)	107		
r. 21			
r. 22	105	O. 11, r. 17	O. 31, r. 17
r. 23 (1)	106	O. 11, r. 18 (1)	O. 31, r. 18 (1)
(2)			
r. 24		O. 11, r. 19 (1)	O. 31, r. 19A (1)
r. 25 (1)		O. 11, r. 19 (2)	O. 31, r. 19A (2)
(2)			
r. 26		O. 11, r. 19 (3)	O. 31, r. 19A (3)
r. 27	108	O. 11, r. 20	O. 31, r. 20
r, 28 (1)	109 (1)	O. 11, r. 21	O. 31, r. 21
(2)	(2)		
r. 29 (1)	110 (1)		
(2)	(2)		
(3)	(3)		
r. 30	117		

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 21. r. 31 (1)[1]			
(2)			
(3)			
(4)			
r. 32 (1)			
(2)			
r. 33 (1)[1]			
(2)			
O. 22, r. 1		O. 12, r. 4	O. 32, r. 4
r. 2			
r. 3		O. 12, r. 4	O. 32, r. 4
r. 4		O. 12, r. 4	O. 32, r. 4
r. 5		O. 12, r. 5	O. 32, r. 5
O. 23, r. 1 (1)	181	O. 19, r. 3	O. 38, r. 3
(2)			
r. 2	182		
O. 23, r. 3[2]	183		O. 38, r. 4
r. 4	437		
r. 5			O. 38, r. 8
r. 6[3]			O. 38, r. 7
r. 7			O. 38, r. 9
r. 8[4]			O. 38, r. 14
r. 9	438		
r. 10 (1)	439		O. 38, r. 13
(2)	439		
r. 11 (1)	440		O. 38, rr. 7 and 8
(2)	440		rr. 7 and 8
r. 12			O. 38, r. 11
O. 24, r. 1			O. 67, r. 2
r. 2			
r. 3			O. 67, r. 3
r. 4			O. 67, r. 4
r. 5			O. 67, r. 5
r. 6			O. 67, r. 6
r. 7 (1)			
(2)			
r. 8			O. 67, r. 9
O. 25, r. 1 (1)	143 (1)	O. 17, r. 1	O. 64, r. 7
		Sec. 148	
(2)			
(3)			
r. 2	143 (2)	O. 17, r. 1	O. 30, r. 34
r. 3	515		
r. 4			O. 64, r. 1
r. 5			
r. 6			O. 64, r. 12
r. 7			O. 64, r. 11
r. 8			O. 64, r. 13
O. 26, r. 1[5]			
r. 2[5]			
O. 27, r. 1	111	O. 13, r. 1	
r. 2	112	O. 13, r. 2	
r. 3 (1)[6]			
(2)	115		
r. 4	144	O. 17, r. 2	
r. 5			
r. 6	146 (2)	O. 14, r. 1 (5)	
		r. 3	
r. 7	148	O. 14, r. 4	

[1] Crown Proceedings Act, 1947, Section 28.
[2] Oaths Ordinance, Section 12.
[3] Oaths Ordinance, Section 6.
[4] Oaths Ordinance, Section 9.
[5] Subsidiary Legislation, Vol. I.
U. S. Admiralty, Rules 27.
[6] U. S. Rule 16.

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(2)			
r. 11 (1)			O. 30, r. 2
(2)			
(3)			
(4)			
(5)			
r. 12			O. 30, r. 2 (3)
r. 13[1]			
r. 14	80		
r. 15 (1)[2]			O. 36, r. 1A
(2)	81		
(3)[3]			
r. 16	711		O. 36, r. 1A and 29
r. 17[4]			O. 36, r. 29 (6)
r. 18			
O. 28, r. 1 (1)	121 (2)	O. 16, r. 1	
(2)	(1)		
(3)			
(4)			
r. 2 (1)	175		
(2)	175		
(3)	175		
r. 3 (1)	122	O. 16, r. 2	
(2)	122		
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r. 5		O. 16, r. 2 (2)	
r. 6	127	O. 16, r. 6	
r. 7 (1)	126 (1)	O. 16, r. 5	
(2)	(2)		
r. 8	135	O. 16, r. 15	
r. 9	136	O. 16, r. 16	
r. 10 (1)	123		
(2)			
(3)			
(4)			
r. 11	124	O. 16, r. 4 (1)	
r. 12	125	O. 16, r. 4 (2)	
r. 13	128	O. 16, r. 7	
r. 14	140	O. 16, r. 20	
r. 15	141 (1)	O. 16, r. 21	
r. 16	134	O. 16, r. 14	
r. 17 (1)	129	O. 16, r. 8	
(2)			
r. 18	130	O. 16, r. 9	
r. 19 (1)	131 (1)	O. 16, r. 10	
(2)	(1)		
r. 20	131 (2)	O. 16, r. 10 (3)	
r. 21	132	O. 16, r. 11	
r. 22 (1)	133	O. 16, r. 12	
(2)			
(3)	133		
r. 23		O. 16, r. 13	
r. 24 (1)		O. 16, r. 16 (2)	
(2)			
(3)			
r. 25 (1)	137 (1)		
(2)	(1)		
(3)	(2)		
r. 26	138	O. 16, r. 18	
r. 27	139		
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[1] U. S. Rule 16.
[2] Chancery Practice Direction, Rule 4 (Appx. A, C. M. G. 7764).
[3] Chancery Practice Direction, Rule 6 (Appx. A).
[4] Chancery Practice Direction, Rule 5, page 57.

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			O. 37A, r. 4
O. 29, r. 2			O. 37A, r. 7
r. 3			O. 37A, r. 5
r. 4			O. 37A, r. 2
O. 29, r. 5			O. 37A, r. 6
r. 6			
r. 7			O. 37A, r. 9
r. 8			O. 37A, r. 12
r. 9 (1)			
(2)			
(3)			
(4)			O. 37A, r. 11
r. 10			
O. 30, r. 1	178 (1)	O. 18, r. 16	
r. 2 (1)			
(2)			
r. 3	178 (2)		
r. 4	178 (3)		
O. 31, r. 1			
r. 2			
r. 3 (1)	145	O. 17, r. 3	
(2)			
r.			
r. 4 (*a*)	146 (1)	O. 14, r. 1 (5)	
	146 (2)	r. 3	
	147		
4 (*b*)	149		
r. 5			
r. 6	143 Proviso.		
r. 7	150	O. 18, r. 2	
Expl.	150 Expl. 1		
r. 8 (1)	150 Expl. 2		
(2)			
(3)			
r. 9 (1)	151		
(2)	167	O. 37, r. 1	
(3)[1]	152, 153		
r. 10			
Expl.	151 Expln.		
r. 11 (1)	153 Expln.		
(2)	153 Expln.		
(3)[2]	164		
(4)	164		
(5)	165	O. 18, r. 17	
(6)			
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r. 13	170	O. 18, r. 10	
r. 14	171	O. 18, r. 11	
r. 15	172		
r. 16	173	O. 18, r. 12	
r. 17 (1)	174		
(2)	174		
(3)			
(4)			
(5)			
r. 18 (1)	163		
(2)	163		
(3)	163	O. 18, r. 3	
(4)	163		
(5)	163		
r. 19 (1)	179	O. 19, r. 1	
(2)	179		
r. 20	180		
r. 21	111		
r. 22 (1)	112		
(2)	112		
r. 23	154 (1)		

[1] Evidence Ordinance, Sections 137, 138, 142 and 143.
[2] Evidence Ordinance, Section 165.
[3] Ordinance No. 39 of 1954, Section 3.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 31, r. 24 (1)	114		
(2)	154 (3)		
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r. 25	154 (3)		
r. 26	155		
r. 27	156		
r. 28[1]	157		
r. 29[2]	158		
r. 30 (1)	159 (1)		
(2)	(2)		
r. 31 (1)	160		
(2)	160		
r. 32	154 (1)		
r. 33	154 (1)		
r. 34	154 (2)		
r. 35[3]	161		
r. 36[4]	162		
r. 37	113 (2)		
r. 38	113 (1)	O. 13, r. 1 (2)	
		r. 3	
r. 39 (1)		O. 13, r. 5	
(2)			
(3)			
(4)			
r. 40	114 (3)	O. 13, r. 8	
	115		
r. 41 (1)	116 (1)		
(2)	116 (1)		
(3)	116 (1)		
(4)	(2)		
r. 42	118		
r. 43	119		
r. 44	120		
r. 45	117		
r. 46		O. 18, r. 18	
r. 47	510		
r. 48 (1)	511		
(2)	511		
(3)	511		
r. 49	512		
r. 50	513		
r. 51	514		
O. 32, r. 1 (1)[5]	184	Sec. 33	
		O. 20, r. 1	
(2)	184 (2)		
(3)			
r. 2	185		
r. 3	186	O. 20, r. 3	
r. 4	187	O. 20, r. 5	
r. 5 (1)[6]	188	O. 20, r. 6 and 7	
(2)			
(3)			
(4)	189 (1)		
r. 6		O. 20, r. 8	
r. 7	190	O. 20, r. 9	
O. 32, r. 8	191	O. 20, r. 10	
r. 9 (1)	192 (1)		
(2)	192 (2)		
r. 10[7]			
r. 11	193		
r. 12	194	O. 20, r. 11	
r. 13 (1)	195	O. 20, r. 19	
(2)	195		

[1] Evidence Ordinance, Section 47.
[2] Evidence Ordinance, Section 67, et. seq.
[3] Evidence Ordinance, Section 90.
[4] Evidence Ordinance, Section 61, et. seq.
[5] Courts Ordinance, Section 70.
[6] Judicial Commission Report, 1936, para. 88.
[7] Law Reform (Misc. Provisions) Act, 1934, Section 3.

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	Expl. 196	..	..
r. 15	.. 197	..	..
r. 16	.. 200	.. O. 20, r. 14	..
r. 17	.. 202	.. O. 20, r. 15	..
r. 18	.. 203	.. O. 20, r. 16	..
r. 19	.. 204	..	..
r. 20	.. 508	..	..
r. 21	.. 509	..	..
r. 22 (1)	.. 205	..	..
(2)	.. 206	..	..
(3)	..	..	..
(4)	..	..	..
(5)	..	..	..
(6)	..	..	..
(7)	..	..	..
r. 23	.. 206	..	..
O. 33, r. 1 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
r. 2	..	..	..
r. 3	..	..	..
r. 4	..	..	..
O. 34, r. 1	..	..	..
r. 2 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
r. 3	..	..	..
r. 4	..	..	..
r. 5	..	..	..
r. 6	..	..	..
O. 34, r. 7	..	..	..
r. 8	..	..	..
r. 9	..	..	..
r. 10	..	..	..
r. 11 (1)	..	..	..
(2)	..	..	..
r. 12	..	..	..
r. 13 (1)	..	..	..
(2)	..	..	..
O. 35, r. 1	.. 208	..	..
r. 2 (1)	..	.. I. S. 35A	..
(2)	..	..	..
r. 3	.. 209	..	..
r. 4	.. 210	..	..
r. 5	.. 211	..	..
r. 6	.. 212	..	.. O. 65, r. 14
r. 7	.. 213	..	..
r. 8	.. 209	..	..
r. 9	..	..	..
r. 10	..	..	..
r. 11 (1)	..	..	.. O. 65, r. 27 (20)
(2)	..	..	..
r. 12	..	..	.. O. 65, r. 5
r. 13	..	..	.. O. 65, r. 11
r. 14	..	..	..
r. 15	..	..	.. O. 65, r. 27 (29)
r. 16	..	..	..
r. 17	..	..	.. O. 65, r. 27 (23)
r. 18 (1)	.. 214	..	..
(2)	..	..	..
r. 19 (1)	..	..	..
(2)	.. 214	..	..
(3)	..	..	..
(4)	..	..	..
(5)	..	..	..
r. 20 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..

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(3)			
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r. 23	216		
O. 36, r. 1			
r. 2			
r. 3	218		
r. 4	224	O. 21, r. 11	
r. 5 (1)	225 (1)	O. 21, r. 17	
(2)	225 (1)		
(3)	225 (1) Prov.		
(4)	225 (2)		
(5)	225 (3)		
r. 6	226 (1)		
O. 37, r. 1 (1)			
(2)		O. 21, r. 1	
r. 2 (1)	222 (1)	I. S. 52	
(2)	222 (2)		
r. 3	219 (1)	O. 21, r. 41	O. 42, r. 32
r. 4	220		
r. 5	221		
r. 6	219 (2)		
r. 7			
r. 8			
O. 38, r. 1 (1)	226 (1)		
(2)			
r. 2			
r. 3 (1)			
(2)			
r. 4	227	O. 21, r. 43	
r, 5	227		
r. 6	227		
r. 7	227		
r. 8	227		
r. 9	228	O. 21, r. 51	
r. 10 (1)	229	O. 21, r. 46	
		r. 48	
O. 38, r. 10 (2)	229		
(3)			
(4)			
(5)		O. 21, r. 48	
r. 11 (1)	232 (1)	O. 21, r. 52	
(2)	232 (2)		
(3)	234 (2)	O. 21, r. 53 (2)	
r. 12	232 (1) Prov.		
r. 13	233		
r. 14	234 (1)	O. 21, r. 53	
r. 15 (1)	234 (2)	O. 21, r. 53 (6)	
(2)	234 (2)		
r. 16	235	O. 21, r. 53 (4)	
r. 17	235	O. 21, r. 53 (4)	
r. 18		O. 21, r. 53 (6)	
r. 19	254		
r. 20[1]		O. 21, r. 49 (2)	O. 46, rr. 1A, 1B
r. 21		O. 21, r. 49	
r. 22		O. 21, r. 49 (3)	
r. 23			
r. 24		O. 21, r. 49 (6)	
r. 25 (*a*)		O. 21, r. 50 (1)	O. 48, r. 8
(*b*)			O. 46, r. 1
(*c*)			
r. 26		O. 21, r. 50 (2)	O. 48A, r. 8
r. 27			
r. 28		O. 21, r. 50 (3)	
r. 29	236	I. S. 64	
r. 30	237 (1)	O. 21, r. 54	
	(2)		

[1] Partnership Act, 1890, Section 23.

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(2)			
r. 35	240		
O. 39, r. 1	241	O. 21, r. 58	
r. 2	241 Prov.		
r. 3	241 ,,		
r. 4	242		
r. 5	242		
r. 6	248		
r. 7			
r. 8 (1)			
(2)			
r. 9			
r. 10			
r. 11			
r. 12			
r. 13			
r. 14			
r. 15			
r. 16	246		
r. 17			
r. 18			
r. 19			
r. 20			
r. 21	241		
r. 22	243		
r. 23	244		
r. 24	245		
r. 25	247		
O. 40, r. 1 (1)	253		
(2)			
r. 2		O. 21, r. 53 (2)	
r. 3	230 (1)		
r. 4	230 (1)		
r. 5 (1)			
(2)			
r. 6			
r. 7			
O. 40, r. 8 (1)			
(2)			
(3)			
r. 9			
r. 10	230 (2)		
r. 11	231		
O. 41, r 1	255		
r. 2	255 (I)		
r. 3	255 (II)		
r. 4 (1)	256		
(2)	256		
(3)	256		
r. 5	257		
r. 6	258	O. 21, r. 65	
r. 7	258		
r. 8	271	O. 21, r. 73	
r. 9	342		
O. 42, r. 1	273		
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(2)	259 (2)		
(3)	259 (2)Prov.1		
(4)	259 (2) ,, 2		
r. 3	265		
r. 4	264	O. 21, r. 88	
r. 5 (1)	260	O. 21, r. 84	
(2)			

[1] Fiscal's Commission Report, para. 102.

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r. 9 (1)	266	O. 21, r. 71	
(2)	266		
r. 10 (1)	267		
(2)	267		
(3)	267 Prov.		
r. 11	268		
r. 12	269		
r. 13	282 (1)		
r. 14 (1)	282 (2)	O. 21, r. 90	
(2)	282 (3)		
r. 15	283 (2)		
r. 16	283 (1)		
r. 17	283 (1)		
r. 18			
r. 19	284	O. 21, r. 91	
r. 20 (1)	285 (1)	O. 21, r. 93	
(2)	285 (2)		
(3)	285 (2)		
r. 21 (1)	286	O. 21, r. 94	
(2)	286		
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(2)	286 ,,		
r. 23	286		
r. 24	286		
r. 25 (1)	287 (1)	O. 21, r. 95	
(2)	287 (2)		
r. 26	288	O. 21, r. 96	
r. 27	289	I. S. 65	
r. 28	290		
r. 29	291		
r. 30 (1)	292		
(2)	292		
r. 31	293		
r. 32	294		
r. 33	295		
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r. 2 (1)			
(2)			
(3)			
r. 3 (1)			
(2)			
r. 4			
r. 5			
r. 6 (1)	275 (1)		
(2)	275 (2)		
r. 7 (1)	276	O. 21, r. 78	
(2)			
r. 8	277	O. 21, r. 79 (1)	
r. 9	278	O. 21, r. 79 (2)	
O. 43, r. 10	279	O. 21, r. 79 (3)	
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(2)	280 (1)		
(3)	280 (2)		
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r. 13			
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(2)			
(3)	343 (2)		
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r. 3	258		
r. 4	270		
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(5)			

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r. 5	303		
r. 6	304		
r. 7	305	O. 21, r. 38	
r. 8 (*a*)	306 (*a*)	O. 21, r. 40	
(*b*)	306 (*b*)		
(*c*)	837 (1)		
r. 9	306		
r. 10	307		
r. 11	308		
r. 12	309		
r. 13	310 (1)		
r. 14	310 (2)		
r. 15	310 (3)		
r. 16	311		
O. 46, r. 17	312		
r. 18 (1)	313	O. 21, r. 39	
(2)			
r. 19	314		
r. 20 (1)	315 (1)		
(2)	(2)		
r. 21	315A (1)		
r. 22	315A (2)		
r. 23	315A (3)		
r. 24	315A (4)		
r. 25 (1)	316		
(2)	316 Prov. 1		
r. 26	316 Prov.		
r. 27 (1)	317 (1)		
	837 (2)		
(2)	317 (2)		
r. 28	318		
r. 29	319		
O. 47, r. 1 (1)	320		
(2)			
(3)			
r. 2	320		
r. 3	321 (1)	O. 21, r. 31 (1)	
r. 4 (1)			
(2)			
(3)			
r. 5	321 (2)	O. 21, r. 31 (1)	
r. 6	321 (2)		
r. 7	322		
r. 8	322		
O. 48, r. 1	323		
r. 2	323		
r. 3	324 (1)		
r. 4 (1)			
(2)			
(3)			
r. 5		O. 21, r. 35 (3)	
r. 6		O. 21, r. 35	
r. 7			
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(2)	324 ,, 2		
r. 9	324 (2)		
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r. 2			
r. 3			
r. 4 (1)			
(2)			
(3)			
r. 5			
r. 6			

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(2)			
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r. 9 (1)			
(*a*)	326		
(*b*)	327A		
(*c*)			
(2)			
r. 10 (1)			
(2)			
(3)			
r. 11			
r. 12			
r. 13 (1)			
(2)			
r. 14			
r. 15	327	O. 21, r. 99	
r. 16	328 (1)	O. 21, r. 100	
r. 17	328 (2)		
r. 18			
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r. 2	332	O. 21, r. 34 (2)	
r. 3	332 (2)	O. 21, r. 34 (3)	
(3)			
r. 4	333	O. 21, r. 34 (5)	
r. 5 (1)	333		
(2)	333		
O. 51, r. 1	334		
r. 2	334		
r. 3 (1)		O. 21, r. 32	
(2)			
r. 4	335		
r. 5	335		
O. 52, r. 1	350		
r. 2	350, 352		
r. 3 (1)	350		
(2)	350		
r. 4			
r. 5	352 (2)		
r. 6	352 Prov.		
O. 53, r. 1	336	O. 21, r. 21	
r. 2 (1)	337	I. S. 48	
(2)	337 (2)		
r. 3		O. 21, r. 22	O. 42, r. 20
r. 4	348	I. S. 145	
r. 5 (1)	349 (1)	O. 21, r. 2 (1)	
(2)	349 (2)	O. 21, r. 2 (2)	
(3)	349 (3)	O. 21, r. 2 (3)	
r. 6 (1)	338 (1)	O. 21, r. 15	
(2)	(1)		
(3)	(2)		
(4)	(3) Prov.		
r. 7 (1)	339 (1)	O. 21, r. 16	
(2)	339 (1) Prov. 1		
(3)	(1) ,, 2		
r. 8	340	I. S. 49	
r. 9 (1)	341 (1)	I. S. 50	
(2)	(2)		
r. 10 (1)	344	I. S. 47	
(2)		I. S. 47 (3)	
(3)			
r. 11 (1)	345	O. 21, r. 18	
(2)	345 (2) Expln. 2		
(3)	345 (2) Expln. 3		
(4)			

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 53, Illus. (*a*)	345 Illus. (*a*)		
(*b*)	,, (*b*)		
(*c*)	,, (*c*)		
(*d*)			
r. 12	346	O. 21, r. 19	
r. 13	351	I. S. 63	
r. 14	270		
r. 15	353		
r. 16	354		
O. 54, r. 1 (1)			
(2)			
r. 2 (1)			
(2)			
(3)			
r. 3			
r. 4			
r. 5 (1)			
(2)			
r. 6			
r. 7 (1)			
(2)			
r. 8			
O. 55, r. 1 (1)	355		
(2)	355		
r. 2	368		
r. 3	356		O. 67, r. 5
r. 4			O. 67, r. 6
r. 5			O. 67, r. 3
r. 6	364		
r. 7 (1)	370 (1)		
(2)	(2)		
r. 8	371		
r. 9	372		
O. 56, r. 1	373		
r. 2	374		
r. 3	375		
r. 4	376		
r. 5	377		
r. 6	378		
r. 7	379		
r. 8	380		
r. 9	381		
O. 56, r. 10	382		
r. 11 (1)	383 (1)		
(2)	383 (2)		
r. 12 (1)			
(2)			
r. 13			
r. 14			
r. 15 (1)			
(2)	384		
(3)	384		
(4)	385		
(5)			
r. 16	386		
r. 17	387		
r. 18 (1)	388 (1)		
(2)	(2)		
(3)	(3)		
r. 19			
r. 20			
r. 21			
r. 22	389		
r. 23 (1)			
(2)			
r. 24			
r. 25			
O. 57, r. 1	392	O. 22, r. 1	O. 17, r. 1
r. 2	393	O. 22, r. 2	O. 17, r. 8

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 57, r. 3 (1)	394 (1)	O. 22, r. 3 (1)	
(2)	(2)		
r. 4	395		
r. 5	396		
r. 6	397	O. 22, r. 5	
r. 7 (1)	398 (1)	O. 22, r. 4	O. 17, r. 8
(2)	(2)		
r. 8 (1)	399 (1)	O. 22, r. 7	
(2)	(2)		
r. 9	400	O. 22, r. 8 (1)	
r. 10	401	O. 22, r. 8 (2)	
r. 11	402	O. 22, r. 3 (2)	
		4 (3)	
r. 12	403	O. 22, r. 9	
r. 13	404	O. 22, r. 10	O. 17, r. 3
r. 14	405		
r. 15			
O. 58, r. 1 (1)	406 (1)	O. 23, r. 1	
(2)	(1)		
(3)	(2)		
(4)	(3)		
r. 2	407	O. 23, r. 2	
r. 3	408	O. 23, r. 3	
r. 4 (1)			
(2)			
r. 5			
O. 59, r. 1	409		
r. 2	410	O. 24, r. 2	
r. 3	411	O. 24, r. 3	
r. 4	412	O. 24, r. 4 (1)	
r. 5	413	O. 24, r. 4 (2)	
Illus. (*a*)	413 Illus. (*a*)		
(*b*)	„ (*b*)		
(*c*)	„ (*c*)		
r. 6	414		
r. 7	415		
O. 60, r. 1			
r. 2 (1) [1]			
(2)			
r. 3 (1) [2]			
(2)			
r. 4 (1) [3]			
(2)			
r. 5 (1) [4]			
(2)			
r. 6 (1) [5]			
(2)			
r. 7 [6]			
O. 61, r. 1	416	O. 25, r. 1	
r. 2	417		
r. 3	419		
r. 4	418 (1)	O. 25, r. 2	
r. 5			O. 64, r. 6
r. 6	418 (2)	O. 25, r. 2 (2)	
O. 62, r. 1		I. S. 75	
		O. 26, r. 2	
r. 2	420	O. 26, r. 1	
r. 3	421	O. 26, r. 2	
r. 4 (1)	422 (1)	O. 26, r. 4	
(2)	(2)		
r. 5	423	O. 26, r. 5	

[1] Payment into Court Order, 1939, para. 2 (*a*).
[2] Payment into Court Order, 1939, para. 2 (*b*).
[3] Payment into Court Order, 1939, para. 3 (*a*).
[4] Payment into Court Order, 1939, para. 3 (*b*).
[5] Payment into Court Order, 1939, para. 4.
[6] Payment into Court Order, 1939, para. 5.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 62, r. 6	424	O. 26, r. 6	
r. 7	425	O. 26, r. 7	
r. 8	426	O. 26, r. 8	
r. 9	427	I. S. 78	
r. 10	428	O. 26, r. 9	
r. 11	429	O. 26, r 16	
r. 12	432 (2)	O. 26, r. 10 (2)	
r. 13		O. 26, r. 10 (3)	
r. 14	430	O. 26, r. 11	
r. 15	431	O. 26, r. 12	
r. 16			
r. 17	433	O. 26, r 15	
r. 18	434	O. 26 r. 16	
r. 19	435	O. 26, r. 17	
r. 20		O. 26, r. 17 (2)	
r. 21 (1)	436	O. 26, r. 18	
(2)	436		
O. 63, r. 1	456 (2)		
r. 2 (i)	458	O. 26, r. 5	
(ii)			
r. 3 (1)	460	O. 27, r. 5	
(2)	460		
O. 63, r. 4 (1)	463	O. 27, r. 8	
(2)	464		
O. 64, r. 1 (1)	503 (1)	O. 28, r. 1	
(2)	(2)		
(3)	(3)		
Expln.	(3)		
r. 2	504	O. 28, r. 1	
r. 3	505		
. 65, r. 1	470	O. 29, r. 1	
O. 66, r. 1		O. 30, r. 1	O. 48*a*, r. 1
r. 2		O. 30, r. 1 (2)	
r. 3 (1)		O. 30, r. 2	O. 48*a*, r. 2
(2)			
(3)			
r. 4 (1)		O. 30, r. 4	
(2)			
r. 5		O. 30, r. 6	O. 48*a*, r. 5
r. 6		O. 30, r. 7	O. 48*a*, r. 6
r. 7 (1)		O. 30, r. 8	O. 48*a*, r. 7
(2)			
(3)			
r. 8		O. 30, r. 9	O. 48*a*, r. 10
r. 9			
r. 10		O. 30, r. 10	O. 48*a*, r. 11
O. 67, r. 1	472	O. 31, r. 11	O. 16, r. 8
r. 2	473		
r. 3	474		
r. 4	475		
O. 68, r. 1	476	O. 32, r. 1	
r. 2	479	O. 32, r. 2	
r. 3	477	O. 32, r. 5	
r. 4 (1)	478 (1)	O. 32, r. 2	
(2)	478 (2)		
r. 5	480	O. 32, r. 5	
r. 6 (1)	481 (1)	O. 32, r. 4	
(2)	(2)		
r. 7	482	O. 32, r. 9	
r. 8 (1)	483 (1)	O. 32, r. 8	
(2)	(2)		
r. 9	484	O. 32, r. 10	
O. 68, r. 10	485	O. 32, r. 10	
r. 11	486	O. 32, r. 12	
r. 12 (1)	487 (1)	O. 32, r. 12	
(2)	487 (2)		
r. 13	488	O. 32, r. 12 (4)	
r. 14	489	O. 32, r. 12	

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 68, r. 15 (1)	490 (1)	O. 32, r. 13	
(2)	490 (2)		
(3)	490 (2)		
r. 16 (1)	491 (1)	O. 32, r. 14	
(2)	491 (2)		
r. 17[1]	492		
r. 18 (1)	493 (1)	O. 32, r. 4	
(2)			
(3)	493 (2)		
r. 19	494	O. 32, r. 4	
r. 20	495		
r. 21 (1)	496	O. 32, r. 11	
(2)	497		
r. 22	498		
r. 23 (1)	500 (1)	O. 32, r. 7	
(2)			
r. 24 (1)	499	O. 32, r. 6	
(2)			
r. 25	502		
r. 26			
r. 27	501	O. 32, r. 15	
O. 69, r. 1	628	I. S. 88	
r. 2 (1)	629	O. 35, r. 1	O. 57, r. 2
(2)	629		
r. 3	630	O. 35, r. 2	
r. 4	634	O. 35, r. 3	O. 57, r. 6
r. 5 (1)	631	O. 35, r. 4	O. 57, r. 7
(2)	631		
(3)	631		
r. 6	632	O. 35, r. 5	
Illus.	632		
r. 7	633	O. 35, r. 6	O. 57, r. 15
O. 70, r. 1	596		
r. 2[2]			
r. 3 (1)	598		
(2)	599		
(3)			
r. 4[3]			
r. 5 (1)			
(2)			
r. 6			
r. 7			
r. 8	598		
r. 9			
r. 10	600		
r. 11[4]	601		
r. 12	602 (1)		
r. 13	602 (2)		
r. 14	607 (1)		
	(2)		
r. 15 (1)	606		
(2)	613		
r. 16 (1)	604 (1)		
(2)	(1)		
(3)	(1) and (2)		
(4)			
r. 17	605		
r. 18 (1)	608		
(2)	608		
r. 19 (1)	609 (1)		
(2)	(2)		
r. 20 (1)	610		
(2)[5]	610 Proviso 1		
(3)	610 Proviso 2		

[1] Courts Ordinance, Sec. 76.
[2] Matrimonial Causes Rules, 1947, r. 4. (White Book, p. 2355.)
[3] Matrimonial Causes Act, 1950, Section 3 (2). (White Book, p. 2331.)
[4] Matrimonial Causes Act, 1950, Section 4.
[5] Matrimonial Causes Act, 1950, Section 21 (1) (*b*).

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 70, r. 21 (1)	611 (1)		
(2)	(2)		
(3)	(2)		
r. 22 (1)	626 (1)		
(2)	(2)		
(3)	(3)		
O. 70, r. 23 (1)	614		
(2)[1]	614		
(3)	614		
r. 24 (1)	614		
(2)[2]	614		
(3)	614		
r. 25			
r. 26 (1)	615 (1) and (2)		
(2)	615 (2) Prov.		
(3)			
r. 27	616		
r. 28 (1)	617 (1)		
(2)	(2)		
(3)			
r. 29	618		
r. 30	621		
r. 31	622		
r. 32	619		
r. 33	620		
r. 34			
r. 35			
r. 36	612		
r. 37 (1)	625 (1)		
(2)	(2)		
r. 38	624		
r. 39	623		
r. 40	627		
O. 71, r. 1	443	O. 33, r. 2	
r. 2	444	O. 33, r. 5	
r. 3	445	O. 33, r. 3	
r. 4	446	O. 33, r. 5	
r. 5 (1)	447 (1)	O. 33, r. 6	
(2)	(2)		
r. 6 (1)			
(2)	448		
r. 7	449	O. 33, r. 8	
r. 8	450	O. 33, r. 10	
r. 9	451	O. 33, r. 11	
r. 10	452	O. 33, r. 15	
r. 11 (1)	453		
(2)			
(3)			
(4)			
(5)			
r. 12			
r. 13	454	O. 33, r. 9	
r. 14	455	O. 33, r. 16	
r. 15			
O. 72, r. 1			
r. 2 (1)			
(2)			
r. 3			
r. 4 (1)			
(2)			
r. 5			
r. 6			
r. 7 (1)			
(2)			
(3)			

[1] Matrimonial Causes Rules, 1947, Section 4 (2).
[2] Matrimonial Causes Rules, 1947, Section 4 (2).

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 72, r. 8 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
(4)	..	..	..
r. 9 (1)	..	..	..
(2)	..	..	..
r. 10	..	..	..
r. 11	..	..	..
r. 12	..	..	..
r. 13 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
(4)	..	..	..
r. 14	..	..	..
r. 15	..	..	..
r. 16	..	..	..
r. 17 (1)	..	..	..
(2)	..	..	..
r. 18 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
r. 19 (1)	..	..	..
(2)	..	..	..
O. 73, r. 1	.. 635	..	..
r. 2	.. 636	..	..
r. 3	.. 637	..	..
r. 4	.. 638	..	..
O. 74, r. 1	..	..	.. O. 54A, rr. 1, 1 (*a*)
r. 2 (1)	..	..	..
(2)	..	..	..
r. 3	..	..	..
r. 4	..	..	..
O. 75, r. 1	.. 582	..	..
r. 2	.. 583	..	..
r. 3	..	..	..
r. 4	..	..	..
r. 5 (1)	..	..	..
(2)	..	..	..
r. 6	.. 585 (1)	..	..
r. 7	.. 585 (2)	..	..
r. 8	.. 585 (3)	..	..
r. 9	.. 586	..	..
r. 10 (1)	.. 587 (1)	..	..
(2)	.. 587 (2)	..	..
(3)	.. 587 (3)	..	..
r. 11 (1)	.. 587 (3)	..	..
(2)	.. 587 (3)	..	..
r. 12	.. 587 (4)	..	..
r. 13	.. 588 (1)	..	..
r. 14 (1)	.. 752	..	..
(2)	..	..	..
(3)	..	..	..
r. 15 (1)	.. 588 (2)	..	..
(2)	.. (2)	..	..
(3)	..	..	..
(4)	.. 747 (2)	..	..
r. 16	.. 589	..	..
r. 17	.. 590	..	..
O. 75, r. 18 (1)	.. 591	..	..
(2)	.. 591	..	..
r. 19 (1)	.. 591	..	..
(2)	..	..	..
r. 20 (1)	.. 592 (1)	..	..
(2)	.. (2)	..	..
r. 21	.. 593	..	..
r. 22	.. 594	..	..
r. 23	.. 594	..	..
r. 24 (1)	..	..	..
(2)	..	..	..

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 75, r. 25 (1)	.. 571	..	..
(2)	.. 571	..	..
(3)[1]	..	..	..
(4)[2]	..	..	..
(5)[3]	..	..	..
r. 26 (1)	.. 745	..	..
(2)	..	..	..
r. 27 (1)	.. 746	..	..
(2)	..	..	..
r. 28 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
r. 29	..	..	..
r. 30	..	..	..
r. 31	.. 747 (1)	..	..
O. 76, r. 1	.. 555	..	..
r. 2 (1)	.. 556 (1)	..	..
(2)	.. (2)	..	..
(3)	.. 749	..	..
r. 3	.. 557	..	..
r. 4	.. 558	..	..
r. 5 (1)	.. 559	..	..
(2)	.. 559	..	..
(3)	.. 559	..	..
(4)	.. 750	..	..
r. 6 (1)	.. 560	..	..
(2)	.. 560	..	..
r. 7	.. 561	..	..
r. 8	.. 562	..	..
O. 76, r. 9 (1)	.. 563	..	..
(2)	.. 563	..	..
r. 10 (1)	.. 564	..	..
(2)	.. 564	..	..
r. 11 (1)	.. 565	..	..
(2)	.. 565	..	..
r. 12	.. 566	..	..
r. 13 (1)	.. 567	..	..
(2)	.. 567	..	..
r. 14	.. 568	..	..
r. 15	..	..	..
r. 16 (1)	.. 752	..	..
(2)	..	..	..
r. 17	.. 569	..	..
r. 18 (1)	.. 570	..	..
(2)	.. 570	..	..
r. 19 (1)	.. 571	..	..
(2)	.. 571	..	..
(3)[4]	..	..	..
(4)[5]	..	..	..
(5)[5]	..	..	..
r. 20 (1)	.. 572 (1)	..	..
(2)	.. 572 (1)	..	..
(3)	.. 572 (2)	..	..
r. 21	.. 573	..	..
r. 22	.. 574	..	..
r. 23 (1)	.. 745	..	..
(2)	..	..	..
r. 24 (1)	.. 746	..	..
(2)	.. 746	..	..
r. 25 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..

[1] Trustee Act, Section 10 (3).
[2] Trustee Act, Section 10 (3).
[3] Trustee Act, Section 10 (4).
[4] Trustee Act, Section 10 (3).
[5] Trustee Act, Section 10 (4).

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 76, r. 26	..	..	..
r. 27	..	..	..
r. 28	.. 747 (1)	..	..
r. 29 (1)	.. 575 (2)	..	..
(2)	.. (2)	..	..
r. 30	.. 576	..	..
r. 31	.. 577	..	..
r. 32 (1)	.. 578 (1)	..	..
(2)	.. (2)	..	..
r. 33	..	..	..
r. 34	.. 579	..	..
r. 35	.. 581	..	..
r. 36 (1)	..	..	..
(2)	..	..	..
r. 37 (1)	.. 580	..	..
(2)	.. 580	..	..
(3)	.. 580	..	..
O. 77, r. 1	.. 518 (1)	..	..
r. 2 (1)	.. 516	..	..
(2)	.. 516	..	..
(3)	.. 516	..	..
r. 3 (1)	.. 518 (1)	..	..
(2)	.. 518 (1)	..	..
(3)	.. 518 (2)	..	..
r. 4	.. 519	..	..
r. 5	.. 519	..	..
r. 6 (1)	.. 520	..	..
(2)	.. 522	..	..
(3)	.. 522	..	..
r. 7	.. 523	..	..
r. 8 (1)	.. 524 (1)	..	..
(2)	.. (1)	..	..
(3)	.. (3)	..	..
(4)	..	..	..
(5)	..	..	..
r. 9 (1)	..	..	..
(2)	..	..	..
r. 10 (1)	.. 524 (2)	..	..
(2)	.. (3)	..	..
r. 11	.. 525	..	..
r. 12 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
r. 13	.. 529	..	..
r. 14	.. 526	..	..
r. 15	.. 542	..	..
r. 16	.. 544	..	..
r. 17	.. 523	..	..
r. 18 (1)	.. 545	..	..
(2)	.. 545	..	..
O. 77, r. 19 (1)	.. 530	..	..
(2)	.. 530	..	..
(3)	.. 530	..	..
(4)	..		
(5)	..		
r. 20	.. 531	..	..
r. 21 (1)	.. 532	..	..
(2)	.. 532	..	..
(3)	..	..	..
r. 22 (1)	.. 535	..	..
(2)	..		
r. 23 (1)	.. 534	..	..
(2)	.. 534	..	..
(3)	.. 534	..	..
(4)	.. 534 Prov.	..	..
r. 24	..	..	..
r. 25	.. 549	..	..
r. 26 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 78, r. 1	546	..	..
r. 2	539	..	..
r. 3	..	..	..
r. 4[1]	..		
r. 5	548	..	..
r. 6 (1)	..		
(2)	..		
(3)	..		
(4)	..		
r. 7	539 (*a*)	..	..
r. 8	539 (*c*)	..	..
r. 9	539 (*b*)	..	..
r. 10	539 (*d*)	..	..
r. 11 (1)	539 (*d*)	..	..
(2)	539 (*d*)	..	..
r. 12	539 (*e*)	..	..
r. 13	539 (*e*)	..	..
r. 14	539	..	..
O. 79, r. 1 (1)	..	..	..
(2)	..	..	..
r. 2 (1)	..	..	..
(2)	..	..	..
r. 3 (1)	..	..	..
(2)	..	..	..
r. 4	..		
r. 5	..	..	..
r. 6	..	..	..
r. 7	..	..	..
r. 8	..	..	..
r. 9	..	..	..
O. 80, r. 1	538 (1)	..	..
r. 2 (1)	538 (1)	..	..
(2)	..	..	..
(3)	541	..	..
r. 3	538 (2)	..	..
r. 4	751	..	..
r. 5	541	..	..
r. 6	541	..	..
r. 7 (1)	521	..	..
(2)	541	..	..
(3)	521	..	..
O 81, r. 1(1)	538 (1)	..	..
(2)	..		
r. 2	538 (1)	..	..
r. 3	..	..	..
r. 4	..	..	..
r. 5	..	..	..
r. 6	718 (1)	..	..
r. 7	718 (2)	..	..
r. 8	718 (3)	..	..
r. 9	719	..	..
O. 82, r. 1 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
(4)	..	..	..
(5)	..	..	..
r. 2 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
(4)	..	..	..
O. 82, r. 3 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
(4)	..		
r. 4 (1)	712 (1)	..	..
(2)	(3)	..	..

[1] Judicature Act, 1925, Section 163.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 82, r. 5 (1)	714 (1)	..	..
(2)	(3)	..	..
r. 6	716	..	..
r. 7 (1)	717 (1)	..	..
(2)	(2)	..	..
(3)	(3)	..	..
r. 8	713 (2)	..	..
r. 9	713 (3)	..	..
r. 10	714 (2)	..	..
r. 11	..	..	..
r. 12	..	..	..
r. 13	540	..	..
r. 14 (1)	550	..	..
(2)	550	..	..
r. 15	..	..	..
r. 16	..	..	..
r. 17	..	..	..
r. 18[1]	..	..	..
O. 83, r. 1	536	..	..
r. 2 (1)	537	..	..
(2)	537	..	..
O. 84, r. 1	551	..	..
r. 2	551	..	..
r. 3 (1)	552	..	..
(2)	552	..	..
r. 4	552	..	..
O. 85, r. 1	..	..	..
r. 2 (1)	..	..	..
(2)	..	..	..
r. 3 (1)	..	..	..
(2)	..	..	..
r. 4 (1)	..	..	..
(2)	..	..	..
O. 85, r. 5	..	..	..
r. 6	..	..	..
r. 7	..	..	..
r. 8	..	..	..
r. 9	..	..	..
r. 10	..	..	..
r. 11	199	..	..
r. 12	..	..	..
r. 13	..	..	..
O. 86, r. 1	554	..	..
r. 2	553	..	..
r. 3[2]	718	..	..
r. 4[2]	718 (2)	..	..
r. 5[2]	718 (3)	..	..
r. 6[3]	719	..	..
r. 7 (1)[3]	..	..	..
(2)[4]	733	..	..
r. 8	..	..	..
r. 9	..	..	..
r. 10	..	..	..
r. 11	..	..	..
r. 12	..	..	..
r. 13	..	..	..
r. 14 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..
(4)	..	..	..
r. 15	..	..	..
r. 16	..	..	..
r. 17[5]	723	..	..

[1] Sec. 29 of A. of E. Act 1925.
[2] New York, Section 2715.
[3] New York, Section 2716.
[4] New York, Section 2733.
[5] New York, Section 2722.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
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r. 19[2]	725		
r. 20			
r. 21 (1)[3]	720		
(2)			
(3)	720		
(4)	721		
(5)	21		
(6)	721		
(7)			
r. 22 (1)[4]	726 (1)		
(2)			
(3)[5]	736		
r. 23 (1)[4]	726 (2)		
(2)			
r. 24 (1) (*a*)[6]	738		
(*b*)[5]	736 (1)		
(*c*)			
(2) (*a*)			
(*b*)			
r. 25			
r. 26			
r. 27			
r. 28[7]	740 (2)		
r. 29			
r. 30 (1) (*a*)			
(*b*)[8]	735		
(*c*)[5]			
(*d*)[5]	736 (2)		
(2)			
r. 31 (1)[9]	734		
(2)			
r. 32			
r. 33 (1)	737		
(2)	737		
r. 34	738		
r. 35 (1)			
(2)	740 (1)		
(3)	740 (3)		
r. 36 (1)[10]	741 (1) and (2)		
(2)[10]	741 (1)		
r. 37[11]	742		
r. 38	743		
r. 39[12]	739		
O. 86, r. 40 (1)	729		
(2)			
r. 41			
r. 42[13]	735		
O. 87, r. 1	595		
O. 88, r. 1	650, 653		
r. 2	650, 653		
r. 3	654		
r. 4	655 Prov.		
r. 5	650, 653		
	654		
r. 6	650, 653	O. 38, r. 1	
		r. 2	

[1] New York, Section 2723.
[2] New York, Section 2724.
[3] New York, Section 2717.
[4] New York, Section 2726.
[5] New York, Section 2739.
[6] New York, Section 2728.
[7] New York, Section 2743.
[8] New York, Section 2735.
[9] New York, Section 2734.
[10] New York, Section 2744.
[11] New York, Section 2745.
[12] New York, Section 2742.
[13] New York, Section 2735.

Judicial Commission Report, Section 112.

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r. 9	651		
r. 10	651		
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r. 13 (1)	652		
(2)	652		
r. 14	656		
r. 15	657	O. 38, r. 7	
r. 16	658	O. 38, r. 8	
r. 17	659		
r. 18	660	O. 38, r. 10	
r. 19	661	O. 38, r. 11	
r. 20 (1)		I. S. 95	
(2)			
O. 89, r. 1	662		
r. 2	663		
r. 3 (1)	664		
(2)	664		
r. 4			
r. 5	665		
O. 89, r. 6	666		
r. 7 (1)	667		
(2)	667		
O. 90, r. 1	668	O. 39, r. 6	
r. 2	668		
r. 3 (1)	669	O. 39, r. 7 (1)	
(2)		r. 7 (2)	
r. 4 (1)	670		
(2)	670		
r. 5		O. 39, r. 10	
O. 91, r. 1 (1)	671	O. 40, r. 1	
(2)	675	O. 40, r. 1 (2)	
r. 2	671 (*d*)	O. 40, r. 2	
r. 3	672		
r. 4	673	O. 40, r. 3	
r. 5	674		
r. 6		O. 40, r. 4	
O. 92, r. 1[1]	676 (1)		
r. 2 (1)	676 (2)		
(2)	676 (2)		
r. 3	676 (3)		
r. 4	676 (4)		
r. 5 (1)	677 (1)		
(2)			
(3)	677 (2)		
r. 6 (1)[2]	678 (1)		
(2)	(2)		
r. 7[3]	679, 680		
r. 8[4]	681		
r. 9 (1)[5]			
(2)			
(3)			
(4)			
r. 10 (1)[6]			
(2)[7]			
r. 11 (1)	682 (1)		
(2)[8]	682 (2)		

[1] I. A. Act of 1940, Section 21, Schedule II, para. 1 (1).
[2] Ind. Sch. II, para 4.
[3] Ind. Sch. II, para. 5.
[4] Ind. Sch. II, para. 6.
[5] I. A. A., Section 11, Eng. A. Act, 1950, Section 23.
[6] I. A. A., Section 12.
[7] Eng. A. A. (1950), Section 25.
[8] Ind. Sch. II, para 7.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 92, r. 12[1]			
Expl.[2]			
r. 13	686		
r. 14[3]			
r. 15[4]			
r. 16[5]	684		
r. 17[6]	685		
r. 18	687		
r. 19[7]	688		
r. 20 (1)[8]	690		
(2)[9]			
r. 21[10]	691 (1)		
r. 22[11]	691 (2)		
r. 23[12]			
r. 24 1)	692 (1)		
(2)	(2)		
(3)	(3)		
r. 25[13]			
r. 26	689		
r. 27 (1)[14]	693 (1)		
(2)			
(3)	693 (2)		
(4)	693 (2)		
r. 28[15]	694		
r. 29 (1)[16]			
(2)			
r. 30[17]			
r. 31[18]			
r. 32[19]	696		
r. 33	697		
r. 34	698		
O. 93, r. 1 (1)	697 (1)		
(2)	(2)		
r. 2	700		
r. 3 (1)	701		
(2)	701		
(3)	701		
(4)	701		
r. 4	702		
O. 94, r. 1 (1)	703	O. 37, r. 2 (1)	O. 3, r. 6
(2)			
r. 2 (1)	704 (1)		
(2)	(1)		
(3)	709		
r. 3 (1)	706	O. 37, r. 3 (1)	O.14, r. 1
(2)	706	O. 37, r. 3 (2)	O.14, r. 16
(3)			
r. 4 (1)			
(2)			
r. 5			
r. 6			
r. 7	710		
r. 8	707		
O. 95, r. 1 (1)	754 (1)		
(2)	(2)		

[1] Eng. A. A., Section 13.
[2] Eng. A. A., 1950, Section 14.
[3] Eng. A. A., 1950, Section 18.
[4] Ind., Sch. II, para. 8.
Ind. A. Act, 1950, Section 28 (1).
[5] Ind., Sch. 11, para. 9.
[6] Ind., Sch. 11, para 10.
[7] Ind., Sch. II, para. 12.
Ind. A. A. 1940, Section 16.
[8] Ind., Sch. II, para 14.
Ind. A. A., 1950, Section 16.
[9] Ind. A. A., 1940, Section 16 (2).
[10] Ind., Sch. II, para. 15 (1).
Ind. A. A., 1940, Section 16 (3).
[11] Ind., Sch. II, para. 15 (1).
Ind. A. A., 1940, Section 30.
[12] Ind., Sch. II, para. 15 (2).
[13] E. A. A., 1950, Section 20.
[14] Ind. A. A., 1940, Section 20.
[15] Ind. A. A., 1940, Section 20 (4).
[16] Section 4, Arb. Ord. (Ch. 83).
[17] Ind. A. A., 1940, Section 20 (5).
[18] Arb. Ord., Section 7 (Ch. 83).
Ind. A. A., Section 34.
Eng. A. Act, 1950, Section 4 (1).
[19] Ind., Sch. II, para. 20.

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(3)			
(4)			
r. 3 (1)	756 (1)		
(2)			
(3)			
(4)			
(5)			
r. 4	756 (1)		
r. 5			
r. 6	756 (1)		
r. 7 (1)			
(2)			
(3)			
(4)			
(5)			
r. 8 (1)	756 (1)		
(2)	756 (1)		
r. 9	756 (2)		
r. 10	756 (3)		
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(2)			
(3)			
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r. 15			
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(2)			
r. 17			
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r. 2 (1)[2]			
(2)			
(3)			
(4)			
(5)			
r. 3[3]			
r. 4[4]			
r. 5			
r. 6 (1)			
(2)			
r. 7[5]			
r. 8[6]			
r. 9 (1)[6]			
(2)			
(3)			
r. 10[6]			
r. 11 (1)			
(2)			
r. 12[7]			
r. 13[8]			
r. 14			
r. 15 (1)			
(2)			
r. 16			
r. 17			
O. 97, r. 1			
r. 2 (1)			
(2)			
(3)			

[1] Civil Appellate Rules 1938, Rule 1.

[2] Civil Appellate Rules 1938, Rule 2 (1)

[3] Civil Appellate Rules 1938, Rule 2 (4).

[4] Civil Appellate Rules 1938, Rule 2 (3).

[5] Civil Appellate Rules 1938, Rule 2 (5).

[6] Civil Appellate Rules 1938, Rule 2 (7).

[7] Civil Appellate Rules 1938, Rule 2 (8).

[8] Civil Appellate Rules 1938, Rule 3.

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New Order and Rule	*Old Section*	*Indian Order and Rule*	*English Order and Rule*
O. 97, r. 3 (1)			
(2)			
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(2)			
r. 5			
r. 6			
r. 7			
r. 8			
r. 9			
		O. 41, r. 5 (1)	
O. 98, r. 1			
r. 2	761		
r. 3	761		
r. 4	762		
r. 5	761 Prov.	O. 41, r. 5 (2)	
		O. 41, r. 5 (4)	
r. 6		O. 45, r. 6	
r. 7	763	O. 45, r. 6 (2)	
r. 8			
r. 9	764		
O. 99, r. 1	765		
r. 2 (1)	766		
(2)	766		
r. 3 (1)	767		
(2)	767		
(3)	767		
(4)			
r. 4	767		
O. 100, r. 1 (1)	768		
(2)	768 Prov. 1		
(3)	768 Prov. 2		
r. 2 (1)	769 (1)	O. 41, r. 16	
(2)	769 (2)		
r. 3	758 (2)		
r. 4	770		
r. 5	771		
O. 100, r. 6 (1)	772 (1)	O. 41, r. 22	
(2)	772 (3)		
(3)			
(4)			
r. 7	773		
r. 8 (1)	774 (1)		
(2)	(1)		
(3)	(2)		
r. 9 (1)	775 (1)		
(2)	(2)		
r. 10 (1)	776 (1)		
(2)	(2)		
(3)	(3)		
(4)	(4)		
r. 11	777		
r. 12			
r. 13			
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(2)	778 Prov. 3 & 4		
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(2)	801		
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r. 4	804		
r. 5	805		
r. 6	806		
r. 7	807		
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r. 15	817	..	..
r. 16	818	..	..
r. 17	819	..	..
r. 18	..	..	..
r. 19 (1)	820 (1)	..	..
(2)	(1)	..	..
r. 20	821	..	..
r. 21	822	..	..
r. 22 (1)	823 (1)	..	..
(2)	(2)	..	..
(3)	(3)	..	..
(4)	(4)	..	..
(5)	(5)	..	..
(6)	(6)	..	..
(7)	(7)	..	..
r. 23 (1)	..	..	..
(2)	..	..	..
r. 24	825	..	..
r. 25	827	..	..
r. 26	828	..	..
r. 27	829	..	..
r. 28 (1)	829A (1)	..	..
(2)	829A (2)	..	..
r. 29	188	..	..
r. 30	832 (2)	..	..
r. 31	833	..	..
r. 32	833	..	..
r. 33	208 Prov.	..	..
r. 34	..	..	..
r. 35	..	..	..
r. 36 (1)	833A (2)	..	..
(2)	833A (2)	..	..
(3)	833A (2)	..	..
r. 37	..	..	..
r. 38 (1)	833A (3)	..	..
(2)	833A (4)	..	..
r. 39	91 (2)	..	..
r. 40	373	..	..
O. 103, r. 1	792	..	..
r. 2	793	..	..
r. 3	794	..	..
r. 4	795	..	..
r. 6 (1)	797 (1)	..	..
r. 7 (2)	798 (2)	..	..
O. 103, r. 8	799	..	..
O. 104, r. 1 (1)	835 (1)	..	..
(2)	(2)	..	..
r. 2	836	..	..
O. 105, r. 1 (1)[1]	..	..	..
(2)	..	..	..
r. 2 (1)	..	..	..
(2)	..	..	..
(3)	..	..	..

[1] R. S. C. (Ceylon) 1911, Vol. I, Sub. Leg. page 11. Evidence by Commission Act, 1859 and 1885; Imperial Acts, pp. 48, 49, 50.

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A COMPARATIVE TABLE SHOWING THE SECTIONS OF THE OLD CODE AND THE CORRESPONDING SECTIONS AND RULES OF THE NEW CODE

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4	62 (1)	
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6		O. 1, r. 2
7		O. 1, r. 3
8		
9	3 (1)	
	3 (3)	
		O. 1, r. 4
10		O. 2, r. 1 (1)
11		O. 2, r. 1 (3)
		O. 2, r. 2
12		O. 2, r. 5
13		O. 2, r. 6 (1)
14		O. 2, r. 6 (2)
		O. 2, r. 7
15		O. 2, r. 8 (1)
16		O. 2, r. 8 (5)
		O. 2, r. 9
		O. 2, r. 11 (1)
17		O. 2, r. 11 (2)
		O. 2, r. 12 (1)
18 (1)		O. 2, r. 12 (3)
(2)		r. 12 (5)
		O. 2, r. 10
19		r. 12 (4)
		r. 14
		r. 15
		O. 2, r. 16
20		O. 2, r. 13
21		O. 2, r. 17
22		O. 5, r. 7
23		O. 4, r. 1 (1)
24		r. 1 (2)
		O. 4, r. 2
25		r. 2 (*a*)
(*a*)		r. 2 (*b*)
(*b*)		r. 2 (*c*)
(*c*)		
(*d*)		O. 4, r. 2 (*d*)
(*e*)		O. 4, r. 8 (1)
26 (1)		r. 8 (2)
(2)		O. 4, r. 3 (1)
27 (1)		r. 3 (2)
		r. 3 (3)
		O. 4, r. 3 (3)
(2)		r. 3 (4)
(3)		r. 3 (5)
		O. 4, r. 4
28		O. 4, r. 5
29		O. 4, r. 6 (*a*)
30		r. 6 (*b*)
		O. 4, r. 7 (1)
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(2)		r. 7 (3)
(3)		r. 7 (4)
(4)		
31		
32		
33		O. 5, r. 1
34 (1)		O. 5, r. 2 (1)
(2)		r. 2 (2)
		r. 2 (3)
(3)		r. 2 (4)
Illustration		O. 5, r. 1 (Illus.)
35 (1)		O. 5, r. 4
(1) (*a*)		r. 4 (*a*)
(*b*)		r. 4 (*b*)
(*c*)		
(2)		O. 5, r. 5

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Old Section	*New Section*	*New Order and Rule*
36 (1)	.. ..	O. 5, r. 3 (1)
		r. 6.
(2)	.. ..	r. 3 (2)
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38 (1)	.. ..	O. 5, r. 6
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39	.. ..	O. 13, r. 1
		r. 3
		O. 102, r. 2
		O. 6, r. 19
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		O. 6, r. 19
		O. 7, r. 3
		r. 4
41	.. ..	O. 7, r. 5 (1)
42	.. ..	O. 7, r. 9
43	.. ..	O. 7, r. 10
44	.. ..	O. 7, r. 11
45	.. ..	O. 7, r. 1
46 (1)	.. ..	O. 6, r. 18, r. 20
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48	.. ..	O. 13, r. 7
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(2)	.. ..	O. 7, r. 1 (*e*)
		r. 7 (2)
		O. 13, r. 9 (2)
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51	.. ..	O. 20, r. 1
52	.. ..	O. 20, r. 2
53	.. ..	O. 7, r. 12
54 (1)	.. ..	O. 7, r. 8
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(2)	.. ..	O. 20, r. 4
55	.. 4 ..	O. 13, r. 8
		r. 9
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		O. 14, r. 1
		r. 2
		r. 3
56	.. ..	
57	.. ..	
58	.. ..	
59	.. ..	O. 14, r. 4
60	.. ..	O. 14, r. 5 (1)
		r. 5 (2)
		r. 5 (3)
(Proviso) ..	.. ..	r. 5 (4)
61	.. ..	O. 14, r. 5 (5)
62	.. ..	O. 14, r. 5 (6)
63	.. ..	O. 14, r. 6
64	.. ..	O. 14, r. 7
		r. 10
		O. 38, r. 32
		O. 4, r. 6 (*a*)
64A	.. ..	O. 14, r. 8
65	.. ..	O. 14, r. 11 (1)
		r. 11 (2)
66	.. ..	O. 14, r. 12
67	.. ..	O. 14, r. 23
68	.. ..	O. 14, r. 15
69	.. ..	O. 14, r. 22 (1)
70	.. ..	O. 14, r. 22 (2)
71 ..		
72	.. ..	O. 15, r. 1
73	.. ..	O. 15, r. 2 (1)
		O. 102, r. 8 (3)
74	.. ..	O 15 r. 4

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Old Section	New Section	New Order and Rule
75		O. 6, r. 18
		r. 19
		O. 8, r. 1
		O 8, r. 6
76		O. 6, r. 20
77		O. 15, r. 3 (1)
		r. 3 (2)
		r. 3 (3)
		O. 12, r. 3 (2)
78		O. 15, r. 2 (2) (*a*)
		O. 17, r. 9
		O. 9, r. 1 (1)
79		r. 1 (2)
		r. 2
		O. 12, r. 3 (2)
		O. 15, r. 6
80		O. 27, r. 14
		O. 27, r. 15 (2)
81		
82		
83		
84 (1)		O. 16, r. 1 (1)
		r. 2 (2)
(2)		r. 2 (2)
(3)		
		r. 1 (2) (*a*)
(4)		
85		O. 16, r. 3
86 (1)		
(2)		O. 16, r. 4
87 (1)		O. 16, r. 6 (1)
(2)		r. 6 (2)
(3)		r. 6 (3)
88 (1)		O. 16, r. 5 (1)
		r. 5 (2)
(2)		
(3)		
89		O. 16, r. 7
90		O. 16, r. 8
91 (1)		O. 10, r. 1
(2)		O. 102, r. 39
92		O. 11, r. 1
93		O. 6, r. 16
		r. 16 (4)
		r. 16 (5)
94 (1)	5 (*a*)	O. 21, r. 1
		r. 9
		r. 10
(2)		O. 21, r. 3
95		
96		O. 21, r. 7
97		O. 21, r. 8
98		O. 21, r. 13
99		O. 21, r. 11
100		O. 21, r. 14
101 (1)	5 (*a*)	O. 21, r. 16 (1)
(2)		r. 16 (4)
(3)		r. 16 (2)
(4)		r. 16 (3)
102 (1)	5 (*a*)	O. 21, r. 17 (1) (*a*)
		r. 17 (2)
(2)		r. 17 (3)
103	5 (*a*)	O. 21, r. 18
104 (1)		O. 21, r. 19 (1)
		O. 20, r. 5
(2)		O. 21, r. 19 (2)
105		O. 21, r. 22
106		O. 21, r. 23
107		O. 21, r. 20
108		O. 21, r. 27
109 (1)	42 (*a*)	O. 21, r. 28 (1)
(2)	42 (*a*)	O. 21, r. 28 (2)
110 (1)		O. 21, r. 29 (1)
(2)		r. 29 (2)
(3)		r. 29 (3)

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Old Section	*New Section*	*New Order and Rule*
111 ..	..	.. O. 27, r. 1
		O. 31, r. 21
112 ..	..	.. O. 27, r. 2
		O. 31, r. 22 (1)
		O. 31, r. 22 (2)
113 (1) ..	..	.. O. 31, r. 38
(2) ..	..	.. O. 31, r. 37
114 (1) ..	..	.. O. 31, r. 24 (1)
(2) ..	..	.. r. 24 (2)
(3) ..	..	.. r. 40
115 ..	..	.. O. 27, r. 3 (2) (*b*)
		O. 31, r. 40
116 (1) ..	..	.. O. 31, r. 41 (1)
		r. 41 (2)
		r. 41 (3)
(2) ..	..	.. r. 41 (4)
117 ..	..	.. O. 21, r. 31
		O. 31, r. 45
		O. 27, r. 8
118 ..	..	.. O. 31, r. 42
119 ..	..	.. O. 31, r. 43
120 ..	..	.. O. 31, r. 44
121 (1) ..	.. 5 (*b*) ..	.. O. 28, r. 1 (2)
(2) ..	..	.. O. 28, r. 1 (1)
122 ..	..	.. O. 28, r. 3 (1)
		r. 3 (2)
		r. 4
123 ..	..	.. O. 28, r. 10 (1)
124 ..	..	.. O. 28, r. 11
125 ..	..	.. O. 28, r. 12
126 (1) ..	..	.. O. 28, r. 7 (1)
(2) ..	..	.. O. 28, r. 7 (2)
127 ..	..	.. O. 28, r. 6
128 ..	..	.. O. 28, r. 13
129 ..	..	.. O. 28, r. 17
130 ..	..	.. O. 28, r. 18
131 (1) ..	.. 6 ..	.. O. 28, r. 19 (1)
	6 (*a*) ..	.. r. 19 (2)
(2) ..	.. 6 (*b*) ..	.. r. 20
132 ..	..	.. O. 28, r. 21
133 ..	.. 6 (*c*) ..	.. O. 28, r. 22 (1)
		r. 22 (3)
134 ..	..	.. O. 28, r. 16
135 ..	..	.. O. 28, r. 8
136 ..	..	.. O. 28, r. 9
137 (1) ..	.. 42 (*b*) ..	.. O. 28, r. 25 (1)
		O. 28, r. 25 (2)
(2) ..	.. 42 (*b*) ..	.. O. 28, r. 25 (3)
138 ..	..	.. O. 28, r. 26
139 ..	..	.. O. 28, r. 27
140 ..	.. 42 (*d*) ..	.. O. 28, r. 14
141 (1) ..	..	.. O. 28, r. 15
(2) ..	..	
142 ..	.. 52 ..	
143 (1) ..	..	.. O. 25, r. 1 (1)
(2) ..	..	.. O. 25, r. 2
(2) Proviso.	..	.. O. 31, r. 6
144 ..	..	.. O. 27, r. 4
145 ..	..	.. O. 31, r. 3
146 (1) ..	..	.. O. 27, r. 6
		O. 31, r. 4
(2) ..	..	.. O. 27, r. 6
		O. 31, r. 4
(3) ..	..	
147 ..	..	.. O. 27, r. 9
		O. 31, r. 4
148 ..	..	.. O. 27, r. 7
		O. 31, r. 4
149 ..	..	.. O. 31, r. 4 (*b*)
150 ..	..	.. O. 31, r. 7
Expln. 1 ..	..	.. r. 7
Expln. 2 ..	..	.. r. 8

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Old Section	*New Section*	*New Order and Rule*
		.. O. 31, r. 9 (1)
151	..	.. O. 31, r. 10 Expln.
Expln.	..	.. O. 31, r. 9 (3)
152	..	.. O. 31, r. 9 (3)
153	..	.. O. 31, r. 11 (1)
Expln.	..	r. 11 (2)
		.. O. 31, r. 23
154 (1)	..	r. 32
		r. 33
		r. 34
(2)	..	.. r. 24 (2)
(3)	..	r. 25
		.. r. 24 (2)
Expln.	..	.. O. 31, r. 26
155	..	.. O. 31, r. 26
Illus.	..	.. O. 31, r. 27
156	..	.. O. 31, r. 28
157	..	.. O. 31, r. 29
158	..	.. O. 31, r. 30 (1)
159 (1)	..	.. r. 30 (2)
(2)	..	.. O. 31, r. 31 (1)
160	..	r. 31 (2)
		.. O. 31, r. 35
161	..	.. O. 31, r. 36
162	..	.. r. 36 (Note)
Note	..	.. O. 31, r. 18 (1)
163	..	r. 18 (2)
		r. 18 (3)
		r. 18 (4)
		r. 18 (5)
		.. O. 31, r. 11 (3)
164	..	r. 11 (4)
		.. O. 31, r. 11 (5)
165	..	
166 ..	..	
167	..	.. O. 31, r. 9 (2)
168 ..	..	
169	..	.. O. 31, r. 12
170	..	.. O. 31, r. 13
171	..	.. O. 31, r. 14
172	..	.. O. 31, r. 15
173	..	.. O. 31, r. 16
174	..	.. O. 31, r. 17 (1)
		r. 17 (2)
175	..	.. O. 28, r. 2 (1)
		r. 2 (2)
		r. 2 (3)
176 ..		
177 ..		
178 (1)	..	.. O. 30, r. 1
(2)	..	.. r. 3
(3)	..	.. r. 4
179	..	.. O. 31, r. 19 (1)
		r. 19 (2)
180	..	.. O. 31, r. 20
181	..	.. O. 23, r. 1 (1)
182	..	.. O. 23, r. 2
183	..	.. O. 23, r. 3
184 (1) 7	..	.. O. 32, r. 1 (1)
(2)	..	.. r. 1 (2)
185	..	.. O. 32, r. 2
186	..	.. O. 32, r. 3
187	..	.. O. 32, r. 4
188	..	.. O. 32, r. 5 (1)
		O.102, r. 29
189 (1) 56	..	.. O. 32, r. 5 (4)
(2) ..	..	
190	..	.. O. 32, r. 7
191	..	.. O. 32, r. 8
192 (1)	..	.. O. 32, r. 9 (1)
(2)	..	.. r. 9 (2)
193	..	.. O. 32, r. 11
194	..	.. O. 32, r. 12
195	..	.. O. 32, r. 13 (1)
		r. 13 (2)

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Old Section	*New Section*	*New Order and Rule*
196		O. 32, r. 14
Expln.		Expln.
197		O. 32, r. 15
198		
199		O. 85, r. 11
200		O. 32, r. 16
202		O. 32, r. 17
203		O. 32, r. 18
204		O. 32, r. 19
205		O. 32, r. 22
206		O. 32, r. 23
207		
208		O. 35, r. 1
		O. 102, r. 33
209		O. 35, r. 3
		r. 8
210		O. 35, r. 4
211		O. 35, r. 5
212		O. 35, r. 6
213		O. 35, r. 7
214		O. 35, rr. 18 (1), 19 (2), 21
215		O. 35, r. 22
216		O. 35, r. 23
217	8	
218	10	O. 36, r. 3
219 (1)		O. 37, r. 3
(2)		O. 37, r. 6
220		O. 37, r. 4
221		O. 37, r. 5
222 (1)		O. 37, r. 2 (1)
(2)		O. 37, r. 2 (2)
223		
224		O. 36, r. 4
225 (1)		O. 36, r. 5 (1), (2), (3)
(2)		O. 36, r. 5 (4)
(3)		O. 36, r. 5 (5)
226 (1)		O. 36, r. 6
(2)		O. 38, r. 1
227		O. 38, rr. 4, 5, 6, 7, 8
228		O. 38, r. 9
229		O. 38, r. 10 (1), (2)
230 (1)		O. 40, r. 3, 4
(2)		O. 40, r. 10
231		O. 40, r. 11
232 (1)		O. 38, r. 11 (1), r. 12
(2)		O. 38, r. 11 (2)
Expln.		do.
233		O. 38, r. 13
234 (1)		O. 38, r. 14
(2)		O. 38, r. 15 (1) (2)
		r. 11 (3)
235		O. 38, rr. 16, 17
236		O. 38, r. 29
237 (1)		O. 38, r. 30
(2)		O. 38, rr. 31, 30
238		O. 38, rr. 32, 33
239		O. 38, r. 34 (1)
240		O. 38, r. 35
241		O. 39, rr. 1, 2, 3, 21
242		O. 39, rr. 4, 5
243		O. 39, r. 22
244		O. 39, r. 23
245		O. 39, r. 24
246		O. 39, r. 16
247		O. 39, r. 25
248		O. 39, r. 6
249		
250		
251		
252		
253		O. 40, r. 1 (1)
254		O. 38, r. 19
255		O. 41, rr. 1, 2, 3

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Old Section	*New Section*	*New Order and Rule*
		.. O. 41, r. 4 (1), (2), (3)
256		.. O. 41, r. 5
257		.. O. 41, rr. 6, 7
258		O. 44, r. 3
		.. O. 42, r. 2 (1)
259 (1)		.. O. 42, r. 2 (2), (3), (4)
(2)		.. O. 42, r. 5 (1)
260		.. O. 42, r. 6
261		.. O. 42, r. 7
262		.. O. 42, r. 8
263		.. O. 42, r. 4
264		.. O. 42, r. 3
265		.. O. 42, r. 9 (1)
266		.. O. 42, r. 10 (1), (2), (3)
267		.. O. 42, r. 11
268		.. O. 42, r. 12
269		.. O. 44, r. 4
270		O. 53, r. 14
		.. O. 41, r. 8
271		.. O. 44, r. 5
272 (1)		.. O. 44, r. 6
(2)		.. O. 42, r. 1
273		O. 43, r. 1
274		.. O. 43, r. 6 (1)
275 (1)		.. O. 43, r. 6 (2)
(2)		.. O. 43, r. 7 (1)
276		.. O. 43, r. 8
277		.. O. 43, r. 9
278		.. O. 43, r. 10
279		.. O. 43, r. 11 (1), (2)
280 (1)		.. O. 43, r. 11 (3)
(2)		.. O. 43, r. 12
281		.. O. 42, r. 13
282 (1)		.. O. 42, r. 14 (1)
(2)		.. O. 42, r. 14 (2)
(3)		.. O. 42, r. 16
283 (1)		.. O. 42, r. 17
Prov.		.. O. 42, r. 15
(2)		.. O. 42, r. 19
284		.. O. 42, r. 20 (1)
285 (1)		.. O. 42, r. 20 (2), (3)
(2)		.. O. 42, r. 21 (1), (2)
286 }		.. r. 22 (1), (2), 23, 24
Prov. }		.. O. 42, r. 25 (1)
287 (1)		.. O. 42, r. 25 (2)
(2)		.. O. 42, r. 26
288		.. O. 42, r. 27
289		.. O. 42, r. 28
290		.. O. 42, r. 29
291		.. O. 42, r. 30 (1), (2)
292		.. O. 42, r. 31
293		.. O. 42, r. 32
294	S. 42 (*e*)	.. O. 42, r. 33
295	S. 42 (*e*)	.. O. 45, r. 1
296		.. O. 45, r. 2
297		.. O. 46, r. 1 (1)
298 (1)		.. O. 46, r. 1 (2)
(2)		.. O. 46, r. 3
299		.. O. 46, r. 4
300		
301	S. 11 (*a*)	
302	S. 11 (*b*)	
303		.. O. 46, r. 5
304		.. O. 46, r. 6
305		.. O. 46, r. 7
306		.. O. 46, r. 8 (*a*)
		r. 8 (*b*)
		r. 9
307		.. O. 46, r. 10
308		.. O. 46, r. 11
309		.. O. 46, r. 12
310 (1)		.. O. 46, r. 13
(2)		.. r. 14
(3)		.. r. 15

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Old Section	*New Section*	*New Order and Rule*
311		O. 46, r. 16
312		O. 46, r. 17
313		O. 46, r. 18 (1)
314		O. 46, r. 19
315 (1)		O. 46, r. 20 (1)
(2)		r. 20 (2)
315A (1)		O. 46, r. 21
(2)		r. 22
(3)		r. 23
(4)		r. 24
316		O. 46, r. 25 (1)
		r. 25 (2)
		r. 26
317 (1)		O. 46, r. 27 (1)
(2)		r. 27 (2)
318	12	O. 46, r. 28
319		O. 46, r. 29
320		O. 47, r. 1 (1)
		r. 2
321 (1)		O. 47, r. 3
(2)		r. 5
		r. 6
322		O. 46, r. 7
		r. 8
323		O. 48, r. 1
		r. 2
324 (1)		O. 48, r. 3
		r. 8 (1)
		r. 8 (2)
(2)		r. 9
325		O. 49, r. 1
326		O. 49, r. 9 (1), (*a*)
327		O. 49, r. 15
327A		O. 49, r. 9 (1) (*b*)
328 (1)		O. 49, r. 16
(2)		r. 17
(3)		
(4)		
329		
330 (1)		
(2)		
331		O. 50, r. 1
332 (1)		O. 50, r. 2
(2)		r. 3
(3)		r. 3
333		O. 50, r. 4
		r. 5 (2)
		r. 5 (1)
333A		O. 50, r. 1
334		O. 51, r. 1
		r. 2
335		O. 51, r. 4
		r. 5
336		O. 53, r. 1
337 (1)		O. 53, r. 2 (1)
(2)		r. 2 (2)
338 (1)		O. 53, r. 6 (1)
		r. 6 (2)
(2)		r. 6 (3)
(3)		r. 6 (4)
339 (1)		O. 53, r. 7 (1)
		r. 7 (2)
		r. 7 (3)
(2)		
340		O. 53, r. 8
341 (1)		O. 53, r. 9 (1)
(2)		r. 9 (2)
342		O. 41, r. 9
343 (1)		O. 44, r. 1 (1)
(2)		r. 1 (3)
344		O. 53, r. 10 (1)

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Old Section	*New Section*	*New Order and Rule*
		.. O. 53, r. 11 (1)
345 (1) ..	.. ..	.. r. 11 (1)
(2) ..	.. ..	
Expln. 1		.. O. 53, r. 11 (2)
Expln. 2	.. ..	.. r. 11 (3)
Expln. 3	.. ..	.. O. 53, r. 11 Illus.
Illustration	.. ..	.. O. 53, r. 12
346 (1) ..	.. ..	
(2)		
347		.. O. 53, r. 4
348 ..	.. ..	.. O. 53, r. 5 (1)
349 (1) ..	.. ..	.. r. 5 (2)
(2) ..	.. ..	.. r. 5 (3)
(3) ..	.. ..	
		.. O. 52, r. 1
350 ..	.. ..	.. r. 2
	.. ..	.. r. 3
	.. ..	.. O. 53, r. 13
351 ..	.. ..	.. O. 52, r. 2
352 (1) ..	.. ..	.. r. 6
	.. ..	.. r. 5
(2) ..	.. ..	.. O. 53, r. 15
353 ..	.. ..	.. O. 53, r. 16
354 ..	.. ..	.. O. 55, r. 1 (1)
355 ..	.. ..	r. 1 (2)
		.. O. 55, r. 3
356 ..	.. ..	
357 ..	.. 15	
358 ..	..	
359 ..	.. 16	
360 ..	.. 17	
361 ..	.. 18	
362 ..	.. 13 (1)	
	.. 13 (2)	
	.. 13 (3)	
	.. 13 (4)	
	.. 13 (5)	
363 ..	.. 14	
364 ..	.. ..	.. O. 55, r. 6
365 ..	.. 21	
366 ..	.. 22	
367 ..	.. 24 (4)	
368 ..	.. ..	.. O. 55, r. 2
369 ..	.. 23 ..	
370 (1) ..	.. ..	.. O. 55, r. 7 (1)
(2) ..	.. ..	.. r. 7 (2)
371 ..	.. ..	.. O. 55, r. 8
372 ..	.. 42 (*f*) ..	.. O. 55, r. 9
373 ..	.. ..	.. O. 6, r. 19
		O. 56, r. 1
		O.102, r. 40
374 ..	.. ..	.. O. 6, r. 19
	.. ..	.. O. 56, r. 2
375 ..	.. ..	.. O. 56, r. 3
376 ..	.. ..	.. O. 56, r. 4
377 ..	.. ..	.. O. 56, r. 5
378 ..	.. ..	.. O. 56, r. 6
379 ..	.. ..	.. O. 56, r. 7
380 ..	.. ..	.. O. 56, r. 8
381 ..	.. ..	.. O. 56, r. 9
382 ..	.. ..	.. O. 56, r. 10
383 (1) ..	.. ..	.. O. 56, r. 11 (1)
(2) ..	.. ..	.. r. 11 (2)
384 ..	.. ..	.. O. 56, r. 15 (2)
	.. ..	.. r. 15 (3)
385 ..	.. ..	.. O. 56, r. 15 (4)
386 ..	.. ..	.. O. 56, r. 16
387 ..	.. ..	.. O. 56, r. 17
388 (1) ..	.. ..	.. O. 56, r. 18 (1)
(2) ..	.. ..	.. r. 18 (2)
(3) ..	.. ..	.. r. 18 (3)
389 ..	.. ..	.. O. 56, r. 22
390 ..		
391 ..		
392 ..	.. ..	.. O. 57, r. 1

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Old Section	*New Section*	*New Order and Rule*
393		O. 57, r. 2
394 (1)		O. 57, r. 3 (1)
(2)	63 (16)	r. 3 (2)
395		O. 57, r. 4
396		O. 57, r. 5
397		O. 57, r. 6
398 (1)		O. 57, r. 7 (1)
(2)		r. 7 (2)
399 (1)		O. 57, r. 8 (1)
(2)		r. 8 (2)
400		O. 57, r. 9
401		O. 57, r. 10
402		O. 57, r. 11
403		O. 57, r. 12
404		O. 57, r. 13
405		O. 57, r. 14
406 (1)		O. 58, r. 1 (1)
		r. 1 (2)
(2)		r. 1 (3)
(3)		r. 1 (4)
407		O. 58, r. 2
408		O. 58, r. 3
409		O. 59, r. 1
410		O. 59, r. 2
411		O. 59, r. 3
412		O. 59, r. 4
413		O. 59, r. 5
414		O. 59, r. 6
415		O. 59, r. 7
416		O. 61, r. 1
417		O. 61, r. 2
418 (1)		O. 61, r. 4
(2)		r. 6
419		O. 61, r. 3
420		O. 62, r. 2
421		O. 62, r. 3
422 (1)		O. 62, r. 4 (1)
(2)		r. 4 (2)
423		O. 62, r. 5
424		O. 62, r. 6
425		O. 62, r. 7
426		O. 62, r. 8
427		O. 62, r. 9
428		O. 62, r. 10
429		O. 62, r. 11
430		O. 62, r. 14
431		O. 62, r. 15
432 (1)		
(2)		O. 62, r. 12
433		O. 62, r. 17
434		O. 62, r. 18
435		O. 62, r. 19
436		O. 62, r. 21 (1)
		r. 21 (2)
437		O. 23, r. 4
438		O. 23, r. 9
439		O. 23, r. 10 (1)
		r. 10 (2)
440		O. 23, r. 11 (1)
		r. 11 (2)
441	26	
442	27 Proviso.	
443		O. 71, r. 1
444		O. 71, r. 2
445		O. 71, r. 3
446		O. 71, r. 4
447 (1)		O. 71, r. 5 (1)
(2)		r. 5 (2)
448		O. 71, r. 6 (2)
449	27	O. 71, r. 7
		r. 15

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Old Section	*New Section*	*New Order and Rule*
		.. O. 71, r. 8
450 ..	.. ..	.. O. 71, r. 9
451 ..	.. ..	.. O. 71, r. 10
452 ..	.. ..	.. O. 71, r. 11 (1)
453 ..	.. ..	.. O. 71, r. 13
454 ..	.. ..	.. O. 71, r. 14
455 ..	..	
456 (1) ..	.. 28 (1)	.. O. 63, r. 1
(2) ..	.. ..	
(3) ..	.. 28 (2)	
(4) ..	.. 63 (8)	
		.. O. 14, r. 13
457 ..	.. ..	.. O. 63, r. 2 (1)
458 ..	.. ..	.. O. 14, r. 16
459 ..	.. ..	.. O. 63, r. 3 (1)
460 ..	.. ..	r. 3 (2)
461 ..	.. 30 (1)	
	30 (2)	
	30 (3)	
462 ..	.. 29	
463 ..	.. ..	.. O. 63, r. 4 (1)
464 ..	.. ..	.. O. 63, r. 4 (2)
465 ..	.. ..	
466 (1) ..	.. 33 (1)	
(2) ..	.. 33 (2)	
Expln.	.. 33	
467 (1) ..	.. 34 (1)	
(2) ..	.. 34 (2)	
468 (1) ..	.. 35 (1)	
(2) ..	.. 35 (2)	
469 (1) ..	.. 36 (1)	
(2) ..	.. 36 (2)	
(3) ..	.. 36 (3)	
470 ..	.. ..	.. O. 65, r. 1
471 ..	.. ..	.. O. 14, r. 14
472 ..	.. ..	.. O. 67, r. 1
473 ..	.. ..	.. O. 67, r. 2
474 ..	.. ..	.. O. 67, r. 3
475 ..	.. ..	.. O. 67, r. 4
476 ..	.. ..	.. O. 68, r. 1
477 ..	.. ..	.. O. 68, r. 3
478 (1) ..	.. ..	.. O. 68, r. 4 (1)
(2) ..	.. ..	.. r. 4 (2)
479 ..	.. ..	.. O. 68, r. 2
480 ..	.. ..	.. O. 68, r. 5
481 (1) ..	.. ..	.. O. 68, r. 6 (1)
(2) ..	.. ..	.. r. 6 (2)
482 ..	.. ..	.. O. 68, r. 7
483 (1) ..	.. ..	.. O. 68, r. 8 (1)
(2) ..	.. ..	.. r. 8 (2)
484 ..	.. ..	.. O. 68, r. 9
485 ..	.. ..	.. O. 68, r. 10
486 ..	.. ..	.. O. 68, r. 11
487 (1) ..	.. ..	.. O. 68, r. 12 (1)
(2) ..	.. ..	.. r. 12 (2)
488 ..	.. ..	.. O. 68, r. 13
489 ..	.. ..	.. O. 68, r. 14
490 (1) ..	.. ..	.. O. 68, r. 15 (1)
(2) ..	.. ..	.. r. 15 (2)
		.. r. 15 (3)
491 (1) ..	.. ..	.. O. 68, r. 16 (1)
(2) ..	.. ..	.. r. 16 (2)
492 ..	.. ..	.. O. 68, r. 17
493 (1) ..	.. ..	.. O. 68, r. 18 (1)
(2) ..	.. ..	.. r. 18 (3)
494 ..	.. ..	.. O. 68, r. 19
495 ..	.. ..	.. O. 68, r. 20
496 ..	.. ..	.. O. 68, r. 21 (1)
497 ..	.. ..	.. O. 68, r. 21 (2)
498 ..	.. ..	.. O. 68, r. 22
499 ..	.. ..	.. O. 68, r. 24 (1)
500 (1) ..	.. ..	.. O. 68, r. 23 (1)
(2)		

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Old Section	*New Section*	*New Order and Rule*
501		O. 68, r. 27
502		O. 68, r. 25
503 (1)		O. 64, r. 1 (1)
(2)		r. 1 (2)
(3)		r. 1 (3)
504		O. 64, r. 2
505		O. 64, r. 3
506 (1)		O. 14, r. 18
(2)		r. 20 (2)
(3)		r. 20 (3)
507 (1)		
(2)		
508		O. 32, r. 20
509		O. 32, r. 21
510		O. 31, r. 47
511		O. 31, r. 48 (1)
		r. 48 (2)
		r. 48 (3)
512		O. 31, r. 49
513		O. 31, r. 50
514		O. 31, r. 51
515		O. 25, r. 3
516	37	O. 77, r. 2 (1)
		r. 2 (2)
		r. 2 (3)
517	37	
518 (1)		O. 77, r. 3 (1)
		r. 1
		r. 3 (2)
(2)		O. 77, r. 3 (3)
519 (1)		O. 77, r. 4
(2)		r. 5
520		O. 77, r. 6 (1)
521		O. 80, r. 7 (1)
		r. 7 (3)
522		O. 77, r. 6 (2)
		r. 6 (3)
523		O. 77, r. 7
		r. 17
524 (1)		O. 77, r. 8 (1)
		r. 8 (2)
(2)		r. 10 (1)
(3)		r. 10 (3)
		r. 8 (3)
525		O. 77, r. 11
526		O. 77, r. 14
527		
528		
529		O. 77, r. 13
530		O. 77, r. 19 (1)
		r. 19 (2)
		r. 19 (3)
531		O. 77, r. 20
532		O. 77, r. 21 (1)
		r, 21 (2)
533		
534		O. 77, r. 23 (1)
		r. 23 (2)
		r. 23 (3)
		r. 23 (4)
535		O. 77, r. 22 (1)
536		O. 83, r. 1
537		O. 83, r. 2 (1)
		r. 2 (2)
538 (1)		O. 80, r. 1
		O. 81, r. 1 (1)
		r. 2
		r. 2 (1)
(2)		O. 80, r. 3
539		O. 78, r. 2
(*a*)		r. 7
(*b*)		r. 9
(*c*)		r. 8

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Old Section	*New Section*	*New Order and Rule*
(*d*)	..	r. 11 (1)
		r. 10
		r. 11 (2)
(*e*)	..	r. 12
		r. 13
(*f*)		
(*g*)		
		r. 4
540	..	O. 82, r. 13
541	..	O. 80, r. 5
		r. 6
		r. 2 (3)
		r. 7 (2)
542	38	O. 77, r. 15
543	38	
544	..	O. 77, r. 16
545	..	O. 77, r. 18 (1)
		O. 77, r. 18 (2)
546	..	O. 78, r. 1
547	39 (1)	
548	..	O. 78, r. 5
549	..	O. 77, r. 25
550	..	O. 82, r. 14 (1)
		r. 14 (2)
551	..	O. 84, r. 1
		r. 2
552	..	O. 84, r. 3 (1)
		r. 3 (2)
		r. 4
553	..	O. 86, r. 2
554	..	O. 86, r. 1
555	63 (17)	O. 76, r. 1
556 (1)	..	O. 76, r. 2 (1)
(2)	..	r. 2 (2)
557	..	O. 76, r. 3
558	..	O. 76, r. 4
559	..	O. 76, r. 5 (1)
		r. 5 (2)
		r. 5 (3)
560	..	O. 76, r. 6 (1)
		r. 6 (2)
561	..	O. 76, r. 7
562	..	O. 76, r. 8
563	..	O. 76, r. 9 (1)
		r. 9 (2)
564	..	O. 76, r. 10 (1)
		r. 10 (2)
565	..	O. 76, r. 11 (1)
		r. 11 (2)
566	..	O. 76, r. 12
567	..	O. 76, r. 13 (1)
		r. 13 (2)
568	..	O. 76, r. 14
569	..	O. 76, r. 17
570	..	O. 76, r. 18 (1)
		r. 18 (2)
571	..	O. 75, r. 25 (1)
		O. 76, r. 19 (1)
		O. 75, r. 25 (2)
		O. 76, r. 19 (2)
572 (1)	..	O. 76, r. 20 (1)
		r. 20 (2)
(2)	..	r. 20 (3)
573	..	O. 76, r. 21
574	..	O. 76, r. 22
575 (1)	..	O. 76, r. 29 (1)
(2)	..	r. 29 (2)
576	..	O. 76, r. 30
577	..	O. 76, r. 31
578 (1)	..	O. 76, r. 32 (1)
(2)	..	r. 32 (2)
579	..	O. 76, r. 34

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Old Section	*New Section*	*New Order and Rule*
580		O. 76, r. 37 (1)
		r. 37 (2)
		r. 37 (3)
581		O. 76, r. 35
582		O. 75, r. 1
583		O. 75, r. 2
584		
585 (1)		O. 75, r. 6
(2)		r. 7
(3)		r. 8
(4)		
586		O. 75, r. 9
587 (1)		O. 75, r. 10 (1)
(2)		r. 10 (2)
(3)		r. 10 (3)
		r. 11 (1)
		r. 11 (2)
(4)		r. 12
588 (1)		O. 75, r. 13
(2)		r. 15 (1)
		r. 15 (2)
589		O. 75, r. 16
590		O. 75, r. 17
591		O. 75, r. 18 (1)
		r. 18 (2)
		r. 19
592 (1)		O. 75, r. 20 (1)
(2)		r. 20 (2)
593		O. 75, r. 21
594		O. 75, r. 22
		r. 23
595		O. 87, r. 1
596	63 (18)	O. 70, r. 1
597	3 (2)	
598		O. 70, r. 3 (1)
		r. 8
599		O. 70, r. 3 (2)
600		O. 70, r. 10
601		O. 70, r. 11
602 (1)		O. 70, r. 12
(2)		r. 13
603		
604 (1)		O. 70, r. 16 (1)
		r. 16 2)
		r. 16 (3)
(2)		r. 16 (3)
605		O. 70, r. 17
606		O. 70, r. 15 (1)
607 (1)		O. 70, r. 14
(2)		r. 14
608		O. 70, r. 18 (1)
		r. 18 (2)
609 (1)		O. 70, r. 19 (1)
(2)		r. 19 (2)
610		O. 70, r. 20 (1)
		r. 20 (2)
		r. 20 (3)
611 (1)		O. 70, r. 21 (1)
(2)		r. 21 (2)
		r. 21 (3)
612		O. 70, r. 36
613		O. 70. r. 15 (2)
614		O. 70, r. 23 (1)
		r. 24 (1)
		r. 23 (2)
		r. 24 (2)
		r. 23 (3)
		r. 24 (3)
		r. 23 Proviso.
		r. 24 Proviso.
615 (1)		O. 70, r. 26 (1)
(2)		r. 26 (1)
Proviso.		r. 27

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Old Section	*New Section*	*New Order and Rule*
616		O. 70, r. 27
617 (1)		O. 70, r. 28 (1)
(2)		r. 28 (2)
618		O. 70, r. 29
619		O. 70, r. 32
620		O. 70, r. 33
621		O. 70, r. 30
622		O. 70, r. 31
623		O. 70, r. 39
624		O. 70, r. 38
625 (1)		O. 70, r. 37 (1)
(2)		r. 37 (2)
626 (1)		O. 70, r. 22 (1)
(2)		r. 22 (2)
(3)		r. 22 (3)
627		O. 70, r. 40
628		O. 69, r. 1
629		O. 69, r. 2 (1)
		r. 2 (2)
630		O. 69, r. 3
631		O. 69, r. 5 (1)
		r. 5 (2)
		r. 5 (3)
632		O. 69, r. 6
633		O. 69, r. 7
634		O. 69, r. 4
635		O. 73, r. 1
636		O. 73, r. 2
637		O. 73, r. 3
638		O. 73, r. 4
650		O. 88, r. 1
		r. 2
		r. 5
		r. 6
		r. 8
651	41 (*a*)	O. 88, r. 9
		r. 10
		r. 11
		r. 12
652		O. 88, r. 13 (1)
		r. 13 (2)
653	41 (*b*)	O. 88, r. 1
		r. 2
		r. 5
		r. 6
654		O. 88, r. 3
		r. 5
		r. 7 (1)
		r. 7 (2)
655		O. 88, r. 4
656	42 (*g*)	O. 88, r. 14
657		O. 88, r. 15
658		O. 88, r. 16
659		O. 88, r. 17
660		O. 88, r. 18
661		O. 88, r. 19
662	41 (*c*)	O. 89, r. 1
663	41 (*e*)	O. 89, r. 2
664	42 (*h*)	O. 89, r. 3 (1)
		r. 3 (2)
665		O. 89, r. 5
666		O. 89, r. 6
667		O. 89, r. 7 (1)
		r. 7 (2)
668		O. 90, r. 1
		r. 2
669		O. 90, r. 3 (1)
670		O. 90, r. 4 (1)
		r. 4 (2)
671	41 (*d*)	O. 91, r. 1 (1)
		r. 2
672		O. 91, r. 3
673		O. 91, r. 4

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Old Section	*New Section*	*New Order and Rule*
674	..	O. 91, r. 5
675	..	O. 91, r. 1 (2)
676 (1)	..	O. 92, r. 1
(2)	..	r. 2 (1)
		r. 2 (2)
(3)	..	r. 3
(4)	..	r. 4
677 (1)	..	O. 92, r. 5 (1)
(2)	..	r. 5 (3)
678 (1)	..	O. 92, r. 6 (1)
(2)	..	r. 6 (2)
679	..	O. 92, r. 7
680	..	O. 92, r. 7
681	..	O. 92, r. 8
682 (1)	..	O. 92, r. 11 (1)
(2)	..	r. 11 (2)
683	..	O. 92, r. 15
684	..	O. 92, r. 16
685	..	O. 92, r. 17
686	..	O. 92, r. 13
687	..	O. 92, r. 18
688	..	O. 92, r. 19
689	..	O. 92, r. 26
690	..	O. 92, r. 20 (1)
691 (1)	..	O. 92, r. 21
(2)	..	r. 22
692 (1)	..	O. 92, r. 24 (1)
(2)	..	r. 24 (2)
(3)	..	r. 24 (3)
693 (1)	..	O. 92, r. 27 (1)
(2)	..	r. 27 (3)
		r. 27 (4)
694	..	O. 92, r. 28
695		
696	..	O. 92, r. 32
697	..	O. 92, r. 33
698	..	O. 92, r. 34
699 (1)	..	O. 93, r. 1 (1)
(2)	..	r. 1 (2)
700	..	O. 93, r. 2
701	..	O. 93, r. 3 (1)
		r. 3 (2)
		r. 3 (3)
		r. 3 (4)
702	..	O. 93, r. 4
703	..	O. 94, r. 1 (1)
704 (1)	..	O. 94, r. 2 (1)
		r. 2 (2)
(2)		
705 (1)		
(2)		
(3)		
706	..	O. 94, r. 3 (1)
		r. 3 (2)
707	..	O. 94, r. 8
708		
709	..	O. 94, r. 2 (3)
710	..	O. 94, r. 7
711	..	O. 27, r. 16
712 (1)	..	O. 82, r. 4 (1)
(2)		
(3)	..	r. 4 (2)
713 (1)		
(2)	..	O. 82, r. 8
(3)	.. 40	r. 9
	.. 42 (*i*)	
714 (1)	..	O. 82, r. 5 (1)
(2)	..	r. 10
(3)	..	r. 5 (2)
715		
716	..	O. 82, r. 6
717 (1)	.. 40	O. 82, r. 7 (1)
	.. 42 (*j*)	

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Old Section	*New Section*	*New Order and Rule*
(2)	41 (*e*) ..	.. O. 82, r. 7 (2)
(3)	..	.. r. 7 (3)
718 (1)	..	.. O. 81, r. 6
		O. 86, r. 3
(2)	..	.. O. 81, r. 7
		O. 86, r. 4
(3)	40 ..	.. O. 81, r. 8
		O. 86, r. 5
719	..	.. O. 81, r. 9
		O. 86, r. 6
720	..	.. O. 86, r. 21 (1)
		r. 21 (4)
721	..	.. O. 86, r. 21 (4)
		r. 21 (5)
		r. 21 (6)
722		
723	..	.. O. 86, r. 17
724	..	.. O. 86, r. 18
725	..	.. O. 86, r. 19
726 (1)	..	.. O. 86, r. 22 (1)
(2)	..	.. r. 23 (1)
727 (1)		
(2)		
728 (1)	..	.. O. 86, r. 24 (1)
(2)		
729	..	.. O. 86, r. 40
730 (1)		
(2)		
731		
732		
733	..	.. O. 86, r. 7 (2)
734	..	.. O. 86, r. 31 (1)
735	..	.. O. 86, r. 42
		r. 30 (1) (*b*)
736 (1)	..	.. O. 86, r. 30 (1) (*c*)
		r. 22 (3)
		r. 24 (1)
(2)	..	.. O. 86, r. 30 (1) (*d*)
737	..	.. O. 86, r. 33 (1)
		r. 33 (2)
738	..	.. O. 86, r. 34
739	..	.. O. 86, r. 39
740 (1)	..	.. O. 86, r. 35 (2)
(2)	..	.. O. 86, r. 28
(3)	..	.. r. 35 (3)
741 (1)	..	.. O. 86, r. 36 (1)
		r. 36 (2)
(2)	..	.. r. 36 (1)
742	..	.. O. 86, r. 37
743	..	.. O. 86, r. 38
744		
745	..	.. O. 76, r. 23 (1)
		O. 75, r. 26 (1)
746	..	.. O. 75, r. 27 (1)
		O. 76, r. 24 (1)
		O. 75, r. 27 (2)
		O. 76, r. 24 (2)
747 (1)	..	.. O. 75, r. 31
		O. 76, r. 28
(2)	..	.. O. 74, r. 15 (4)
748		
749	..	.. O. 76, r. 2 (3)
750	..	.. O. 76, r. 5 (4)
751	..	.. O. 80, r. 4
752	..	.. O. 75, r. 14 (1)
		O. 76, r. 16 (1)
753	49	
754 (1)	..	.. O. 95, r. 1 (1)
(2)	..	.. r. 1 (2)
755	..	.. O. 95, r. 2 (1)

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Old Section	*New Section*	*New Order and Rule*
756 (1)		O. 95, r. 3 (1)
		r. 4
		r. 6
		r. 8 (1)
		r. 8 (2)
(2)		r. 9
(3)		r. 10
757		O. 95, r. 11 (1)
758 (1)		O. 95, r. 12
(2)		O. 100, r. 3
759		O. 95, r. 13 (1)
		r. 13 (2)
		r. 13 (3)
760		O. 95, r. 14
761		O. 98, r. 2
		r. 3
		r. 5
762		O. 98, r. 4
763		O. 98, r. 7
		r. 8
764		O. 98, r. 9
765		O. 99, r. 1
766		O. 99, r. 2 (1)
		r. 2 (2)
767		O. 99, r. 3 (1)
		r. 3 (2)
		r. 3 (3)
		r. 4
768		O. 100, r. 1 (1)
		r. 1 (2)
		r. 1 (3)
769 (1)		O. 100, r. 2 (1)
(2)		r. 2 (2)
770		O. 100, r. 4
771		O. 100, r. 5
772 (1)		O. 100, r. 6 (1)
(2)		r. 6 (2)
773		O. 100, r. 7
774 (1)		O. 100, r. 8 (1)
		r. 8 (2)
(2)		r. 8 (3)
775 (1)		O. 100, r. 9 (1)
(2)		r. 9 (2)
776 (1)		O. 100, r. 10 (1)
(2)		r. 10 (2)
(3)		r. 10 (3)
(4)		r. 10 (4)
777		O. 100, r. 11
778		O. 101, r. 1 (1)
		r. 1 (2)
792	44	O. 103, r. 1
793		O. 103, r. 2
794		O. 103, r. 3
795		O. 103, r. 4
796		O. 103, r. 5
797 (1)		O. 103, r. 6 (1)
(2)		r. 6 (2)
798		O. 103, r. 7
799		O. 103, r. 8
800	45	
801		O. 102, r. 1 (1)
		r. 1 (2)
802		O. 102, r. 3
803		
804		O. 102, r. 4
805		O. 102, r. 5
806		O. 102, r. 6
807		O. 102, r. 7
808		
809 (1)		O. 102, r. 8 (1)
(2)		r. 8 (2)
(3)		r. 8 (3)
810		O. 102, r. 9

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Old Section	*New Section*	*New Order and Rule*
811		O.102, r. 10
812		O.102, r. 11
814		O.102, r. 12
815		O.102, r. 13
816		O.102, r. 14
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AN ACT TO CONSOLIDATE AND AMEND THE LAWS RELATING TO THE PROCEDURE OF THE CIVIL COURTS

BE IT ENACTED BY THE QUEEN'S MOST EXCELLENT MAJESTY BY AND WITH THE ADVICE AND CONSENT OF THE SENATE AND HOUSE OF REPRESENTATIVES OF CEYLON IN THIS PRESENT PARLIAMENT ASSEMBLED AND BY THE AUTHORITY OF THE SAME AS FOLLOWS:

Short title and date of operation.

1. This Act may be cited as the Code of Civil Procedure 1954 and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.

Actions

Procedure of actions.

2. The procedure of an action shall be subject to and regulated by the provisions contained in the body of the Code and in the Rules.

Institution of actions, in what Court.

3. (1) Subject to the pecuniary or other limitations prescribed by any law, an action shall be instituted in the Court within the limits of whose jurisdiction—

(*a*) the defendant or one of the defendants 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.

Explanation 1.—Where a person has a permanent dwelling at one place and also a temporary dwelling place at another, he shall be deemed to reside at both places.

Explanation 2.—A mere temporary stay in, or an occasional visit to, a place does not constitute residence.

Explanation 3.—A corporation shall be deemed to reside where it has its sole or principal place of business in Ceylon.

Matrimonial actions.

(2) In matrimonial actions the District Court within the local limits of whose jurisdiction the plaintiff resides shall also have jurisdiction to entertain the plaint. Further, where spouses who have a Ceylon domicile are both resident outside the Island at the date of the institution of a matrimonial action, the Court within the local limits of the jurisdiction of which either spouse may have last resided shall also have jurisdiction to entertain the action.

When one of two or more Courts may entertain an action.

(3) Where 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.

Summons to defendant.

4. Where an action has been duly instituted a summons may be issued to the defendant and served in such manner as prescribed by the Rules.

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Power to summon witnesses and to order discovery and the like.

5. Subject to the Rules in that behalf the Court may, at any time, either of its own motion or on the application of any party,—

(*a*) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(*b*) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(*c*) order any fact to be proved by affidavit or otherwise notwithstanding any provision in any other law to the contrary.

Power of Court to compel attendance of persons.

6. Subject to the rules in that behalf, the Court may for the purpose of compelling the attendance of any person to whom a summons has been issued or who has been otherwise directed by Court to appear in person or produce documents or other material objects—

(*a*) issue a warrant for his arrest;

(*b*) sequester his property and sell the same for the purpose of satisfying costs incurred in consequence of such sequestration together with the amount of any fine that may be imposed as hereinafter provided;

(*c*) impose a fine upon him not exceeding fifty rupees in the case of the Court of Requests and not exceeding two hundred rupees in the case of the District Court; a party on whom a fine has been imposed may, in the discretion of the Court, be allowed to pay the same by instalments;

(*d*) order him to furnish security for his appearance and in default commit him to jail.

Judgment and Decree

Judgment and decree.

7. After the conclusion of the case, the Court shall, after consultation with the assessors, if any, pronounce judgment, and a decree shall be drawn up in accordance therewith.

Classification of decrees.

8. 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;

(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;

or it may—

(H) adjudicate upon and determine any existing, future or contingent right or obligation notwithstanding that any relief consequential upon such adjudication or determination is not granted.

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Execution

Powers of Court to enforce execution.

9. Subject to the provisions contained in the next following sections numbered 10, 11 and 12, and in the Rules, the Court may, on the application of the decree-holder, order execution of the decree—

(*a*) by delivery of any property specifically decreed;

(*b*) by seizure and sale, or by sale without seizure of any property;

(*c*) by arrest and detention in jail;

(*d*) by appointment of a receiver; or

(*e*) in such other manner as the nature of the relief granted may require.

Exempted property.

10. The following property shall not be liable to seizure or sale in execution of a decree for the payment of money, namely—

(*a*) the necessary wearing apparel, necessary kitchen utensils, beds and bedding of the judgment-debtor, his wife and children; and chairs, tables and pictures not exceeding two hundred and fifty rupees in value of such judgment debtor, his wife and children;

(*b*) such tools, utensils and implements of trade, or business of the judgment-debtor, and, where the judgment-debtor is an agriculturist, such implements of husbandry, cattle and seed grain as may in the opinion of the Court be necessary to enable the judgment-debtor to earn his livelihood;

(*c*) professional instruments and library necessary for the carrying on of the judgment-debtor's profession or business to the value of one thousand rupees;

(*d*) books of accounts;

(*e*) mere rights to sue for damages;

(*f*) so much of the salary and allowances of an employee in a shop or office or in a Municipality or Urban Council as does not in the aggregate exceed five hundred rupees in respect of each month of service.

(*g*) such quantity of paddy as may, in the opinion of the Court, where the judgment-debtor is an agriculturist, be necessary for the purpose of providing for the support of himself and his family, until the next harvest;

(*h*) the stipend and allowance of a naval, military, air force, civil or political pensioner of the Government or a pensioner of a Municipality or Urban Council;

(*i*) all compulsory deposits and other sums in or derived from any provident fund;

(*j*) the salary and allowances of a public officer or servant;

(*k*) the pay and allowances of persons to whom articles of War apply;

(*l*) the wages of labourers and domestic servants;

(*m*) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(*n*) a right to future maintenance.

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Provided that nothing in this section shall be deemed to affect the Army, Air Force or Navy Acts, or any similar law for the time being in force.

Explanation.—(1) The items mentioned in clauses (*f*), (*h*), (*i*), (*j*), (*k*) and (*l*) are exempt from seizure, whether before or after they are actually payable.

(2) " Shop " and " office " in paragraph (*f*) shall have the same meanings as in the Shop and Office Employees (Regulation of Employment and Remuneration) Act, No. 9 of 1954.

Arrest and Imprisonment

Exemption from arrest.

11. No warrant of arrest in order to commit a judgment-debtor to jail in execution of a decree shall be issued—

(*a*) where 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 costs is less than two hundred rupees;

Limit of imprisonment.

12. No person shall be imprisoned in execution of a decree for a longer period than six months where the decree is entered by a District Court, or three months where the decree is entered by a Court of Requests.

Service of Process

Every process to be valid for the whole Island.

13. (1) Every 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 the Island.

Protection of officer executing or serving the same.

(2) Every person charged under this Code with the duty of executing or serving any 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 or service 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 or serving such process.

Notice of action to be given; period of limitation of action.

(3) No action shall be maintainable against any person charged as aforesaid with the duty of executing or serving any such process in respect to his execution or service 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.

Amends may be tendered before action.

(4) 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.

Plaintiff to pay costs where amends held adequate.

(5) Where 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 but he shall be condemned to pay all costs.

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What acts not within last section.

14. The seizure or sale of property, which does not belong to the person whose property is authorised 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 any process within the meaning of the second 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 authorised to be seized or sold.

Fiscal to execute and serve processes of Court anywhere in the Island.

15. It shall be the duty of every Fiscal, upon receiving any process directed to him by any Court, by himself or by his officers to execute or serve such process according to the exigency thereof.

Headman or police officer to execute or serve processes in his own limits only.

16. It shall be the duty of every headman, and of every police officer, upon receiving any process directed to him by any Court, to execute or serve every such process according to the exigency thereof in any place within the district or division in which such headman or police officer is empowered to act.

Endorsement of process by Fiscal.

17. It shall be competent to any Fiscal to whom any process has been directed under the foregoing sections, and to the Fiscal's Officer to whom the Fiscal may have entrusted such process for execution or service, to endorse thereon the name of any headman or police officer 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 or police officer to constitute the person whose name is endorsed an officer of the Fiscal for the purpose of executing or serving such process;

(*b*) in the case of the Fiscal, to impose upon the Fiscal whose name is so endorsed the like duty of executing or serving the endorsed process as he would be under, by virtue of section 15, if such process were directed to him immediately by the Court from which it issues.

Duty of every Fiscal to assist.

18. Every Fiscal and Fiscal's officer shall, within his province or district, and every headman or police officer 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 or serving any process.

Approved process server to serve processes anywhere in the Island.

19. It shall be lawful for an approved process server upon receiving any process issued for service by any Court himself to serve such process according to the exigency thereof.

Proceedings against Fiscal or approved process-server.

20. Every Judge shall have full power and authority to punish as for contempt of Court—

(*a*) every Fiscal or Deputy Fiscal or other officer who neglects or refuses to execute or serve any process;

(*b*) every approved process server who, after having accepted any process for service, neglects or refuses to serve such process.

When process may not be served or executed.

21. Process, whether at the suit of the Crown or individuals, shall not be executed or served between the period of sunset and sunrise, nor on a Post Office Holiday, nor on any Minister of religion while performing his functions in any place of public

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worship, nor upon any individual of any congregation during the performance of public worship at any such place.

Explanation.—Post Office Holidays shall mean Sundays and Public Holidays other than those excluded from the operation of the Holidays Ordinance in respect of the Post and Telecommunication Offices.

Outer door not to be forced to arrest person.

22. The outer door of any dwelling-house shall not be forced open in order to seize the person under any process whether at the suit of the Crown or individuals, excepting when such person, after having been duly arrested, shall have escaped or shall have been rescued.

Body of person to be arrested must be seized or touched.

23. In order to constitute an arrest, the body of the person to be arrested shall be actually seized or touched, unless such person express his acquiescence in the arrest without being so seized or touched.

In effecting seizure of movable property, outer or inner door not to be forced open except with permission of Court.

24. (1) Except with the permission of the Court previously had and obtained, the outer or inner door of any dwelling-house shall not be forced open in order to effect seizure of movable property under any process whether at the suit of the Crown or individuals.

Permission not to be granted unless the dwelling house is in occupation of the judgment debtor.

(2) Permission shall not be granted unless such dwelling house is wholly or in part in the occupation of the judgment debtor, and the judgment debtor refuses or in any way prevents access thereto.

Judgment creditor may be ordered to give security.

(3) Before granting permission the Court may in its discretion require the judgment creditor to give security for any damage that may be caused to or sustained by a person other than the judgment debtor.

When inner door may be opened.

(4) When the person executing the process has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe such property to be; permission of Court shall not be regarded as necessary in such a case.

Execution or service of process for contempt to be governed by the Criminal Procedure Code.

25. Notwithstanding anything hereinbefore contained, in proceedings for contempt all processes shall be executed or served in accordance with the provisions contained in that behalf in the Criminal Procedure Code.

Actions by or Against Persons of Limited Means

Persons of limited means.

26. A person who is not possessed of property exceeding in value five hundred rupees other than his necessary wearing apparel and the subject matter of the action, nor in receipt of salary and allowances exceeding in the aggregate one hundred rupees a month, nor has an annual income from all sources whatsoever exceeding one thousand two hundred rupees, shall be deemed to be a person of limited means.

Privileges.

27. A person of limited means shall be entitled in bringing or defending an action to the following privileges:—

(*a*) He shall not be liable to pay any stamp duty, binding fee or other dues as would have been payable to the Crown if he had not been adjudged to be a person of limited means.

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(*b*) He shall be entitled to such

(i) legal advice, or
(ii) legal aid, or both

as may be available to him under the Rules prescribed in that behalf.

Excepted actions.

Provided, however, that such a person shall not be entitled to the aforesaid privileges in actions in respect of—

(*a*) defamation;
(*b*) breach of promise of marriage;
(*c*) seduction;
(*d*) money lent and advanced;
(*e*) recovery of wages and salaries;

Provided further that—

(*a*) in matrimonial actions or
(*b*) in actions arising out of or resulting from collisions between transport and transport or person and transport, whether on land, water or in air,

the aforesaid privileges may be extended to any person, notwithstanding that such person is possessed of property or is in receipt of a salary and allowances or income exceeding the limits prescribed by section 26, if the Court is satisfied that it is reasonable in all the circumstances that such person should be permitted to bring or defend the action as a person of limited means.

Explanation:—Transport includes any vehicle on land, vessel on water and aircraft in air.

Actions by or Against the Crown or Public Officers

Attorney-General to represent the Crown in actions by or against the Crown.

28. (1) Actions by or against the Crown shall be instituted by or against the Attorney-General.

But not Solicitor-General.

(2) Attorney-General does not in this section include the Solicitor-General or any Crown Counsel.

Writ against person or property in such action.

29. No writ against person or property shall be issued against the Attorney-General in any action brought by or against the Crown in any case.

Attorney-General and public officer entitled to notice.

30. (1) No action shall be instituted against the Attorney-General as representing the Crown, or against a 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, or left at the office of, the Attorney-General or such officer as the case may be.

Contents of notice.

(2) Every such notice of action shall state the cause of action, the name and place of abode of the person intending to institute the action, and the relief he claims.

Plaint to aver delivery of notice.

(3) The plaint in such actions must contain a statement that such notice of action has been duly delivered or left.

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Procedure where no notice has been given.

(4) Where no such notice shall have been given prior to institution of action and objection is taken prior to or at the filing of answer that no such notice had been given, the Court shall stay the further proceedings of the action for a period of one month and the plaintiff shall bear all costs occasioned as a result of such postponement.

Amendment of plaint averring notice to be allowed.

(5) Where after the giving of such notice as required by sub-section (1) of this section, the plaint fails to aver the fact of such notice having been given, the Court shall permit an amendment of the plaint averring the giving of such notice and the plaintiff shall bear all costs occasioned by such amendment.

Action not to be dismissed for lack of notice or averment thereof.

(6) No such action as is referred to in sub-section (1) of this section shall be dismissed only for the reason that no notice prior to institution of action had been given as required by the said sub-section or that a statement that such notice of action has been duly delivered or left has not been averred in the plaint.

Actions by the United Kingdom or Commonwealth Countries

Actions by Commonwealth Countries.

31. Actions by the Government of the United Kingdom or any of the Commonwealth countries other than the Dominion of Ceylon shall be instituted by—

(*a*) the Attorney-General; or
(*b*) a Government Department, or
(*c*) the High Commissioner in Ceylon,

of the United Kingdom or of the Commonwealth country with the consent of the Government of Ceylon, certified by the signature of a Minister of Ceylon.

Actions against High Commissioners

When High Commissioners may be sued.

32. Any High Commissioner of any of the Commonwealth countries may be sued in any competent Court in like manner and subject to the same terms and conditions as an Ambassador of a foreign State, and the provisions of section 36 shall mutatis mutandis apply to such action.

Explanation.—High Commissioner in this and the preceding section includes the chief representative in the Dominion of Ceylon of any Commonwealth country, whether he is known by the title of High Commissioner for that country or by any other title.

Actions by Aliens and by or against Foreign Rulers

Action by aliens when permitted.

33. (1) Alien enemies residing in Ceylon with the permission of the Minister, and alien friends, may sue in the Courts of this Island as if they were subjects of Her Majesty.

When not permitted.

(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 Her Majesty's Government in Ceylon, and carrying on business in that country without a licence in that behalf under the hand of a Minister of this Island, shall for the purpose of sub-section (2) of this section be deemed to be an alien enemy residing in a foreign country.

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Actions by Foreign States.

34. (1) A Foreign State may sue in the Courts of this Island: Provided that—

(*a*) it has been recognized by Her Majesty's Government in Ceylon; and

(*b*) the object of the action is to enforce the private rights and not the political rights of such State.

Non-recognition of foreign State to be taken judicial notice of.

(2) The Court shall take judicial notice of the fact that a Foreign State has not been recognized by Her Majesty's Government in Ceylon.

Recognized agents of foreign Powers.

35. (1) Persons specially appointed by order of Government at the request of any sovereign State or, at the request of any sovereign Prince or ruling Chief, whether residing within or without the Island, or at the request of any person competent in the opinion of the Government to act on behalf of such State, Prince or Chief, to prosecute or defend any action on its or 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 Code on behalf of such State, Prince or Chief.

Deemed party to action.

(2) A person appointed under this section may authorise 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.

Foreign Prince or Ambassador may be sued with consent of Government.

36. (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 a Minister (but not without such consent) be sued in any competent Court.

When consent may not be given.

(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.

No execution against person or property without consent of Government.

(3) No such Prince, Chief, Ambassador, or Envoy shall be arrested under the provisions of this Code; and no decree shall be executed against the property of any such Prince, Chief, Ambassador, or Envoy unless with the consent of Government certified as aforesaid.

Testamentary Applications

Penalty for not producing last will.

37. Where any person shall die leaving a will in Ceylon, every person made liable under the rules to produce such will to any Court, who shall wilfully omit to produce it, or to furnish the information thereby required within the time therein prescribed therefor shall be guilty of an offence, and liable to a fine not exceeding one thousand rupees.

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Penalty for not reporting death in case of intestacy.

38. Where any person shall die in Ceylon without leaving a will, every person made liable to report such death under, or to furnish any information required by, the Rules, who shall wilfully omit to report such death or to furnish such information within the time therein prescribed therefor shall be guilty of an offence and liable to a fine not exceeding one thousand rupees.

No action maintainable to recover property of testator or intestate of over five thousand rupees unless probate or administration has been taken out.

Transfer of such property, where an offence.

Penalty.

39. (1) 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, within twenty years prior to the date of the institution of the said action, where such estate or effects amount to or exceed in value the sum of Five Thousand Rupees, unless grant of probate or letters of administration shall first have been issued; 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 estate duty. And the amounts 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.

Debts and liabilities to be disregarded in ascertaining value of estate.

(2) Where a person dies after the coming into operation of this Code, in determining, for the purpose of this section, the value of the estate left by such person the debts and liabilities payable by, and claims against, his estate shall be disregarded.

Disobedience to orders of Court punishable as contempt.

40. An executor or administrator or any other person who wilfully disobeys or neglects to comply with or execute any order or direction of Court made or given in any testamentary action or proceeding shall be guilty of the offence of contempt of Court.

Supplemental Proceedings

Power of Court to issue warrants of arrest, mandates of sequestration, etc.

41. The Court may, subject to the Rules in that behalf—

(*a*) issue a warrant to arrest the defendant before judgment and to commit him to jail for a period not exceeding three months;

(*b*) issue a mandate to sequester the property of the defendant before judgment;

(*c*) grant a temporary injunction, and in the case of disobedience commit the person guilty thereof to jail and order his property to be attached and sold;

(*d*) appoint a receiver of any property;

(*e*) issue a warrant to search for and seize any property of a deceased testator or intestate.

Contempt

Contempt of Court.

42. Every Court shall have full power and authority to punish as for contempt of Court every person—

(*a*) who shall fail to comply with any order to answer interrogatories or for discovery, production or inspection of documents;

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(*b*) who shall fail to comply with the terms of a summons served on him to give evidence or produce any document;

(*c*) who shall fail to appear in Court in compliance with any notice or direction issued or given by Court directing him to appear or requiring him to produce any document in Court;

(*d*) who, being present in Court, refuses to give evidence or produce any document then in his custody;

(*e*) who shall commit waste upon any property sold in execution of a decree;

(*f*) who, being a Fiscal's Officer or an approved process server, shall make a false statement of fact in any affidavit relating to the execution or service of any process;

(*g*) who, in any proceeding, shall make a false statement of fact, or suppress or conceal any material fact;

(*h*) who shall disobey any injunction;

(*i*) who shall fail to attend upon any citation served on him;

(*j*) who, being a citee, shall disobey any decree requiring him to deliver money or possession of other property;

(*k*) who makes use of a medical certificate without good cause and with intent to delay the administration of justice;

(*l*) who, being a medical practitioner, issues a medical certificate without good cause and with intent to delay the administration of justice;

(*m*) who, being a proctor,

(i) upon whom an order against any party for interrogatories, or discovery, production or inspection, is served, shall wilfully neglect to give notice thereof to his client; or

(ii) shall fail to pay the expenses in deposit with him to a person summoned to appear as a witness;

(*n*) who shall wilfully disobey any order of Court or wilfully obstruct the execution thereof; or

(*o*) who is declared by the Rules to be guilty of, or be deemed guilty of, or liable to be punished as for the offence of, contempt of Court.

General Powers to punish for contempt to remain unaffected.

43. Nothing in the preceding section nor in section 20 nor in section 40, shall be deemed to limit, modify, or otherwise affect, the powers vested in, or conferred upon, any Court under any other law to punish any act, conduct, neglect, refusal or disobedience as a contempt.

Procedure.

44. Proceedings in contempt shall be subject to, and regulated by, the provisions contained in the Rules.

Punishments.

45. The following sentences of fine or imprisonment, as the case may be, may be imposed on conviction for contempt 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;

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(*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.

Appeals and Revisions

Appeals to Supreme Court from District Court.

46. Save where otherwise expressly provided, in this Code, or by any other Law for the time being in force, an appeal shall lie to the Supreme Court from every judgment, decree, or order pronounced by a District Court.

Appeals to Supreme Court from Court of Requests.

47. An appeal shall lie to the Supreme Court from any final judgment or any order having the effect of a final judgment, pronounced by the Commissioner of a Court of Requests:

Provided that there shall be no appeal from any final judgment or any order having the effect of a final judgment pronounced by a Commissioner 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;

Provided further that where the Court refuses to grant leave to appeal, it shall be lawful for the party aggrieved thereby to apply to the Supreme Court for leave to appeal in accordance with the rules.

No appeal from consent decree.

48. No appeal shall lie from a judgment, decree, or order pronounced by any Court with the consent of parties.

Powers of revision by Supreme Court.

49. 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.

No decree to be reversed or nullified for error or irregularity not affecting merits or jurisdiction.

50. No judgment, decree or order pronounced by any Court shall on appeal or revision be reversed or altered or amended on account of any misjoinder of parties or causes of action, or any error, defect or irregularity in any proceedings, which shall not have prejudiced the substantial rights of parties.

General and Miscellaneous

Privileges from arrest of Judges, parties, proctors, and advocates.

51. 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.

Privilege from arrest of witness.

52. 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 under civil process while going to, remaining at, or returning from the place where he is required to attend.

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53. No member of the Senate or House of Representatives shall be liable to arrest under civil process while going to, attending, or returning from any meeting of the Senate or House of Representatives, or of any Committee of such Senate or House, or any joint sitting of the Senate and the House of Representatives.

Privilege from arrest of Senators and Members of the House of Representatives.

54. The Crown shall be bound by the provisions of this Code unless expressly declared not to be so bound.

Crown to be bound.

55. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Inherent powers of Court saved.

56. The Court may at any time, after reasonable notice to all interested parties, either on its own motion or on that 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 make any amendment which is necessary to bring a decree into conformity with a judgment.

Amendment of judgments, decrees and orders.

Rules

57. The rules in the First Schedule shall have effect as if enacted in the body of this Code.

Effect of Rules.

58. (1) The Judges of the Supreme Court or any five of them, of whom the Chief Justice shall be one, may from time to time, by rules to be made in that behalf, revoke, annul, add to, vary, amend, or alter all or any of the Rules in the First Schedule, and may frame, constitute, and establish such other Rules as to them shall seem meet, for regulating and controlling the procedure practice and administration of the Civil Courts of the Island, and the Rules so made, framed, constituted, and established, shall have the same force and effect as if they had been contained in the First Schedule.

Judges may make rules.

(2) The Rules so framed shall not be inconsistent with the provisions in the body of this Code, or any Act or Ordinance in force subject, however, to any modification or variation made in any such Act or Ordinance by the provisions contained in the body of this Code, and without prejudice to the generality of the powers conferred by the preceding sub-section, may in particular provide for all or any of the following matters or purposes:—

Matters for which Rules may provide.

(*a*) The form and manner of proceeding to be observed in all Civil Courts;

Manner of Proceedings.

(*b*) the pleading, practice and procedure, in respect of all actions, proceedings, applications and other matters in all Civil Courts, and any matters incidental or relating to any such pleading, procedure or practice;

Procedure.

(*c*) the consolidation of actions, appeals or other proceedings;

Consolidation.

(*d*) procedure by way of originating petition;

Originating petition.

(*e*) regulating third party procedure;

Third Party procedure.

(*f*) special procedure for controlling and regulating any special action, proceeding, application or other matter;

Special action.

(*g*) the manner and mode of execution or service of processes;

Processes.

(*h*) the proceedings of Fiscals, approved process servers and other ministerial officers of the Civil Courts;

Fiscals and approved process servers.

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Arrest. (*i*) proceedings on arrest in mesne process or in execution;

Proof of facts. (*j*) regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given in any proceedings or on any application in connection with, or at any stage of, any proceedings;

Appeals. (*k*) the mode of prosecuting appeals;

Costs. (*l*) regulating any matters relating to costs;

Stamp duty. (*m*) regulating any matters in relation to stamp duty;

Delegation. (*n*) delegating to the Registrar, Master, Secretary, Chief Clerk, or other official of the Court, of any judicial, quasi-judicial, or non-judicial duties;

Keeping of books. (*o*) the keeping of all books, registers, entries, and accounts. which may be necessary or desirable for the efficient transaction of the business of the Civil Courts;

Assessors. (*p*) the mode of summoning, empanelling or challenging of assessors;

Forms. (*q*) forms to be followed in respect of or in relation to any proceedings or matters before any Civil Court;

Contempt. (*r*) procedure in proceedings for contempt;

General. (*s*) all Rules necessary to give effect to the powers conferred on the Civil Courts by this or any other Act, Ordinance, or law.

Rules Committee. 59. (1) A committee to be called the Rules Committee shall be constituted, consisting of the following persons, to be appointed by the Minister of Justice, namely:—

(*a*) Two District Judges, of whom one shall be an officer of the Special Class of the Ceylon Judicial Service;

(*b*) two Advocates;

(*c*) two Proctors, of whom one shall be a proctor practising in a Court outside Colombo;

(*d*) an officer of the Ministry of Justice, who shall be a lawyer.

Bar Council and Incorporated Law Society to be consulted. (2) Before the Minister makes the appointment of Advocates and Proctors, he shall consult the Bar Council of Ceylon and the Incorporated Law Society of Ceylon, as the case may be.

Chairman and Secretary of Committee. (3) The Chairman of the Committee shall be the Senior District Judge, and the Secretary shall be the officer of the Ministry of Justice.

Tenure of Office. (4) Each member of the Committee shall hold office for a period of three years, and shall be eligible for re-appointment. Whenever any member of the Committee retires, resigns, dies or becomes incapable of acting, the Minister may appoint another person to be a member in his place.

Rules Committee to report to Supreme Court. (5) The Rules Committee shall from time to time, and as often as may be necessary, make reports to the Chief Justice for the consideration of the Judges of the Supreme Court upon any measures deemed necessary or expedient by it for the better regulation and control of the procedure, practice and administration of the Civil Courts, and the Judges shall, on a consideration of such reports, make such rules as to them shall seem meet and proper.

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60. (1) All rules made under section 58 shall be laid as soon as conveniently may be before the Senate and the House of Representatives, if then in session, and if not then in session, then so soon as possible after the commencement of the next ensuing session; and if a resolution in the Senate and the House of Representatives is passed, within a period of forty days next succeeding the date on which any rule is so laid, to the effect that any such rule be anulled, such rule shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder. Rules to be laid before Senate or House of Representatives.

(2) All such rules, when made, shall be published in the *Government Gazette*, and shall have, from the date of publication or from such other date as may be specified, the force of law. Publication in *Gazette*.

Savings and Exceptions

61. In every case in which no provision is made by this Code, 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 Code or by any law for the time being in force shall after this Code 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. Casus omissus.

62. (1) In the absence of any specific provision to the contrary, nothing in this Code contained shall be held in any way to limit, modify, or otherwise affect any special rules of procedure which, under or by virtue of the provisions of any Act of Parliament of the United Kingdom or of Ceylon, or of any Ordinance or other law, may from time to time have been, or be, laid down, to be followed by any Civil Court in this Island, in the conduct of any action, matter or thing, of which any such Court can lawfully take cognizance. Savings.

(2) In particular and without prejudice to the generality of the provisions contained in the preceding sub-section, nothing in this Code shall be deemed to limit, modify, or otherwise affect the special procedure prescribed by the Mortgage Act, No. 6 of 1949, or of the Partition Act, No. 16 of 1951, in respect of actions to which the said Acts apply. Saving of special provisions of Mortgage and Partition Acts.

63. In this Act, except where a different meaning is expressly assigned or unless there is anything repugnant in the subject or context— Interpretation.

(1) " approved process server " means a person duly authorized and empowered by a Civil Court to serve processes issued for service; Approved process server.

(2) " Attorney-General " includes also the Solicitor-General and any Crown Counsel specially authorized by the Attorney-General to represent the Attorney-General; Attorney-General.

(3) " 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; Cause of action.

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Chief Clerk. (4) " Chief Clerk " or " clerk " in relation to a Court of Requests includes an additional or deputy chief clerk or clerk;

Civil Court. (5) " Civil Court " means a Court in which civil actions may be brought either in the first instance or by way of appeal;

Code. (6) " Code " includes Rules;

Court. (7) " 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;

Crown. (8) " Crown " means the Crown in right of or in respect of Her Majesty's Government in Ceylon;

Decree. (9) " decree " means the formal expression of 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);

Foreign Court. (10) " foreign court " means a court situate beyond the limits of, and not having authority in, Ceylon;

Foreign Judgment. (11) " foreign judgment " means the judgment of a foreign court;

Judge. (12) " Judge " means the presiding officer of a Court, and includes Judges of the Supreme Court, District Judges and Commissioners of Requests;

Judgment. (13) " judgment " means the statement given by the Judge of the grounds of a decree or order;

Judgment-creditor. (14) " Judgment-creditor ", " decree-holder " or " writ-holder " means the person in whose favour a judgment, decree or order capable of execution is pronounced, entered or made, and includes any person entitled by transfer, operation of law or otherwise, to execute or enforce a judgment, decree or order, or to have a judgment, decree or order executed or enforced;

Judgment-debtor. (15) " Judgment-debtor " or " debtor " means the person against whom a judgment, decree or order capable of execution is pronounced, entered or made, and includes any person against whom, by reason of operation of law or otherwise, a judgment, decree or order may be executed or enforced or is directed to be executed or enforced;

Legal Representative. (16) " legal representative " means an executor or administrator, or, in the case of an estate below the value of Five Thousand rupees which has not been administered, the intestate heirs of the deceased;

Lunatic. (17) " lunatic " means every person found by due course of law to be of unsound mind and incapable of managing his affairs;

Matrimonial Action. (18) " matrimonial action " includes action for divorce a vinculo matrimonii or for separation a mensa et thoro or for declaration of nullity of marriage;

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(19) " order " means the formal expression of any decision of a civil court which is not a decree; Order

(" Order " in relation to Rules is not within the foregoing definition and means one of the several divisions into which the Rules are divided);

(20) " original court " includes District Courts and Courts of Requests; Original Court.

(21) " Police Officer " has the same meaning as in the Police Ordinance; Police Officer.

(22) " process " includes all writs, warrants, mandates, commands, precepts, summonses, subpoena, notices, rules, orders and citations issued by Court; Process.

(23) " public officer " includes all officers or servants employed in this Island by or under the Government of Ceylon; Public Officer.

(24) " recognized agent " means any of the persons designated or deemed to be designated as such under the Code, and no others; Recognized Agent.

(25) " Rules " means the Rules, as well as the forms contained in the First Schedule or made from time to time under the provisions of this Code; Rules.

(26) " Secretary " in relation to a District Court includes an additional, deputy or assistant secretary; Secretary.

(27) " written " and " writing " includes " printed " and " print " and " lithographed " and " lithograph ", respectively. Written, writing.

Repeals

64. On and from the date on which this Act comes into operation, the laws, Ordinances, Acts, sections of Ordinances or of Acts and Rules of Court respectively mentioned in the first column of the Second Schedule hereto shall be severally repealed to the extent mentioned in the third column thereof. Repeals.

65. Every action, application or other matter already instituted and pending in any Court at the time of the coming into operation of this Act shall, so far as circumstances permit, be continued and proceeded with to final judgment and execution under the provisions of this Act in the same manner in every respect as if the same had been originally instituted after the commencement of this Act, except that the special provisions relating to New Procedure Actions shall not apply; and such Court may make all such special orders in any such action, application or matter as may be necessary for that purpose: Actions already pending to be continued under the provisions of this Act.

Provided always that any such Court may, on reasonable cause being shown, direct that any such action, application or matter commenced before the coming into operation of this Act shall be continued, as if this Act had not been passed, up to execution or to final judgment or to any stage of such action, application or matter which the Court may direct. Except where Court sees fit to direct otherwise.

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THE FIRST SCHEDULE

ORDER I

General Provisions

O. 1. r. 1. Action.

1. 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.

O. 1, r. 2. Regular or summary.

2. 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 state formally 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.

O. 1, r. 3. To be ordinarily regular.

3. Except where it is by this Code specially provided that actions may be instituted by summary procedure, every action shall commence and proceed by a course of regular procedure, as hereinafter prescribed.

O. 1, r. 4. Application for withdrawal and transfer of action.

4. 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 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.

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ORDER II

Parties to Actions

1. (1) All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate actions any common question of law or fact would arise.

O. 2, r. 1. Joinder of Plaintiffs.

(2) Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the action, the Court may put the plaintiffs to their election, as to which of them should proceed with the action, or order separate trials or make such other order as may be expedient.

Court may order separate trials.

(3) 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. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be entitled to relief unless the Court in disposing of the costs shall otherwise direct.

Judgment may be given for one or more plaintiffs subject to order for costs.

2. Where two or more co-owners are entitled to the possession of immovable property, one or more of them may maintain an action in respect of his or their undivided shares in the property against a trespasser or one or more of the co-owners.

O. 2, r. 2. Action by one or more co-owners.

3. Where the holder of a Bill of Exchange or Promissory Note dies intestate leaving an estate below the value of Rupees Five Thousand, his heirs may, without obtaining letters of administration to the estate of the deceased, join in one action to recover the amount due on the Bill of Exchange or Promissory Note.

O. 2, r. 3. Joinder of heirs of holder of Bill of Exchange.

4. Where the plaintiff is in doubt as to the person from whom he is entitled to relief, he may join two or more defendants, in order that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

O. 2, r. 4. Plaintiff in doubt from whom he is entitled to relief.

5. 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 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 may appear to the Court to be just.

O. 2, r. 5. Substituted and added plaintiffs.

6. (1) All persons may be joined in the same action as defendants against whom the right to any relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist whether jointly, severally or in the alternative, where if separate actions were brought against such persons, any common question of law or fact would arise.

O. 2, r. 6. Joinder of defendants.

(2) 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.

Judgment may be given against one or more defendants.

(3) It shall not be necessary that every defendant shall be interested as to all the relief claimed in the action.

Every defendant need not be interested in all the relief claimed.

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O. 2, r. 7. Joinder of parties liable on the same contract.

7. 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.

O. 2, r. 8. Representation of numerous plaintiffs.

8. (1) Where there are numerous persons having a common interest in bringing an action, one or more of such persons may sue on behalf or for the benefit of all persons who are so interested, after obtaining an order of the Court in that behalf, hereinafter called a representation order.

Applications for representation order.

(2) Application for such representation order shall be made by way of summary procedure and shall give a sufficient description of the persons on whose behalf or for whose benefit the action is sought to be instituted, and shall set out the interest alleged to be common to all such persons, the relief sought in the action and the grounds upon which the person or persons proposed as plaintiff or plaintiffs claim to be permitted to represent all such persons.

May be granted or refused ex-parte.

(3) The Court may grant or refuse the application ex parte or after notice to such persons as it may consider necessary.

Where granted ex-parte, notice of action to be given.

(4) Where the Court makes a representation order ex parte and an action is instituted in pursuance thereof, notice of the institution of such action shall be given to all persons interested.

By personal service or public advertisement.

(5) The notices required to be given under paragraphs (3) and (4) shall be either by personal service or (if from the number of persons or any other cause such service is not reasonably practicable then) by public advertisement, as the Court may direct.

O. 2, r. 9. Representation of numerous defendants.

9. (1) Where it is sought to institute an action against numerous persons who have a common interest in defending the action, the plaintiff may at any time, either before or after the institution of the action but before issue of summons, obtain an order (also called a representation order) permitting one or more of such persons to be sued as representing all such persons.

Governed by the same rules as for numerous plaintiffs.

(2) The provisions of paragraph (2), (3), (4) and (5) of Rule 8 shall, mutatis mutandis, apply to an application for a representation order under this Rule.

O. 2, r. 10. Party represented may be added.

10. Any person, on whose behalf or for whose benefit or as representing whom a representation order has been made under Rule 8 or 9, may apply to the Court to be made a party.

O. 2, r. 11. Misjoinder not to defeat action.

11. (1) 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.

Unwilling plaintiff to be made defendant.

(2) If the consent of any one 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.

O. 2, r. 12. Parties improperly joined may be struck out.

12. (1) The Court may at any time before or at the preliminary investigation, or where no preliminary investigation has been ordered, before or at the trial, either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, 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.

Necessary party may be added.

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(2) The Court may, at any time after the preliminary investigation, on such terms as may appear to the Court to be just, make any of the orders specified in paragraph (1), only for the purpose of preventing a manifest miscarriage of justice.

But not after preliminary investigation.

(3) Every order for amendment or alteration of parties shall state the facts and reasons which together form the ground on which the order is made.

Reasons for order to be set out.

(4) No person shall be added as a plaintiff or as the next friend of a plaintiff without his consent thereto.

No addition as plaintiff without consent.

(5) In the case of a party being added, the added party shall be described as ' added party ' in all pleadings or processes or papers entitled in the action and made after the date of the order.

Added party to be described as such.

13. Where a plaintiff or a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary; and amended copies of the summons and of the plaint shall be served on any new defendant, and, if the Court thinks fit, on the original defendants.

O. 2, r. 13. Consequential amendment of plaint.

14. The action as against any person added as defendant shall be deemed to have been instituted only on the date on which such person is added.

O. 2, r. 14. Commencement of action against new defendant.

15. No person shall be allowed to intervene in a pending action otherwise than in pursuance of, and in conformity with, the provisions of this Order or any other written law.

O. 2, r. 15. Intervention not otherwise allowed.

16. The Court may give the conduct of the litigation to such of the parties as it deems proper.

O. 2, r. 16. Conduct of litigation.

17. All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity, and in any case at or before the preliminary investigation, or where no preliminary investigation has been ordered, before the trial, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

O. 2. r. 17. Objections to non-joinder or misjoinder of parties.

ORDER III

Third Party Procedure

1. Where in any action a defendant claims as against any other person not already a party to the action (in this Order called the Third Party)—

O. 3, r. 1. Application to add third party.

(*a*) that he is entitled to contribution or indemnity, or

Contribution or indemnity.

(*b*) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or

Connected relief or remedy.

(*c*) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and the third party, or between any or either of them,

Same question or issue.

the defendant may, at the time of or before filing his answer, with notice to the plaintiff apply by motion supported by affidavit to add the third party.

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ILLUSTRATIONS

(*a*) Action by plaintiff against defendants, two directors of a company, that they should make good certain sums of money belonging to the company which the plaintiff alleges have been misappropriated by the defendants. Defence that they are not the only directors but that there is another director, X, who is equally responsible for the alleged misappropriation and who would be liable to them for contribution if the plaintiff succeeds in the action against them. Defendants may move to add X as a third party.

(*b*) Action by plaintiff on a dishonoured Bill of Exchange drawn by X and accepted by the defendant. Defendant, who claims indemnity against X on the ground that the Bill had been accepted by him for the accommodation of X, may move to add X as a third party to the action.

(*c*) Action by plaintiff for damages for breach of contract by defendant to sell and deliver copra. Defendant had a contract with X for purchase of copra to fulfil his contract with the plaintiff. Where X is also in default, defendant may move to add X as third party; if the defendant had contracts with not only X but also Y, and where both X and Y were in default, defendant may move to add both X and Y as third parties.

(*d*) Action by plaintiff for damages for non-acceptance of rubber by defendant under a contract of purchase. Defence that the defendant contracted as agent of X to the knowledge of the plaintiff and hence not liable. Further defence that the rubber tendered was not up to quality and was in consequence rejected by X. To determine the question as between defendant and X as to whether the rubber tendered by the plaintiff was of the quality contracted for, defendant may move to add X as a third party though the latter may have no interest in the question whether the defendant is at all liable to the plaintiff on the plea based on agency.

O. 3, r. 2. Form of affidavit.

2. The affidavit shall set out—

(*a*) the nature of the claim in the action;

(*b*) the state of the proceedings;

(*c*) the facts out of which the claim against the third party arises; and

(*d*) the name and address of the third party.

O. 3, r. 3. Third Party plaint.

3. The defendant (in this Order called the summoning defendant) shall, within ten days of the date of the order adding the third party, file in Court a plaint, hereinafter called a third party plaint, setting out the nature and grounds of the claim or the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed against the third party. Where the claim relates solely to the determination of any question or issue specified in Rule 1 (*c*) and such question or issue is not capable of precise valuation, the question or issue, for purposes of Order VII, Rule 1 (*j*) shall be valued at One thousand rupees. Neither the provisions of Section 3 of the Code nor of Rule 1 (*g*) of Order VII shall apply to such a plaint.

O. 3, r. 4. Third party summons.

4. Upon the third party plaint being accepted, the Court shall order a summons hereinafter called a third party summons (Form Nos. 5, 6, 7 and 8 in Appendix I as may be appropriate with such variations as circumstances may require), for service on the third party. The third party summons shall be accompanied by a copy each of the plaint, and of the answer, if any, in the action, and of the third party plaint.

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O. 3, r. 5.
Effect of addition of Third Party vis a vis the defendant.

5. (1) The third party shall, as from the time he is added, be a party to the action with the same rights in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the summoning defendant.

vis a vis the plaintiff.

(2) The third party, in so far as he might be affected thereby, shall also be entitled to set up any defence to the plaintiff's claim as against the summoning defendant.

ILLUSTRATIONS

(*a*) In illustration (*b*) under Rule 1 of this Order, where X has been added as a third party, and where X's defence to the defendant's claim is that the bill had not been accepted for his accommodation and that he has had other transactions with the defendant involving cross accounts between them and that if an account were taken it would be found that the defendant is indebted to him, he may set up the claim by way of reconvention against the defendant.

(*b*) Action by plaintiff against defendant upon a bond. On defendant's application claiming indemnity, X added as third party. Though defendant may not take up the plea that the bond is void in that the consideration therefore is illegal, X may nevertheless raise such a plea against the plaintiff's claim.

O. 3, r. 6.
Default by third party.

6. If a third party duly served with a third party summons does not appear, or enter appearance, or makes default in filing or delivering answer, he shall be deemed to admit the validity of and shall be bound by any judgment given in the action, whether by consent or otherwise, and by any decision therein on any question specified in the third party plaint; and when contribution or indemnity or other relief or remedy is claimed against him in the third party plaint, he shall be deemed to admit his liability in respect of such contribution or indemnity or other relief or remedy.

O. 3, r. 7.
Default by third party and defendant.

7. Where a third party does not appear, or enter appearance, or makes default in filing or delivering answer, and the summoning defendant suffers judgment by default, such defendant shall be entitled to apply at any time, after satisfaction of the judgment against himself, or before such satisfaction on proof of facts showing that in all the circumstances it is just and proper so to do, to have judgment entered against the third party to the extent of any contribution or indemnity claimed in the third party plaint, or, on proof of facts showing that in all the circumstances it is just and proper so to do, to have such judgment entered in respect of any other relief or remedy claimed, as the Court shall direct:

Provided that it shall be lawful for the Court to set aside or vary such judgment against the third party upon such terms as may seem just.

O. 3, r. 8.
Plaintiff may amend pleadings setting up claim against third party.

8. The plaintiff may amend his pleadings so as to claim against the third party any relief or remedy which the plaintiff might have claimed against the third party had he been joined originally as a defendant.

O. 3. r. 9.
Directions of Court for convenient determination of all questions.

9. At the preliminary investigation or the hearing of the action, the Court shall give such directions as to it shall appear proper for having the questions and the rights and liabilities of the parties most conveniently determined and enforced, and as to the mode and extent in or to which the third party shall be bound or made liable by the decision or judgment in the action.

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ILLUSTRATIONS

(*a*) In illustration (*d*) under Rule 1 of this Order, the Court may direct that the question of the liability of the defendant to the plaintiff be first determined, and thereafter, if necessary, the questions as to quality and the liability, if any, of X to the defendant; or where, if the plaintiff had amended his pleadings, claiming against X damages in the alternative, the Court may direct that the liability to the plaintiff either of the defendant or of X be determined first and thereafter the other questions; and in either case, the Court may direct all the issues arising between plaintiff, defendant and X to be tried at the same time.

(*b*) Action by plaintiff for damages caused to his building by reason of the defendant pulling down a common wall. Upon application of defendant, defendant's building contractor, X, who carried out the demolition of the common wall, added as third party. X files answer to defendant's claim denying his liability to indemnify defendant. Court may direct that the trial of issues relating to negligence in pulling down the common wall and to damages as between plaintiff, defendant and X, should first be proceeded with and that X should be bound by the adjudication in respect of those issues, and reserve the determination of the liability of X to the defendant to a later stage.

O. 3, r. 10. Trial.

10. Upon the hearing of the action, all issues shall be tried at the trial as may arise between the plaintiff and the summoning defendant and the third party, or between any or either of them, as to the liability of the summoning defendant to the plaintiff or as to the liability of the third party to make any contribution or indemnity claimed in whole or in part, or as to any other relief or remedy claimed in the third party plaint by the summoning defendant, and all questions or issues stated in the third party plaint shall be determined not only as between the plaintiff and the summoning defendant but as between the plaintiff, the summoning defendant and the third party, or any or either of them.

ILLUSTRATION

A sues B, B adds X as third party. Not only could questions common to A, B and X be tried in the action but also the particular questions arising between A and B as well as those between B and X, and judgment may be entered both on the claim by A against B as well as on that by B against X.

O. 3, r. 11. Judgment and execution after trial.

11. (1) The Court may enter such judgment as the nature of the case may require for or against the summoning defendant against or for the third party, and may grant to the summoning defendant or to the third party any relief or remedy which might properly have been granted if the third party had been made a defendant to an action duly instituted against him by the summoning defendant:

Provided that execution shall not be issued without leave of the Court until after satisfaction by the summoning defendant of the judgment against him.

Where action decided otherwise than by trial.

(2) Where the action is decided otherwise than by trial, the Court may, on application by motion, make such order as the nature of the case may require, and, where the plaintiff has obtained satisfaction of judgment against the summoning defendant, may order such judgment as may be just to be entered for or against the summoning defendant against or for the third party.

O. 3, r. 12. Costs.

12. The Court may decide all questions of costs as between the third party and other parties to the action, and may order any one or more of them to pay the costs of any other or others, or give such directions as to costs as the justice of the case may require.

O. 3, r. 13. Fourth party.

13. (1) Where a third party makes as against any person not already a party to the action (in this Order called the fourth party), such a claim as is defined in Rule 1 of this Order, the

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provisions of this Order regulating the rights and procedure as between the summoning defendant and the third party shall apply mutatis mutandis as between the third party and the fourth party; and the third party may apply to add the fourth party, and the preceding Rules of this Order shall apply mutatis mutandis, and the expression 'fourth party plaint' and 'fourth party summons' shall apply to every plaint and summons so issued.

Subsequent parties.

(2) Where a fourth party added under this Rule by a third party in turn makes such a claim as is defined in Rule 1 of this Order against another person not already a party to the action (in this Order called the fifth party), this Order as applied by this Rule shall have effect as regards such fifth party and any other further person (in this Order called the sixth party, seventh party, &c.) so added, and so on successively.

ILLUSTRATION

In illustration (*c*) under Rule 1 of this Order, if X in turn had contracted with A for purchase of copra and A himself had made default, X may move to add A as a fourth party.

O. 3, r. 14.

Third party plaint against co-defendants.

14. (1) Where a defendant claims against another defendant—

Contribution or indemnity.

(*a*) that he is entitled to contribution or indemnity, or

Connected relief or remedy.

(*b*) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, or

Connected question or issue.

(*c*) that any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant making the claim and should properly be determined not only as between the plaintiff and the defendant making the claim but as between the plaintiff and that defendant and another defendant, or between any or either of them,

the defendant making the claim may with notice to the plaintiff apply by motion supported by affidavit to file against such other defendant a plaint (also called a third party plaint) making such claim or specifying such question or issue.

Form of affidavit plaint and summons.

(2) The affidavit under paragraph (1), and where the Court grants the application, the third party plaint and summons (also called a third party summons), shall conform with the requisites in that behalf contained in Rules 2, 3 and 4 respectively of this Order, subject, however, to such variations as circumstances may require, provided, however, that where the defendant against whom the claim is made has appeared, or entered appearance, the summons to such defendant shall not require him to appear, or to enter appearance, in Court.

Procedure.

(3) The same procedure shall be adopted for the determination of such claim, question or issue between the defendants as would be appropriate under this Order as if he were a third party.

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Plaintiff's right not to be prejudiced.

(4) Nothing herein contained shall prejudice the rights of the plaintiff against any defendant to the action.

ILLUSTRATION

Trustees deposit trust funds with their Proctors for investment. Trust funds lost by imprudent investment made by Proctors. Action by beneficiary against trustees and Proctors for recovery of money. Trustees claim to be indemnified by the Proctors against plaintiff's claim or, in the alternative, contribution, and also further relief against them by way of damages for negligence and breach of fiduciary duty in making the investment. Trustees may move to file against the Proctors a third party plaint setting out their claim against them.

O. 3, r. 15. Claim in reconvention.

15. In this Order, the words "plaintiff" and "defendant" respectively shall include a plaintiff and a defendant to a claim in recovention.

ILLUSTRATION

Action by plaintiff to recover fees alleged to be due to him as director of the defendant company. Defendant denies liability and makes a claim in reconvention for calls alleged to be due from plaintiff in respect of shares in the company allotted to the plaintiff. Plaintiff had applied for the shares as nominee of X. As the word "defendant" includes a defendant to a claim in reconvention, the plaintiff who is defendant to the claim in reconvention may move to add X as a third party for indemnity in respect of calls made on him.

O. 3, r. 16. Third party proceedings may be set aside.

16. The third party proceedings may at any time be set aside by the Court.

ORDER IV

Recognized Agents and Proctors

O. 4, r. 1. Appearances may be by party in person, his recognized agent or Proctor.

1. (1) Any appearance, application, or act in or to any Court, required or authorised by law to be made or done by a party 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 authorised to make or do, and except where 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 in that behalf.

Appearance to be in person when so directed.

Provided that any such appearance shall be made by the party in person, if the Court so directs.

Advocate represents Proctor.

(2) An advocate instructed by a Proctor for this purpose represents the Proctor in Court.

O. 4, r. 2. Recognized Agents.

2. The recognized agents of parties by whom such appearances and applications may be made, or acts done, are—

Attorney-General.

(*a*) On behalf of the Crown in respect of any Court, the Attorney-General; who is also authorized to 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 Court.

Attorneys.

(*b*) Persons holding general powers of attorney authorizing them to make such appearances and applications, and do such acts on behalf of such parties; which power or a copy thereof duly certified shall in each case be filed in the Court.

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(*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. — Persons carrying on trade.

(*d*) In Courts of Requests, any person specially allowed by the Commissioner on sufficient cause to represent any party. — In Courts of Requests any person authorised by Commissioner.

O. 4, r. 3. Proxy.

3. (1) The appointment of a Proctor to make any appearance or application or do any acts as aforesaid (hereinafter called the proxy) shall be in writing, in Form No. 11 in Appendix I, signed by the client or by his recognized agent.

Shall contain address for service.

(2) Every proxy shall contain an address of the Proctor within the limits of the city or town in which the Court may be situated, at which service of process, which under the provisions of this Code may be served on a Proctor instead of the party whom he represents, may be made.

To be in force till case is ended.

(3) Every such proxy shall be filed in Court and shall be in force until revoked or determined with the leave of the Court and after notice to the Proctor or the client by a writing signed by the client or Proctor 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 including proceedings by way of appeal to the Supreme Court or Her Majesty in Council, are ended and judgment satisfied so far as regards the client:

Proxy not to be revoked till after appealable period.

Provided that no revocation or determination of a proxy shall be permitted during the period commencing from the day on which argument or hearing in regard to any cause or matter is concluded and terminating on the last day for perfecting any appeal against any judgment or order made affecting such cause or matter unless a fresh proxy is filed along with such revocation or determination.

Advocate need not present authority.

(4) No Advocate of the Supreme Court shall be required to present any document empowering him to act.

Attorney-General may grant special or general proxy.

(5) The Attorney-General may grant a proxy to a Proctor to act specially in any particular case or to act generally on behalf of the Crown.

O. 4, r. 4. Proceedings stayed on death or incapacity of Proctor.

4. If any proctor duly appointed shall die, or be removed, or suspended, or otherwise become incapable to act, 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.

O. 4, r. 5. Effect of service of process on Proctor.

5. Any process served on the Proctor of any party or left at the address contained in the proxy, 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 as if the same had been given to, or served on, the party in person.

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O. 4, r. 6.
Agent to accept service.

6. Besides the recognized agents described in Rule 2 of this Order:

Person residing within a two-mile radius.

(*a*) any person residing within the limits of the city or town in which the Court is situated may be appointed an agent to accept service of process, except in actions to recover money due upon the mortgage of immovable property. 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 within such limits 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;

In mortgage actions.

(*b*) in actions to recover money due upon the mortgage of immovable property, a Proctor or person whose address may have been registered under Rule 7 of this Order by the mortgagor shall be an agent to accept service of process.

O. 4, r. 7.
Agent to accept service in action upon mortgage of immovable property.

7. (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 form set out in the First Schedule to the Mortgage Act, No. 6 of 1949.

Registration of address.

(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.

Cancellation of Registration.

(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.

Registration fee.

(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.

O. 4, r. 8.
Process served on recognized agent effectual.

8. (1) Processes served on the recognized agent of a party or on an agent appointed to accept service of process under Rule 6 of this Order shall be as effectual as if the same had been given to or served on the party in person, unless the Court otherwise directs.

Mode of service.

(2) The provisions contained in this Code for the service of process on a party to an action shall apply to the service of process on such recognized agent or agents appointed to accept process.

ORDER V

Scope and subject of action

O. 5, r. 1.
Frame of regular action.

1. 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.

O. 5, r. 2.
Action to include whole claim.

2. (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.

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(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of, his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Relinquishment of part of claim.

(3) A person entitled to more than one relief in respect of the same cause of action, may sue for all or any of such reliefs; but if he omits, except with the leave of the Court obtained before the hearing, to sue for any of such reliefs, he shall not afterwards sue for any relief so omitted.

Omission to sue for one of several reliefs.

(4) 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.

Obligation and collateral security 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 1952 and 1953 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.

O. 5, r. 3.

3. (1) Save as otherwise provided, 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 the defendants may unite such causes of action in the same action.

Joinder of causes of action.

(2) Where 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 Rule 6 of this Order.

Jurisdiction depends on aggregate value.

O. 5, r. 4.

4. 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 claims for—

Joinder of claims in actions for immovable property.

(*a*) mesne profits or arrears of rent in respect of the property claimed, or any part thereof;

Mesne profits.

(*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.

Damages.

ILLUSTRATION

A sues B to recover land upon the allegation that the land belongs to C, and that he (A) bought it of C. A makes C a party defendant; but he cannot without leave of Court join with this claim an alternative claim for damages against C for non-performance of his contract of sale.

O. 5, r. 5.

5. No claim by or against an executor, administrator, or heir, as such shall 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.

Claims by or against Executor, Administrator, or heir.

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O. 5, r. 6. Court may order separate trials.

6. Where it appears to the Court ex proprio motu or on the application of a defendant that any causes of action joined in one action cannot be conveniently tried or disposed of together, the Court may order separate trials, or make such other order as may be expedient.

O. 5, r. 7. Objections to misjoinder of causes of action.

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity, and, in any case at or before the preliminary investigation, or where no preliminary investigation has been ordered, before the trial, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER VI

Pleadings Generally

O. 6, r. 1. Pleading.

1. "Pleading" shall mean the statement in writing setting out the claim or demand in any action or matter and the defence or objection thereto and includes plaint, answer, replication and any other written statement of like nature as well as any petition or statement of objection.

O. 6, r. 2. Pleading to state material fact and not evidence.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies either for his claim or demand or for his defence or objection, as the case may be, but not the evidence by which they are to be proved, and shall be divided into paragraphs numbered consecutively.

O. 6, r. 3. Forms of Pleading.

3. The forms in Appendix II when applicable, and where they are not applicable forms of the like character, shall be used for all pleadings.

O. 6, r. 4. Particulars to be given where necessary.

4. (1) In all cases in which the party pleading relies on any misrepresentation, mistake, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary to set out sufficiently and adequately the claim, demand, defence or objection, particulars shall be stated in the pleading.

In actions for defamation.

(2) In an action for defamation if the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he shall give particulars of the facts and matters on which he relies in support of such sense.

O. 6, r. 5. Further and better pleadings.

5. A further and better statement of the nature of the claim, demand, defence or objection, or further and better particulars of any matter stated in any pleading, may be ordered, upon such terms as to costs and otherwise as may be just.

O. 6, r. 6. Condition precedent.

6. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified by the party in his pleading; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the party shall be implied in the pleading.

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O. 6, r. 7. Particulars of objection to be specially pleaded.

7. A party must raise by his pleading all issues of fact and questions of law which show the action, claim in reconvention or petition not to be maintainable or sustainable, or that the transaction is either void or voidable, and all such grounds of defence, reply or objection, as the case may be, as if not raised would be likely to take the opposite party by surprise as, for instance, prescription, release, novation, assignation, payment, performance, illegality or unenforceability under the Prevention of Frauds Ordinance.

O. 6, r. 8. Denial of contract.

8. Where a contract, promise or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise or agreement alleged, or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

O. 6, r. 9. Effect of document to be stated.

9. Whenever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

O. 6, r. 10. Malice, knowledge, etc.

10. Whenever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred:

In actions for defamation express malice to be pleaded.

Provided that where in an action for defamation the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the plaintiff shall, if he intends to allege that the defendant was actuated by express malice, file a replication giving particulars of the facts and matters from which such malice may be inferred.

O. 6, r. 11. Particulars to be given of defamatory words alleged to be true.

11. Where in an action for defamation the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he shall give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

O. 6, r. 12. Notice.

12. Whenever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form of the precise terms of such notice or the circumstances from which such notice is to be inferred are material.

O. 6 r. 13. Implied contract or relation.

13. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances, without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

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O. 6, r. 14. Presumption of law.

14. Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied as, for instance, consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim.

O. 6, r. 15. Striking out pleadings.

15. The Court may, at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action.

O. 6, r. 16. Amendment of Pleadings.

16. (1) The Court may, at any time, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

No amendment ordinarily after preliminary investigation.

(2) Where, however, preliminary investigation has been ordered in an action, no party shall be permitted to alter or amend his pleadings after the conclusion of the preliminary investigation, unless the Court is satisfied that an alteration or amendment should be permitted in order to prevent manifest injustice.

Court may ex mero motu amend at any stage.

(3) The Court may ex mero motu at any stage of the proceedings give such directions or make such orders with regard to the amendment of pleadings as to it may appear necessary or proper.

Amendments to be clearly written.

(4) Every such alteration or amendment shall be clearly written on the face of the pleading allowed to be amended, or if this cannot conveniently be done, a fair draft of the pleading as altered or amended shall be appended to the original pleading.

And initialled by the Judge.

(5) Every alteration or amendment of a pleading shall be initialled by the Judge.

O. 6, r. 17. Failure to amend after order.

17. If a party who has obtained an order for leave to amend or been ordered to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within ten days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such ten days, as the case may be, unless the time is extended by the Court.

O. 6, r. 18. Pleading to be signed.

18. Every pleading presented by a Proctor shall be signed by such Proctor. In every other case the pleading shall be signed by the party presenting it, and such signature shall be verified by the signature of some officer authorised by the Court in that behalf.

O. 6, r. 19. Pleadings to be legibly written and stamped.

19. (1) Every pleading and every other document to be filed in Court, whether or not annexed or added to a pleading, as for instance, particulars of account, abstract of title, affidavit, motion, shall be legibly written or typed or printed in the English language upon good and suitable paper and shall where necessary be duly stamped in accordance with the provisions of the Stamp Ordinance.

Affidavit may also be in Sinhalese or Tamil.

(2) Notwithstanding anything contained in the preceding paragraph, an affidavit instead of being in the English language may be in either the Sinhalese or Tamil language, and where the affidavit is in either the Sinhalese or Tamil language, a true translation thereof in the English language shall accompany such affidavit.

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20. Where a pleading or any document does not comply with the provisions of Rule 18 or 19 of this Order, the Court may make order permitting the fault or defect to be remedied; where the fault or defect is not remedied within the time allowed by Court in that behalf, it shall make order rejecting the pleading or document, and every order of rejection or return shall be in writing signed by the Judge and filed of record, and the Court shall proceed as if such pleading or document had not been filed in Court.

O. 6, r. 20. Pleading may be returned or rejected.

ORDER VII

Plaint

1. The plaint shall contain the following particulars:—

O. 7, r. 1. Requisites of plaint.

(*a*) the name of the Court in which the action is brought and the date of filing the plaint; — Name of Court and date.

(*b*) the name, description and place of residence of the plaintiff; — Plaintiff's residence.

(*c*) the name, description and place of residence or business, or registered office of the defendant, so far as can be ascertained; — Defendant's residence.

(*d*) where the plaintiff or defendant is a minor or a person of unsound mind, a statement to that effect; — Disability of party.

(*e*) where the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, a statement showing in what capacity such plaintiff or defendant sues or is sued; — Representative capacity of party.

(*f*) 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; — Causes of action to be set out separately.

(*g*) the facts showing that the Court has jurisdiction; — Jurisdiction.

(*h*) a demand of the relief which the plaintiff claims; — Relief.

(*i*) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and — Set-off.

(*j*) a statement of the value of the subject-matter of the action for the purposes of jurisdiction and of stamp duty, so far as the case admits. — Value of action.

2. Every plaint not presented by a proctor shall be accompanied by a memorandum in writing giving a registered address as required by Order XII.

O. 7, r. 2. Address for service of process.

3. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed.

O. 7, r. 3. precise valuation.

4. 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.

O. 7, r. 4. Approximate valuation.

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O. 7, r. 5. Further requisites, in land actions.

5. 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,

Land to be described.

(1) 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; and

Table of Devolution of title.

(2) there shall also be filed along with the plaint a table setting out the devolution of the title relied on, whether under deeds or by way of succession or otherwise in Form 17 in Appendix I, with such variations as circumstances may require, subscribed or verified in the manner prescribed in Rule 18 of Order VI.

O. 7, r. 6. Production of document sued upon.

6. Where a plaintiff sues upon a document in his possession or power, he shall, when the plaint is presented, deliver the document or a copy thereof to be filed with the plaint.

O. 7, r. 7. Memorandum of documents produced to be endorsed.

7. (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.

Memorandum to be verified.

(2) Such memorandum shall be examined by the Secretary or Clerk of the Court, as the case may be, and signed by him if he finds it correct.

O. 7, r. 8. Document not produced with plaint inadmissible afterwards.

8. A document which or the copy whereof ought to be delivered by the plaintiff when the plaint is presented and which is not delivered shall not, without the leave of Court, be received in evidence on his behalf.

O. 7, r. 9. Plaintiff suing in a representative character.

9. Where 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 (if any) 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.

O. 7, r. 10. Plaint must show defendant's liability to be sued.

10. The plaint shall 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.

O. 7, r. 11. Exemption from prescription.

11. Where the cause of action arose beyond the period allowed by any law for instituting the action, the plaint shall show the ground upon which exemption from such law is claimed.

O. 7, r. 12. Action on lost negotiable instrument.

12. Where the action is founded upon a bill of exchange or promissory note, if it be proved that the instrument is lost, and if an indemnity is given by the plaintiff, to the satisfaction of the Court against the claims of any other person upon such instrument, the Court may enter such decree as it would have entered

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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.

ORDER VIII

Answer

1. The answer shall contain the following particulars:— O. 8, r. 1. Requisites of answer.

(*a*) the name of the Court, the number of the case, and the date of filing the answer; Name of Court, number of case and date.

(*b*) the name of the plaintiff; Name of plaintiff.

(*c*) the name, description and place of residence, or business, or registered office of the defendant; Residence of 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; where the defendant relies upon several distinct grounds of defence or claims in reconvention founded upon separate or distinct facts, they shall be stated, as far as may be, separately and distinctly. The statement shall be drawn in duly numbered paragraphs, referring by number, where necessary, to the paragraphs of the plaint; Admission or denial of averments in 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 affect the lien upon the amount decreed of any Proctor in respect of the costs payable to him under the decree. Claim in reconvention.

2. In actions relating to land, where the plaintiff has filed a table of devolution of title, the defendant shall, unless he admits the correctness of the title set out, file a table of devolution of title upon which he relies. Such table of devolution of title shall conform to the requirements of Rule 5 (2) of Order VII. O. 8, r. 2. Land actions.

3. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the answer, shall be taken to be admitted: O. 8, r. 3. Allegation in plaint not denied deemed to be admitted.

Provided, however, that no denial shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue unless expressly admitted.

4. It shall not be sufficient for a defendant in his answer to deny generally the averments contained in the plaint, but the defendant must deal specifically with each allegation of fact, of which he does not admit the truth, except damages. O. 8, r. 4. Denial to be specific.

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O. 8, r. 5. Evasive denial.

5. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance, and where an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

ILLUSTRATIONS

(*a*) If it is alleged that the defendant received a certain sum of money, it shall not be sufficient to deny that he received that particular amount but he must deny that he received that sum or any part thereof, or else set out how much he received.

(*b*) In actions upon bills of exchange, promissory notes or cheques, a defence in denial must deny some matter of fact, *e.g.*, the drawing, making, endorsing, accepting, presenting, notice of dishonour of the bill or not.

(*c*) In actions for goods bargained and sold, or sold and delivered, the defence must deny the order or contract, the delivery or the amount claimed; in an action for money paid and received, it must deny the receipt of money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

(*d*) Where plaintiff sues on a bond conditioned for the payment of a sum of money and for the performance of covenants in an indenture, a plea of general performance by defendant is bad; for the condition being to do several things, defendant should plead to each particularly by itself.

O. 8, r. 6. Jurisdiction of the Court to be specially traversed.

6. 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.

O. 8, r. 7. Plaintiff suing in representative capacity.

7. If the defendant disputes the right of the plaintiff to sue as executor, administrator or trustee, or in any representative capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

O. 8, r. 8. Ground of defence arising pending action.

8. (1) Any ground of defence which has arisen after the institution of the action or after the presentation of the answer containing a claim in reconvention, may be raised by the defendant or plaintiff as the case may be, in his answer or replication.

(2) Where any ground of defence arises after answer is filed, the defendant may, and where any ground of defence to any claim in reconvention arises after filing of replication, the plaintiff may, with leave of Court, file an amended answer or replication, as the case may be, setting forth the same.

ORDER IX

Replication

O. 9, r. 1. Replication may be allowed, when.

1. (1) Except where the defendant has set up a claim 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 preliminary investigation or, where no preliminary investigation has been ordered, before the trial, upon such terms as to the Court may appear proper.

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(2) 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 between the parties cannot be conveniently raised without such further pleading.

Order not to be made unless real issues cannot otherwise be raised.

Explanation.—Action for declaration of title based upon deed of transfer executed in 1946. Defendant asserts title based upon a partition decree entered in 1948. If plaintiff wishes to attack the validity of the partition decree, he must file replication after obtaining order of Court in that behalf.

2. All pleadings after answer shall be subject to the provisions of Rule 1 of Order VIII relative to the form and substance of the answer as far as the same can be made applicable.

O. 9, r. 2.
Replication and further pleading.

3. Every allegation of fact in the answer if not admitted specifically or by necessary implication or stated to be not denied in the replication shall be taken to be denied.

O. 9, r. 3.
Allegation in answer not admitted deemed to be denied.

4. Where no replication is filed, the plaintiff shall be deemed to join issue with the defendant upon the denials contained in the answer and to deny all and singular the averments in the answer setting out the claim in reconvention.

O. 9, r. 4.
Where no replication filed issue deemed joined and reconvention denied.

Explanation.—Action by plaintiff on a running account. Defendant denies correctness of plaintiff's account and sets up claim in reconvention based on an account filed by him. Where the plaintiff still asserts the correctness of his account and denies the accuracy of the defendant's account, no replication need be filed.

5. If it appears to the Court that the trial of a claim in reconvention is likely to cause embarrassment or to prejudice or delay the trial of the claim in convention, the Court may on the application of the plaintiff or any other party affected thereby, at any time prior to or at the preliminary investigation or if the parties agree at any subsequent stage of the action, or of its own motion at any time order a separate trial of the claim in reconvention or make such other order as may be necessary or expedient for the separate disposal thereof.

O. 9, r. 5.
Separate trial of claim in reconvention.

ORDER X

Motions

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 by motion by the applicant in person or his Advocate or Proctor, and a memorandum in writing of such motion shall, if so required, be at the same time delivered to the Court.

O. 10, r. 1.
Incidental applications.

2. (1) Every application authorised or required by the rules to be made to the Court and every application to the Court in the course of an action save those referred to in the preceding rule shall be made by motion, which shall be in writing, and shall be delivered to or filed in Court.

O. 10, r. 2.
Other applications.

(2) Except where the application is authorised to be made ex-parte, no motion shall be made without previous notice to the parties affected thereby.

Notice of motion to be given.

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Court may dispense with notice.

(3) Where a Judge is satisfied that the delay caused by the giving of notice of a motion would or might entail irreparable or serious mischief, the Court may make order ex-parte on such motion upon such terms as to costs or otherwise and subject to such undertaking, if any, as the Court may think proper; and any party affected by such order may move to set it aside.

Length of notice of motion.

(4) Unless the Court gives special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

O. 10, r. 3.
Motions may be dismissed or adjourned where necessary notice not given.

3. Where on the hearing of a motion or other application the Court shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court may think proper to impose.

O. 10, r. 4.
Adjournment of hearing.

4. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court shall think proper.

ORDER XI

Journal

O. 11, r. 1.
Journal.

1. 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.

ORDER XII

Registered Address

O. 12, r. 1.
Address to be registered by party appearing in person.

1. (1) Every party to an action not appearing by proctor shall file a memorandum in writing giving an address within the limits of the city or town in which the Court is situate (hereinafter called the registered address) at which all legal documents not required to be served personally and relating to the action or appeal therein (including an appeal to Her Majesty in Council) may be served on him.

On first appearance.

(2) Such address shall be furnished at the time a party first appears or enters an appearance in Court.

Proctor's address deemed address of party.

(3) Where a party appears by Proctor, the address of the Proctor for service contained in the proxy as required by rule 3 (2) of Order IV, shall be the registered address of such party.

Explanation.—" Legal document " includes all processes, pleadings, petitions, affidavits, interrogatories, notices, motions and other documents, proceedings and written communications.

O. 12, r. 2.
Address may be furnished subsequently.

2. Where a party fails to file a registered address he may at any subsequent date furnish the same with leave of Court after notice to all Proctors appearing in the action as well as to all parties appearing without a Proctor and have furnished a registered address.

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O. 12, r. 3. Effective service.

3. (1) Service of all legal documents referred to in rule 1 of this Order at the registered address shall be deemed to be sufficient service.

Where no address registered service on Secretary effective.

(2) Where any party fails to file a registered address, all such legal documents intended for such party shall be left with the Secretary or Clerk of the Court and the service on the Secretary or Clerk shall be deemed to be a sufficient service on such party.

Secretary to post documents or deliver them to party or his agent.

(3) The Secretary or Clerk of the Court shall deliver the documents to such party where he applies for them in person, or if duly authorised in that behalf forward them by post to such party, or deliver them to any agent, servant or manager of such party.

O. 12, r. 4. Change of address.

4. Any party may with leave of Court and after due notice to all proctors and to all other parties who have furnished registered addresses change his registered address by filing a fresh memorandum in writing, giving the new address.

O. 12, r. 5. Proctor subsequently appearing for unrepresented party to notify other parties of his appointment.

5. (1) Where a party after having appeared in person appears by Proctor, the Proctor shall

(*a*) file his proxy in Court; and at the same time,

(*b*) notice all other Proctors and all parties appearing in the action who have furnished registered addresses, of his appointment and of his registered address.

Registered address of party from time of representation.

(2) From the time the party appears by Proctor, the registered address of the party shall be that of his Proctor.

Party subsequently unrepresented to notify other parties of registered address.

(3) Where a party after having appeared by Proctor appears in person, he shall—

(*a*) furnish a registered address as required by rule 1 of this Order; and at the same time

(*b*) notice all Proctors and all other parties appearing in the action who have furnished registered addresses of his registered address.

O. 12, r. 6. Illusory or fictitious address.

6. Where the registered address furnished is illusory or fictitious, the appearance may be set aside by Court on the application of any party affected thereby.

ORDER XIII

Commencement of Regular Action

O. 13, r. 1. Regular action to commence by plaint.

1. Every action of regular procedure shall be instituted by presenting a plaint.

Explanation :—

1. The forwarding of a plaint through the post does not amount to a presentation of the plaint.

2. A duly registered clerk of a Proctor may on behalf of such Proctor hand over or deliver the plaint to the duly appointed officer of Court.

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O. 13, r. 2.
Conformity of plaint with rules.

2. Every plaint shall comply with the rules prescribed in Orders VI and VII, so far as they are applicable.

O. 13, r. 3.
Land and matrimonial actions governed by old procedure.

3. In actions for—

(*a*) vindication of title to land;

(*b*) partition;

(*c*) cancellation of lease;

(*d*) enforcement of other rights or interests in or for land;

(*e*) enforcement of matrimonial rights, or

(*f*) enforcement of the mortgagee's rights under a mortgage bond containing hypothecation of immovable property,

(hereinafter called actions governed by the Old Procedure), the plaint shall be presented by the plaintiff either in person or by his duly appointed Proctor (who shall present his proxy at the same time) to the Court or to such officer as the Court shall appoint in this behalf, and the provisions of Rules 4 to 11 of this Order shall apply to such actions.

O. 13, r. 4.
Plaint to be registered and numbered.

4. In actions governed by the Old Procedure the plaint shall be registered and numbered.

O. 13, r. 5.
Court may refuse to entertain plaint.

5. Before the Court admits the plaint (whether presented by the plaintiff or by a Proctor in his behalf) it may, if in its discretion it shall think fit, refuse to entertain the same for any of the following reasons, namely:

Particulars incorrectly stated.

(*a*) if it does not comply with the provisions of Orders VI and VII so far as they are applicable;

Unnecessary particulars.

(*b*) if it contains any particulars other than those required by the said orders;

Not subscribed.

(*c*) if it is not subscribed, or subscribed and verified, as the case may be, as required by rule 18 of Order VI;

Non-disclosure of cause of action.

(*d*) if it does not disclose a cause of action;

Improperly framed.

(*e*) if it is not framed in accordance with the provisions of Rule 1 of Order V;

Non-joinder or mis-joinder.

(*f*) if it is wrongly framed by reason of non-joinder or mis-joinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same action;

Failure to file table of devolution of title.

(*g*) if table setting out the devolution of title where necessary is not filed as required;

Non-furnishing of address for service.

(*h*) if an address for service of process is not given as required by rule 1 of Order XII;

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:

Amendment not to alter character of action.

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;

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And provided further that in each of the following cases, namely— And may reject.

(*i*) where the relief sought is under-valued, and the plaintiff on being required by the Court to correct the valuation within a time to be fixed by Court, fails to do so; Relief under-valued.

(*j*) where the relief sought is properly valued, but the plaint is insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamps within a time to be fixed by Court, fails to do so; Stamped insufficiently.

(*k*) where the action appears from the statement in the plaint to be barred by any positive rule of law; Prescribed.

(*l*) when the plaint having been returned for amendment within a time fixed by the Court is not amended within such time; Failing to amend.

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.

6. 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 3 of the Code not being present the plaint shall be returned to be presented to the proper Court. O. 13, r. 6. Plaint presented to wrong Court.

7. 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. O. 13, r. 7. Order on return or rejection of plaint.

8. Where the Court admits the plaint, it shall order summons in Form No. 20 in Appendix I to issue. O. 13, r. 8. Where plaint admitted, summons in Form No. 20.

9. (1) The plaintiff or his Proctor shall thereupon present to the officer of Court authorised in that behalf the summons in Form No. 20 in Appendix I, together with— O. 13, r. 9. Summons and copies to be presented to Court.

(*a*) as many duplicate copies of the summons as there are defendants;

(*b*) a like number of copies of either the plaint or the concise statement referred to in rule 3 (1) of Order XIV, and

(*c*) such translations as are required by rule 3 (2) of the same order,

inserting in every one of such documents the number assigned to the action.

(2) The correctness of the copies of the plaint or the concise statement shall be certified by the Proctor, where he presents them to Court or where they are presented by the plaintiff in person they shall be examined by the officer of Court authorised in that behalf and signed by him if found to be correct. Copies of plaint to be certified by Proctor or by officer of Court.

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O. 13, r. 10. Service of summons through Court.

10. The summons and the duplicate copies thereof shall be signed and sealed with the seal of the Court by the Officer authorised in that behalf; the summons, together with the copies thereof and of the plaint or the concise statements and translations, if any, shall be delivered or transmitted by the officer of Court to the Fiscal of the district in which the defendant resides under a precept from the Court in the Form No. 21 in Appendix I or to the like effect, and the Fiscal shall cause the same to be served in accordance with the provisions of Order XIV on the defendant or on each defendant if more than one, and shall, as provided in Order LV return the same and the execution thereof to the Court duly verified by the officer to whom the actual service thereof has been entrusted.

O. 13, r. 11. Proctor may follow New Procedure in taking out and serving summons.

11. Where the Court has in terms of Rule 8 of this Order ordered summons to issue, if the plaint has been presented by a Proctor, he may instead of following the procedure prescribed in Rules 9 and 10 of this Order take out summons and have the same served in accordance with the provisions of Rules 15, 16 and 17 of this Order, so far as they are applicable.

Explanation :

1. Plaint and proxy as required by Rule 12 need not be filed, as they have already been filed in Court.
2. The summons would be in Form No. 20 in Appendix I in conformity with the Order of Court already made under Rule 8.
3. The summons, the copies thereof and the dockets must all bear the number of the action at the time they are tendered, as the number has already been assigned.
4. Where the summons is returned to the Proctor without service being effected, he shall apply to Court for extension of time, and where the Court grants the application, re-issue it for service.
5. To a partition action this Rule cannot be applied in view of section 62 of this Code, and *inter alia* of section 13 of the Partition Act, No. 16 of 1951, which requires the summons to be issued to the Fiscal under precept from Court.
6. An action upon a mortgage bond may be proceeded with under this Rule, but the special provisions contained in the Mortgage Act, No. 6 of 1949, must also be complied with.

O. 13, r. 12. Actions governed by New Procedure.

12. In actions other than those specified in Rule 3 of this Order (hereinafter called actions governed by the New Procedure)—

Plaintiff appearing by Proctor.

(1) Where a Proctor appears for the plaintiff the plaint, together with—

(*a*) the proxy,

(*b*) the summons, which shall be in Form No. 22 in Appendix I,

(*c*) as many duplicate copies of the summons as there are defendants, and

(*d*) a docket in Form No. 23 in Appendix I in duplicate containing the following particulars:—

(i) the name of the Court;

(ii) the name and address of the Proctor at the right hand top corner;

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(iii) the names of parties;

(iv) the value of the action;

(v) the class of action under the Stamp Ordinance;

(vi) the value of stamps affixed to the plaint, proxy and summons, and

(vii) the date of presentation, and having spaces for the insertion of the number of the action and the signature of the officer of Court,

shall be presented to the officer duly appointed in that behalf, by the Proctor, who shall sign the copies of the docket in the presence of such officer.

(2) The provisions of Rules 15—17 of this Order shall apply to such actions.

Explanation.—The duly registered clerk of a Proctor may where he presents the plaint and other documents sign the docket himself in place of the Proctor.

O. 13, r. 13. Where Proctor ceases to act, action relegated to Old Procedure.

13. Where at any stage of an action governed by the New Procedure the sole plaintiff or one of several plaintiffs ceases to be represented by a Proctor, the action till the appointment of a new Proctor, if any, shall be regulated by the provisions applicable to actions governed by the Old Procedure.

Explanation.—Where, after the Proctor has filed the plaint and obtained his copy of the docket and the summons or, where after the pleadings are deemed to be closed, the Proctor ceases to represent the plaintiff, no proceedings can be taken under Rules 15 to 17 of this Order in the former case, nor under Order XIX in the latter case, as in both cases the further progress of the action would be regulated by the Old Procedure.

O. 13, r. 14. Plaintiff appearing in person.

14. (1) Where the plaintiff appears in person, in an action governed by the New Procedure, he shall present the plaint to the officer of Court appointed in that behalf, and the provisions of Rules 4 to 10 of this Order shall apply to such action.

Subsequently appearing by Proctor.

(2) Where the plaintiff subsequently appears by Proctor, the procedure to be followed from that stage shall be that prescribed for actions governed by the New Procedure.

O. 13, r. 15. Plaints in actions other than land and matrimonial presented by Proctor.

15. (1) In actions governed by the New Procedure, the officer shall duly register and number the plaint and shall, if satisfied that the particulars in the docket are in conformity with those contained in the plaint and summons, insert the number in the dockets, sign and seal with the seal of the Court the dockets, the summons and the copies thereof, and return the same to the person presenting them, save the plaint, the proxy and one copy of the docket, which shall be filed of record.

Period of validity of summons under New Procedure.

(2) The summons so signed and sealed shall be valid for service without an order of Court for a period of one year from the date of its issue.

When particulars incorrect, documents to be returned.

(3) Where the officer is not satisfied that the particulars are in conformity with those contained in the plaint and summons he shall return the documents to the person presenting them for rectification or if the person presenting them so desires submit them for the orders of the Court and in the latter event the officer of Court shall return one of the dockets with an endorsement thereon that the other documents have been retained for

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securing the order of Court thereon. The Court shall make order directing either the return of the papers for amendment or the acceptance of them by the officer.

O. 13, r. 16. Request for Service to be issued by Proctor.

16. (1) The Proctor shall retain the summons in his possession and deliver or transmit for service to—

(*a*) the Fiscal of the District in which the defendant resides, or

(*b*) an approved process server, or

(*c*) the appropriate official specified in Rule 15, 16, 17 or 18 of Order XIV,

the signed and sealed duplicate copies of the summons attaching to each a copy of the plaint accompanied by such translations as are required by Rule 3 (2) of Order XIV, together with a Request for Service in Forms Nos. 24 or 25 in Appendix I (subject to such variations, if any, as circumstances may require) after inserting in every one of such documents the number assigned to the action.

Multiple summons.

(2) (*a*) It shall also be lawful for the Proctor to deliver or transmit the summons for service at one and the same time or at different times to any two or more of the persons specified in the preceding paragraph, and for that purpose shall be entitled to obtain as many duplicate copies of the necessary documents as may be required.

(*b*) The first service to be effected shall be the effectual service, and on receipt of the first return of service the other duplicate copies may be recalled.

(*c*) The plaintiff shall, however, not be entitled to recover more than the cost of effecting service in any one mode without special order of Court.

Illustration.—The defendant to an action is an employee of an incorporated company. The Proctor for plaintiff may, if he so desires, send three separate duplicate copies simultaneously, one each to the Fiscal, the approved process server and the manager of the company for service on the defendant. The approved process server effects service first, and the manager next, while the manager's return of service reaches the Proctor before that of the approved process server. The service effected by the approved process server is the effective service. On receipt of the manager's return of service the Fiscal may be directed to return the summons.

O. 13, r. 17. Request for service to be filed in Court if summons served, otherwise to be re-issued.

17. (1) Where the endorsement on the Request for Service is one of service, the Proctor shall within three days of the return thereof to him file it in Court; or where the endorsement is one of non-service re-issue it for service as often as may be necessary during the period of validity of the summons.

Summons to be returned after all defendants served or expiry of period of service.

(2) The summons shall be returned to Court when all defendants have been served or on the expiry of the period of its validity.

Extension of validity of summons.

(3) Where summons has not been served within a period of one year, the Court may, on proof that the plaintiff has taken every reasonable step to effect service, make an order extending the validity of the summons for a further period of one year, and where necessary, as often as it deems proper.

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ORDER XIV

Service of Summons

O. 14, r. 1. Form of Summons.

1. (1) The summons shall be either in Form No. 20 or Form No. 22 in Appendix I requiring the defendant to appear and answer the plaint on a date to be specified therein, or to enter an appearance within ten days of the date of service of summons, as the case may be.

Shall be signed and sealed.

(2) Before the summons is issued from Court, it shall be signed and sealed with the seal of the Court by an officer authorised in that behalf.

O. 14, r. 2. Fixing day for appearance and answer of defendant.

2. Where a day is specified in the summons for the appearance and answer of the defendant, such day shall be fixed with reasonable regard to the current business of the Court and the time necessary for the service of summons and for the defendant to appear and answer on such day.

O. 14, r. 3. Copy of plaint or concise statement to be annexed to summons.

3. (1) Every summons shall be accompanied by a copy of the plaint or, where the Court so permits by reason of the length of the plaint or the number of defendants or for any other sufficient cause, by a concise statement of the plaint setting out the nature of the claim made or other relief or remedy claimed.

Translations of summons and plaint to accompany.

(2) Where the defendant does not understand the English language but understands either the Sinhalese or Tamil language, translations of the summons and of the plaint or the concise statement, as the case may be, into that language which the defendant understands shall accompany the summons.

O. 14. r. 4. Personal service effected by delivery of duplicate.

4. Subject to the several provisions as to service contained in the Rules, service of summons shall be made by delivering or tendering to the defendant personally a duplicate thereof.

O. 14, r. 5. Service to be personal.

5. (1) Whenever it may be practicable, the service of summons shall be made on the defendant in person.

Where personal service not practicable.

(2) If, after reasonable exertion—

(*a*) the Fiscal is unable to effect personal service, he shall report such inability

Fiscal to report (i) to Court,

(i) where the summons was forwarded to him by Court, then to such Court in a fair return to the precept, or

(ii) to Proctor.

(ii) where the summons was forwarded to him by Proctor, then to such Proctor in a fair return to the Request for Service,

attaching to such return the summons or the duplicate copy of the summons, as the case may be, and the connected documents as exhibits;

Approved process server to report to Proctor.

(*b*) the approved process server is unable to effect personal service, he shall report such inability to the Proctor in a fair return to the Request for Service, attaching thereto the duplicate copy of the summons and the connected documents as exhibits.

Substituted service where defendant evades or cannot be served on three separate occasions.

(3) (*a*) Where the return to the precept or the Request for Service is that service could not have been effected on three separate occasions though reasonable attempts were made to effect service, or that the defendant was evading service, or that for any other reason personal service could not be effected on the defendant, it shall be competent to the Court on being

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satisfied by evidence adduced before it that the defendant is within the Island, to prescribe any other mode of service as equivalent for personal service.

(*b*) Notwithstanding anything contained in the preceding paragraph, in the case of a tenancy action, where one of the reliefs claimed is ejectment, it shall be lawful to the Court, on being satisfied that the tenant is out of the Island and that the plaintiff has not been notified by the tenant of the appointment of a recognized agent or other agent empowered to accept service of summons, to direct that the summons be served on any adult occupant of the premises, and such service shall be deemed sufficient service on the defendant.

Substituted service in Mortgage actions relating to immovable property.

(4) Where in an action for the recovery of money due on the mortgage of immovable property a return such as that referred to in paragraph 2 of this rule is made, the Court shall not, under the preceding provisions of this Rule, have the power to prescribe any other mode of service as an equivalent for personal service but whether or not the Court is satisfied that the defendant is within the Island, the Court shall, upon application made by the plaintiff, on its being satisfied—

(*a*) upon a certificate filed in that behalf by the Proctor for the plaintiff that the mortgagor has not registered an address for service under Rule 7 of Order IV, or

(*b*) that such an address having been registered the Fiscal was unable to effect service on such agent under rule 8 of this Order,

order 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 rule 7 of Order IV, the sending of a copy of the summons by registered post to that address).

Substituted service to be as effectual as personal.

(5) 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.

(6) Where 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.

O. 14, r. 6. When more defendants than one, service on each.

6. Where there are more defendants than one, service of the summons shall be made on each defendant.

O. 14, r. 7. Service on recognized agents and agents to accept process.

7. Where a defendant has a recognized agent in terms of rule 2 of Order IV, or an agent to accept service of process in terms of rule 6 of the same Order, service of summons on such recognized agent or agent to accept service of process shall be deemed sufficient service on the defendant.

O. 14, r. 8. Service on registered agent of mortgagor.

8. Where the mortgagor has registered an address of an agent under rule 7 of Order IV, service of summons may be made on such agent and shall be sufficient.

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O. 14, r. 9.
On summons being delivered to Proctor he may file proxy on behalf of defendant.

9. A Proctor duly authorised in that behalf may intimate to the plaintiff or his Proctor his willingness, on the summons being delivered to him or otherwise, to file proxy on behalf of the defendant in an action already filed or intended to be filed, and where such Proctor files his proxy in pursuance thereof no service of summons on the defendant shall be necessary.

O. 14, r. 10.
In action against partnership, service effective on partner or manager.

10. In the case of an action against partners relative to a partnership transaction or to an actionable wrong in respect of which relief is claimed from the partners as a firm, or where a firm is sued in its business name as provided for in Rule 1 of Order LXVI, service of summons on any one partner or on the person, if any, not being a partner who has the control or management of the business of the partnership at its principal place of business, or at the principal place, within the local limits of the Court's jurisdiction, of such business, shall be deemed to be sufficient service on the partners.

O. 14, r. 11.
Service effective on Manager of defendant out of jurisdiction.

11. (1) 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 service, personally carries on such business or work for such person within such limits, shall be deemed good service.

Master of ship agent of owner or charterer.

(2) For the purpose of this rule, the master of a ship shall be deemed to be the agent of the owner or charterer.

O. 14, r. 12.
Service on Agent in charge of immovable property.

12. Where in an action to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no recognised agent or an agent empowered to accept service, service may be made on any agent of the defendant in charge of the property.

O. 14, r. 13.
In cases against Crown service effective on Attorney-General.

13. In actions against the Crown, the summons shall be served upon the Attorney-General.

O. 14, r. 14.
Service on Corporation or company.

14. When the action is against a corporation or against a board or other public body, or a company authorised 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 a duplicate copy thereof at the registered office (if any) of the corporation, board, public body, or company; or

(*b*) by giving a duplicate copy thereof to the Secretary or other principal officer of the corporation, board, public body or company.

O. 14, r. 15.
Service on defendant in jail.

15. Where the defendant is confined in jail a duplicate copy of the summons shall be delivered or sent by post to the Commissioner of Prison and Probation Services for service.

O. 14, r. 16.
Service on public officer or servant of local authority.

16. Where the defendant is a public officer or a servant of any local authority a duplicate copy of the summons may be delivered or sent by post for service, in the case of the public officer to the head of the department in which he is employed, and in the case of the servant of the local authority to the chief executive officer of such local authority.

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O. 14, r. 17. Service on employees of institutions.

17. Where the defendant is an employee or servant in any of the following bodies, establishments or institutions—

(*a*) a corporation,

(*b*) a board or other public body,

(*c*) a company incorporated under the Companies Ordinance,

(*d*) a company incorporated outside the Island but having a place of business within the Island under the Companies Ordinance,

(*e*) a school registered as an assisted school by the Director of Education,

(*f*) a business registered under the Business Names Ordinance,

a duplicate copy of the summons may be delivered or sent by post for service to the manager or other principal officer of such body, establishment or institution.

ILLUSTRATION

Defendant in the action is a Municipal employee. Summons sent to Fiscal for service. Fiscal may forward the summons to the head of the department in the Municipality for service, or he may deliver it to one of his servers for service. Where the plaintiff issues copies in duplicate of the summons and requests service both through the head of the department and by process server, the Fiscal may adopt both methods.

O. 14, r. 18. Copy of summons may be sent to Commanding Officer for service.

18. Where any naval, military, or Air Force Officer or any sailor, soldier, or airman is a defendant, a duplicate copy of the summons may be delivered or sent by post to his Commanding Officer for the purpose of being served on him.

O. 14, r. 19. Request for service to be forwarded by Fiscal.

19. A Request for Service as set out in Rule 16 of Order XIII, but signed by the Fiscal, shall accompany the copy of the summons for service forwarded by the Fiscal to the persons specified in Rule 15, 16, 17 or 18 of this Order.

O. 14, r. 20. Duty of person to whom Request for Service is forwarded.

20. (1) Where a Request for Service is forwarded either by the Fiscal or Proctor to any person to effect service under Rules 15, 16, 17 or 18 of this Order, it shall be the duty of that person either to serve the summons himself or to cause it to be served upon the defendant.

Service to be endorsed.

(2) The Request for Service shall be returned to the Fiscal or the Proctor as the case may be either with an acknowledgment of the summons by the defendant or with a statement of the service endorsed thereon and signed by the person effecting the service and counter-signed by the person to whom the Request for Service was forwarded, where he has not himself effected the service.

or reasons for non-service.

(3) Where from any cause service cannot be effected, the Request for Service shall be returned together with all connected documents with a full statement of such cause and of the steps taken to procure service endorsed thereon and signed and counter-signed in the manner provided under the preceding paragraph.

Endorsements evidence of service or non-service.

(4) The acknowledgment or the endorsements verified by the signature or signatures shall be deemed to be evidence of service or of non-service as the case may be.

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(5) The Request for Service may be returned to the Fiscal or the Proctor as the case may be,

Return of Request for Service by post or delivery.

(*a*) by sending it by post, or

(*b*) in the case of the Proctor, by delivering it to him or to an Agent authorised by him.

O. 14, r. 21.

21. Where pursuant to the provisions of Rule 16 of Order XIII a Proctor forwards a Request for Service to the Fiscal, it shall be the duty of the Fiscal to serve the summons and make the appropriate returns in like manner as if the Request for Service were a precept issued by the Court.

Duty of Fiscal on receipt of Request for Service.

O. 14, r. 22.

22. (1) Service of summons out of the Island 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 the Island 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.

Service out of the Island.

Mode of service to be prescribed.

(2) 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.

O. 14, r. 23.

23. No misnomer or misdescription of any person or place in any such summons 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.

Misdescription not to vitiate summons.

ORDER XV

Appearance, Delivery of Pleadings and Fixing of Day for Preliminary Investigation or Trial (Old Procedure Actions)

O. 15, r. 1.

1. Where the summons is in Form No. 20 in Appendix I requiring the defendant to appear and answer on a day specified therein and the parties appear in Court on the day so specified, 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.

Defendant to answer on day for appearance.

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 authorised person.

O. 15, r. 2.

2. (1) If the defendant does not admit the plaintiff's claim, he shall himself, or his proctor shall on his behalf, deliver to the Court an answer which shall comply with the rules prescribed in Orders VI and VIII, so far as they are applicable.

Answer to be in writing.

Copy of answer to be served.

(2) (*a*) Where an answer is delivered to Court, a true copy thereof shall be served on the plaintiff or his Proctor.

(*b*) Where an answer is delivered to Court by a third party in Third Party Proceedings under Order III, the copy of the answer shall be served on the summoning defendant or his

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Proctor, and where the third party sets up any defence to the claim preferred by the plaintiff against the summoning defendant, he shall also serve on the plaintiff a copy thereof.

(c) The provisions of this rule shall apply to the fourth and subsequent parties to an action.

O. 15, r. 3. Rejection and amendment of answer.

3. (1) If any answer is argumentative or prolix, or contains matter irrelevant to the action, or does not comply with the provisions or Orders VI, or VIII so far as they are applicable, or with rule 1 of Order XII, the Court may, by an order to be endorsed thereon, reject the same or return it to the party by whom it was tendered for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

When defendant held not to have filed answer.

(2) If the answer is rejected or left unamended as ordered, the defendant shall be regarded as having failed to file answer.

Ground of rejection to be specified.

(3) The order so endorsed shall specify the ground of the rejection or return.

O. 15, r. 4. Extension of time to answer.

4. 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 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.

O. 15, r. 5. Claim in reconvention to be brought to the notice of Court.

5. Where an answer contains a claim in reconvention the plaintiff or his Proctor shall bring that fact to the notice of the Court, whereupon a day shall be fixed for the filing of replication by the plaintiff. The Court may for sufficient reason extend the time for filing replication.

O. 15, r. 6. Day of preliminary investigation or of trial.

6. (1) On the filing of the defendant's answer, or where a replication is permitted on the day fixed for filing such replication, and whether the same is filed or not, the Court shall fix a short date to enable the parties to consider the pleadings; and on the day so fixed the Court shall, after hearing the parties, either appoint a day for preliminary investigation or set down the case for trial.

Order final and not appealable.

(2) The order made by the Court under the preceding paragraph shall be final and shall not be subject to appeal.

Fixing day of trial or preliminary investigation, same procedure governing new procedure.

(3) In fixing the date for either the preliminary investigation or the trial, the Court shall have regard to the provisions of Rule 12 (1) of Order XIX and Rules 15 and 16 of Order XXVII, and where the date of trial has been fixed, the parties shall be governed by the provisions of Rule 17 of Order XXVII.

ORDER XVI

Default in Appearing or Pleading (Old Procedure Actions)

O. 16, r. 1. Non-appearance of plaintiff, action to be dismissed.

1. (1) Where the plaintiff fails to appear or excuse his absence sufficiently on the day fixed for the appearance and answer of the defendant, or on the day appointed for the subsequent filing of the answer or for the filing of the replication or for the preliminary investigation or for the trial, and if the defendant

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on the occasion of such default of the plaintiff to appear is present in person or by Proctor, the Court shall, subject to the next succeeding paragraph, dismiss the plaintiff's action.

But judgment for so much as defendant admits, or after discharge of burden by defendant.

(2) If, notwithstanding that the plaintiff fails to appear,

(*a*) the defendant admits the plaintiff's claim in whole or in part, judgment shall be given in accordance with such admission, and where part only of the claim has been admitted the Court shall dismiss the action in so far as it relates to the remainder; or

(*b*) where on the day fixed for trial the defendant does not admit the claim in whole or in part but the issues framed or arising upon the pleadings disclose that the burden either on all the issues or on some of them is on the defendant the Court may proceed to try such issues and enter such judgment or make such other order as to it shall seem proper.

O. 16, r. 2. Dismissal on default bars fresh action.

2. (1) Where an action has been wholly or partly dismissed under rule 1, the plaintiff shall be precluded from bringing a fresh action in respect of the same cause of action.

Dismissal may be set aside.

(2) The plaintiff, however, may apply within a reasonable time from the date of dismissal, by way of petition supported by affidavit, to have the dismissal set aside, and if on the hearing of such application, of which the defendant shall be given notice, the Court is satisfied that there was good cause for the non-appearance of the plaintiff, the Court shall make order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the action as from the stage at which the dismissal for default was made.

O. 16, r. 3. Non-appearance of defendant.

3. Where the defendant fails to appear or excuse his absence sufficiently on the day fixed for his appearance and answer, and if the Court is satisfied that the defendant has been duly served with summons, or where after the defendant has appeared in Court 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 preliminary investigation or for the trial, or where the defendant fails to file his answer on the day fixed therefor, and if on the occasion of such default of the defendant the plaintiff appears and does not consent to an adjournment, then the Court shall proceed to hear the case ex-parte and to pass such decree as to it shall seem proper.

O. 16, r. 4. Decree against defendant for default may be set aside.

4. Where within a reasonable time after the entering of a decree against him by default, the defendant shall with notice to the plaintiff satisfy the Court that he had reasonable grounds for such default, the Court shall set aside the decree and admit the defendant to proceed with his defence as from the stage at which the decree for default was passed, upon such terms as to costs or otherwise as to the Court shall appear proper.

O. 16, r. 5. Neither party appearing, action to be dismissed.

5. (1) Where on the day appointed for the defendant to appear and answer or for the subsequent filing of answer or for the filing of replication or for the preliminary investigation or for the trial, neither party appears when the case is called, the Court shall dismiss the action without costs.

Dismissal bar to fresh action.

(2) The dismissal of an action under paragraph (1) shall preclude the plaintiff from instituting a fresh action on the same cause of action.

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Dismissal may be set aside.

(3) The Court may, however, upon the application of either party made within a reasonable time after the dismissal and upon notice to the other side, set aside the dismissal and direct the action to be proceeded with as from the stage at which the dismissal for default was made, upon such terms and conditions as to costs or otherwise as to it shall seem proper.

O. 16, r. 6.

No appeal against decree for default.

Order setting aside or refusing to set aside decree in default appealable.

Consent of Proctors insufficient to vacate order.

6. (1) No appeal shall lie against any decree or order entered under the foregoing rules for default of appearance.

(2) The order setting aside or refusing to set aside the decree or order 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.

(3) The mere consent of the Proctors for the parties will not be reason sufficient to justify the Court in setting aside the decree or order.

O. 16, r. 7.

Where two or more defendants severally liable.

7. Where two or more defendants are alleged to be severally liable in an action, and a summons is served upon any of them, the plaintiff may proceed against the person or persons so 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 taken against him or them alone. Where judgment is so taken the plaintiff may proceed in the same action against the other defendants.

O. 16, r. 8.

One of several defendants appearing, no decree for default need be passed against defendants failing to appear.

8. Where there are more defendants than one in an action, 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.

ORDER XVII

Entering of Appearance and delivering of Pleadings (New Procedure Actions)

O. 17, r. 1.

Proctor to file proxy and tender memorandum of appearance.

1. (1) Where the summons is in Form No. 22 in Appendix I requiring the defendant to enter appearance within the period of ten days of the service of summons, and the defendant enters appearance by Proctor, the Proctor shall present to the Officer of Court authorised in that behalf the proxy in his favour entitling him to appear, together with a memorandum of appearance in Form No. 30 in Appendix I containing the following particulars:—

(*a*) the name of the Court,
(*b*) the number of the action,
(*c*) value of stamps affixed to the proxy,
(*d*) the names of the parties,
(*e*) the date of delivery,

and bearing on the top right hand corner

(*f*) the name of the Proctor, his address for service as required by Rule 1 (3) of Order XII and a statement particularising the defendant or defendants on whose behalf appearance is entered.

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(2) The memorandum shall contain a space for the signature of the officer of Court. Signature of Officer.

(3) The memorandum shall be signed by the person presenting it in the presence of the officer before delivery. Memorandum to be signed before delivery.

(4) The officer shall, if satisfied that the particulars (*a*), (*b*), (*c*), (*e*) and (*f*) set out in the memorandum are in conformity with those in the proxy, he shall sign and seal the memorandum with the seal of the Court which shall show the date of sealing and return it to the person presenting it and file the proxy of record. If in order, memorandum to be signed, sealed and returned by officer.

Explanation : A duly registered clerk of a Proctor may tender the proxy and the memorandum on behalf of such Proctor and may himself sign the memorandum in place of the Proctor.

(5) Where the Officer is not satisfied that the particulars in the memorandum are in conformity with those contained in the proxy, he shall return the documents to the person presenting them for rectification or, if the person presenting them so desires, shall forthwith submit them for the orders of the Court. If not, to be returned for rectification or submitted to Court for orders.

2. Where the defendant enters appearance in person, the procedure prescribed in the preceding rule shall be followed, subject to the following variations: O. 17, r. 2. Defendant in person to tender memorandum in duplicate.

(*a*) In place of the proxy a duplicate copy of the memorandum shall be delivered;

(*b*) in the memorandum the name and the registered address of the defendant shall take the place of the name and the address for service of the Proctor, and in place of the statement particularising the defendant or defendants for whom the Proctor appears there shall be endorsed a statement that the defendant defends in person;

(*c*) the memorandum shall be in Form No. 31 in Appendix I with such variations as circumstances may require;

(*d*) the duplicate of the memorandum shall be filed of record in place of the proxy.

3. If the memorandum presented by a defendant appearing in person does not contain a registered address, it shall not be received. O. 17, r. 3. Irregular memorandum.

4. (1) The defendant may, in lieu of delivering to the officer of Court the memorandum of appearance and the duplicate thereof, enter appearance through the post by sending to the Secretary of the Court by registered letter: O. 17, r. 4. Appearance by post.

(*a*) a memorandum of appearance in Form No. 31 in Appendix I and a duplicate thereof, duly filled up.

(*b*) a postal or money order for Re. 1,

(*c*) a notice of appearance as set out in rule 5 hereof, and a duplicate thereof, duly filled up, and

(*d*) two envelopes each sufficiently stamped, one addressed to the plaintiff's Proctor at the registered address, and the other addressed to the defendant entering the appearance.

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Copy of memorandum to be sent to defendant and copy of notice to plaintiff.

(2) On receipt of these documents the officer shall sign and seal with the seal of the Court, which shall show the date of sealing, the copies of the memorandum and of the notice, and shall file of record one copy each of the memorandum and of the notice, and shall post the other copy of the notice to the plaintiff's Proctor, and the duplicate copy of the memorandum to the defendant.

Remittance to be credited to revenue.

(3) The amount remitted shall be credited to revenue.

O. 17, r. 5.
Notice of appearance to be given to plaintiff's Proctor.

5. (1) The defendant shall on the day on which he enters appearance give notice of his appearance in Form No. 32 in Appendix I with such variations as circumstances may require to the plaintiff's Proctor. The notice may be given authenticated by the signature either of the Proctor entering appearance or of the defendant entering appearance in person, as the case may be, by a notice being either delivered at the registered address or directed by prepaid letter to that address and posted on the day of entering appearance, and shall in either case be accompanied by the sealed memorandum.

Except where appearance entered by post.

(2) Paragraph (1) of this rule shall not apply to a defendant entering an appearance in person through the post under rule 4 of this Order.

O. 17, r. 6.
Undertaking by Proctor to file proxy.

6. (1) Within the time limited for the appearance of a defendant, a Proctor may, either with the consent of the plaintiff's Proctor, or after notice to such Proctor, and on satisfying the Court of the existence of special circumstances entitling him to make an application for such an order, be permitted to file an undertaking to file his proxy for such defendant within such time as may be allowed by Court.

In exceptional circumstances may be allowed ex-parte.

(2) In exceptional circumstances the Court may allow the application ex-parte but the Proctor shall in that event forthwith notify the plaintiff's Proctor of the order of Court.

Where proxy not tendered Proctor to pay stamp fees.

(3) A Proctor not filing a proxy in pursuance of his written undertaking so tendered shall be liable to pay all stamp fees that would have been payable had he in the ordinary course filed his proxy at the date of his undertaking.

O. 17, r. 7.
Time for appearance.

7. A defendant may appear at any time before judgment. If he appear at any time after the time limited by the summons for appearance, he shall not, unless the Court shall otherwise order, be entitled to any further time for delivering his answer or for any other purpose than if he had appeared according to the summons.

O. 17, r. 8.
Time for delivery of answer.

8. Where a defendant has entered an appearance, he or his Proctor, as the case may be, shall deliver his answer to the officer of Court authorised in that behalf within ten days from the date of appearance, unless such time is extended by consent in writing of the plaintiff's Proctor or by the Court after notice to such Proctor.

O. 17, r. 9.
Copy of answer to be served on plaintiff.

9. (1) The Proctor or the defendant, as the case may be, shall on the day on which the answer is delivered to Court, deliver at, or send by prepaid post to, the registered address of the plaintiff a true copy of the answer duly certified by such Proctor or defendant.

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Third party to serve copy of answer on summoning defendant.

(2) (*a*) Where a third party in terms of the provisions of the Order relating to third party procedure is added a party to the action, he shall deliver at, or send by pre-paid post to, the registered address of the summoning defendant the copy of the answer.

And on plaintiff where necessary.

(*b*) And where the third party sets up any defence to the claim preferred by the plaintiff against the summoning defendant, he shall also deliver at, or send by pre-paid post to, the registered address of the plaintiff a copy of the answer.

Provisions applicable to fourth party.

(*c*) The provisions of this Rule shall apply to fourth and subsequent parties to an action.

O. 17, r. 10.
Time for delivery of replication.

10. (1) Where the plaintiff desires to deliver a replication to a claim in reconvention, he shall deliver it within ten days from the date of service of the answer.

Replication where no claim in reconvention.

(2) Where the plaintiff desires to deliver a replication to an answer which contains no claim in reconvention, he shall, with notice to the defendant, apply to Court within ten days from the service of the answer for an order permitting him to file such replication, and unless the Court directs to the contrary, shall file it within ten days from the date of granting the application.

Extension of time.

(3) Extension of the time for delivery of replication may be allowed in like manner as in the case of an answer.

O. 17, r. 11.
Mode of delivery and service.

11. The provisions of Rules 8 and 9 of this Order shall mutatis mutandis apply to the delivery and service of the replication.

O. 17, r. 12.
Defect in plaint to be raised by motion.

12. (1) A defendant may within the time limited for the delivery of his answer with notice to the plaintiff's Proctor apply to Court by way of motion—

(*a*) for an order directing the plaintiff to amend the plaint, rectify the valuation of relief claimed, or supply any deficiency in the stamp duty payable thereon as the case may be, for any of the reasons (so far as applicable) for which the Court may return or reject a plaint under Rule 5 of Order XIII,

(*b*) for an order of dismissal on any of the grounds set out in Rule 6 of Order XIII.

Amendment not to alter character of action.

(2) No amendment however shall be allowed which would have the effect of converting an action of one character into an action of another and inconsistent character.

Where plaint not amended as ordered, action to be dismissed.

(3) Where the plaint is not amended or the valuation not rectified or the deficiency not supplied as ordered by Court, or where the Court is satisfied that it has no jurisdiction, the action shall be dismissed, but such dismissal shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

O. 17, r. 13.
Defect in answer to be raised by motion.

13. (1) A plaintiff may within ten days of the service of the answer on him with notice to the defendant apply to Court by way of motion for an order directing the defendant to amend the answer or supply any deficiency of stamp duty as the case may be, for any of the reasons for which the Court may, acting under Rule 3 of Order XV, return or reject an answer.

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Where answer not amended as ordered, answer deemed not filed.

(2) Where an answer is not amended or deficiency not supplied as ordered the defendant shall be regarded as having failed to file answer.

O. 17, r. 14. Costs.

14. In disposing of any of the applications under the last two preceding Rules the Court may make such order as to costs as to it shall seem proper.

O. 17, r. 15. Time within which amendment to be filed.

15. (1) Where the Court allows or directs amendment of the plaint, answer or replication, such amended plaint, answer or replication shall unless the Court otherwise directs, be filed within ten days of the date of the order allowing or directing the amendment.

Time within which opposite party may file his pleadings of amendment.

(2) Where, after or in consequence of an amendment of, or rectification to, the plaint or answer, an answer or replication has to be filed, or it becomes necessary to amend an answer or replication already filed, the defendant or the plaintiff, as the case may be, shall file the answer or replication or the amendments thereof within ten days from the date of service of the amended plaint or answer, as the case may be.

Computation of time for next step where amendment is refused or not filed.

(3) Where a plaint, answer or replication is amended, or where the Court disallows or refuses amendment of a plaint or answer or the application for any amendment thereof, or where, after the Court has allowed or directed the amendment of a plaint, answer or replication no such amendment is filed, in computing the time for the next step to be taken by any party, the day on which such amendment may be filed, or the day of such disallowance or refusal, or the last day permitted for the filing of such amendment shall be deemed to be the day on which the preceding step or act had been taken or done.

ILLUSTRATION

Action for damages for negligence. Defendant enters appearance but before time limited for the filing of his answer plaintiff moves to amend the plaint. Court allows the application. An amendment is filed, and copy of the amended plaint is served on the defendant. The next step to be taken is for the defendant to file his answer. For the purpose of computing the time for filing his answer, the day on which the amended answer was filed in Court would be deemed to be the day of his entering appearance, as that would be the preceding step from which the time would have to be computed for the filing of his answer.

O. 17, r. 16. Form of notice to added party.

16. (1) Notice calling upon a person to show cause why he should not be added a party defendant in respect of an action governed by the new procedure shall be in Form No. 33 in Appendix I requiring him to enter appearance within ten days of the service of notice.

Time for delivery of objection.

(2) Where such person enters appearance, he shall have ten days from the date of entering such appearance to file a statement of objections.

Provisions relating to summons to apply.

(3) The provisions of this order shall mutatis mutandis apply to the entering of appearance and to the filing of objections as if the notice were a summons and the statement of objections an answer.

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(4) The party issuing notice shall thereafter take steps to have the date for inquiry into such objection determined by Court in accordance, so far as they are applicable, with the provisions relating to the fixing of a date for trial contained in Order XIX.

Date for inquiry to be governed by provisions of Order 19.

ORDER XVIII

Default of Appearance or in Delivery of Pleadings (New Procedure Actions)

1. Where the defendant fails to enter appearance within the time limited by the summons or such other time as may be allowed by Court, the trial of the action shall proceed ex-parte as set out in the Rules following.

O. 18, r. 1.
Defendant in default, ex-parte trial.

2. (1) Where the action is one for the recovery of—

(*a*) damages arising whether out of contract or tort, or

(*b*) movable property with or without a claim for damages, the Court shall on the motion of the plaintiff fix a date for the ex-parte hearing of the action, if satisfied that the defendant has been duly served with summons.

O. 18, r. 2.
In action for damages date to be fixed for ex-parte hearing.

(2) Oral evidence shall be placed before the Court with regard to the claim made, and the Court shall make an assessment of—

(*a*) the damages claimed,

(*b*) the value of the movable property and damages, if any, and enter such judgment as to it shall seem proper.

And oral evidence to be placed before Court.

(3) No oral evidence need, however, be given where damages claimed against an over-holding tenant are not in excess of the rent.

Not where damages against over-holding tenant do not exceed the rent.

ILLUSTRATION

Action for damages for Rs. 10,000 for breach of promise of marriage. Where defendant fails to enter appearance within time, the plaintiff must file a motion and move the Court to fix a date for the ex-parte hearing of the action; the Court shall, on being satisfied by reference to the record that summons has been duly served on the defendant and that he is in default, set down a date to take oral evidence of the plaintiff's claim. The plaintiff must place before Court by means of oral testimony evidence in support of his claim, and in particular of the damages claimed by him. The Court must proceed, if satisfied that the plaintiff has made out the case, to assess the damages claimed before entering judgment.

3. (1) In regard to actions governed by the New Procedure and not falling under rule 2 of this Order, no oral evidence shall be necessary, unless the Court in any particular case makes order to the contrary.

O. 18, r. 3.
In other actions no oral evidence necessary.

(2) The plaintiff may without moving for a date place evidence before the Court ex-parte in support of his claim by affidavit or affidavits and move for judgment, and the Court, if satisfied that the defendant has been duly served with summons and that the plaintiff is entitled to the relief claimed by him either in its entirety or subject to modification, may enter such judgment in favour of the plaintiff as to it shall seem proper.

Plaintiff may move for judgment on affidavit.

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Court to hear plaintiff before modifying relief claimed.

(3) Where the Court is of opinion that the entirety of the relief claimed by the plaintiff cannot be granted, the Court shall hear the plaintiff before modifying the relief claimed.

ILLUSTRATION

Action for house rent. After expiry of time within which the defendant should have entered appearance and where no appearance has in fact been entered, the plaintiff may file ex-parte an affidavit or affidavits setting out the relevant facts and circumstances giving rise to his claim and establishing the relief claimed by him and move for judgment without asking for a special date for ex-parte hearing. If the Court is satisfied by reference to the record that the defendant has been duly served with summons and that he is in default of appearance, Court may enter judgment for the plaintiff as prayed for if satisfed with the evidence furnished by the affidavits.

Where the Court is of opinion that the house rent claimed, having regard to the standard rent, is excessive the Court may, after notice to the plaintiff and hearing him, enter judgment for such smaller sum as it considers the plaintiff to be entitled to having regard to the Rent Restriction Ordinance.

O. 18, r. 4. Mixed actions.

4. (1) Where the plaint contains more than one cause of action, one or more of which fall under rule 2 of this Order and the other or others of which fall under rule 3 of this Order, the action shall be deemed to be one falling under rule 2 of this Order.

Claim for interest not provided for.

(2) Where interest is claimed for a period anterior to the date of action in either a claim not founded upon an instrument or a claim founded upon an instrument not providing for the payment of interest, the action shall be deemed to be one falling under rule 2 of this Order.

Claim for interest at legal rate from date of action.

(3) Where in respect of a claim as in the preceding paragraph mentioned interest is claimed at the rate of interest allowed by law from the date of institution of action to date of decree and thereafter on the aggregate amount of the claim and interest from date of action to date of decree, the action shall not by reason thereof be deemed to fall under rule 2 of this Order.

ILLUSTRATION

1. Action for goods sold and delivered. Where the plaintiff claims interest up to date of action, though such claim be based upon an allegation that bills rendered to the defendant contained a statement that interest would be charged if payment was not made within a specified time, nevertheless, as the action is not upon an instrument, the action must in terms of rule 2 of this Order be set down for ex-parte hearing for oral testimony to be placed before the Court, so that inter alia the Court may adjudicate upon the claim for interest.

2. Action upon cheque, Plaintiff claims interest at the legal rate from date of action to date of decree and thereafter on the aggregate amount at the same rate till payment. Plaintiff is entitled to move for judgment by filing affidavit in terms of rule 3 of this Order.

O. 18, r. 5. Ex-parte trial against defendants in default to be taken up along with trial against those not in default.

5. In cases falling under rule 2 of this Order, where there are several defendants of whom one or more enter appearance and another or others of whom fail to appear, the plaintiff may move to have the action set down for ex-parte trial against such of the defendants as may be in default, but the ex-parte trial shall be taken up at the same time as the trial of the action against such of the defendants as are not in default either of appearance or of pleading.

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O. 18, r. 6.
In other actions, trial ex-parte may proceed against defaulting defendants.

6. (1) In cases falling under rule 3 of this Order, where there are several defendants of whom one or more enter appearance and another or others of whom fail to appear, the plaintiff may move for ex-parte judgment as provided in rule 3 of this Order against such of the defendants as may be in default and may issue execution upon such judgment without prejudice to his right to proceed with the action against such defendants as may have appeared.

Even in actions upon Bills of Exchange, &c.

(2) Notwithstanding that the defendants are jointly liable upon a bill of exchange, promissory note or cheque, the provisions of paragraph (1) of this rule shall nevertheless apply.

O. 18, r. 7.
Oral evidence may be led where decree is to be sued upon in foreign Court.

7. Where in an action falling under rule 3 of this Order the plaintiff deems it necessary that oral evidence should be heard by Court before adjudicating upon his claim with a view to suing upon the judgment that may be entered therein in a foreign Court, it shall be competent to the plaintiff to make application to Court by way of motion to have the case set down for ex-parte hearing as provided for by rule 2 of this Order.

O. 18, r. 8.
Default in pleading.

8. Where the defendant after having entered appearance makes default in delivering his answer within the time limited or allowed for that purpose, the action shall proceed as if the defendant had failed to enter appearance.

O. 18, r. 9.
Judgment by default may be set aside.

9. Where judgment has been entered against the defendant for default of appearance or of delivery of answer, such judgment may be set aside and order made in accordance with and subject to the conditions prescribed by rule 4 of Order XVI.

O. 18, r. 10.
Consequence and cure of default at preliminary investigation or trial.

10. Where the plaintiff or defendant or both make default in appearing on the day fixed for the preliminary investigation or for the trial, the consequence and cure of such default shall be governed by the provisions for like default under Order XVI, save that where ex-parte trial is ordered it shall be proceeded with in conformity with rules 2 and 3 of this Order.

O. 18, r. 11.
Setting aside of judgment irregularly entered.

11. Where judgment by default has been entered irregularly, the Court shall, upon the application of the defendant, with notice to the plaintiff, set aside the judgment if satisfied of the irregularity complained of and direct the action to be proceeded with as from the stage at which judgment by default was entered upon such terms as to costs or otherwise as to the Court shall appear proper.

ORDER XIX

Close of Pleadings and fixing Date for Preliminary Investigation or Trial—(New Procedure Actions)

O. 19, r. 1.
When pleadings deemed to be closed.

1. On the expiration of three days from—

(*a*) the date of delivery either of the answer, where it contains no claim in reconvention, or where no order for replication has been made under Rule 10 (2) of Order XVII, or of any amendment thereof, or

(*b*) the date limited or allowed for the delivery either of replication, where the answer contains a claim in reconvention, or where replication has been allowed by Court, or of any amendment thereof,

pleadings shall be deemed to be closed and all material statements of fact and questions of law in the pleadings last delivered shall be deemed to have been denied and put in issue.

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O. 19, r. 2. Where Proctors agree, date for preliminary investigation to be fixed.

2. Not later than ten days from the close of pleadings the proctor appearing for the plaintiff shall with the concurrence of the other proctors appearing in the action apply by way of motion to the Court to appoint a day for the preliminary investigation of the action.

O. 19, r. 3. Where defendant's Proctor does not consent, plaintiff's Proctor may apply ex-parte for preliminary investigation.

3. (1) Where the plaintiff's Proctor is unable to secure the concurrence of the other Proctors appearing in the action (save those excepted by rule 6 (4) of this Order) but considers that a preliminary investigation would tend to a speedy disposal of the action, he may by motion ex-parte apply to the Court to appoint a day for preliminary investigation.

Objection of dissentient Proctor to be annexed.

(2) The motion bearing the endorsement of objection or endorsements of objection and concurrence shall be annexed to the ex-parte motion.

O. 19, r. 4. Where Proctors agree, date of trial to be fixed.

4. Where the plaintiff's Proctor does not consider that a preliminary investigation would tend to a speedier disposal of the action, he may, not later than ten days from the close of pleadings, move by way of motion, with the concurrence of the other Proctors appearing in the action, to have the case set down for trial.

O. 19, r. 5. Where plaintiff's Proctor does not consent, defendant's Proctor may apply for preliminary investigation.

5. (1) Where the concurrence of a Proctor for a party defendant is sought to have the action set down for trial, and such Proctor considers that a preliminary investigation would be beneficial and in the interest of all parties, he may retain the motion of the Proctor for plaintiff, and after notifying the Proctor for the plaintiff within forty-eight hours of the receipt of the motion by him of his intention, apply to Court not later than ten days from the service of the motion on him by way of motion ex-parte to appoint a day for preliminary investigation.

Securing concurrence of other Proctors.

(2) Where more Proctors than one appear for the defendants, the Proctor making the application shall obtain a memorandum signifying the concurrence or otherwise of the other Proctors, if possible.

Objection or concurrence of other Proctors to be annexed.

(3) The motion of the plaintiff's Proctor as well as the memorandum bearing the endorsement of concurrence or otherwise of the other Proctor or Proctors shall be annexed to the ex-parte motion.

O. 19, r. 6. Consequences of default of defendant in making application for preliminary investigation.

6. Where a Proctor for a party defendant after notifying the Proctor for the plaintiff of his intention to apply to Court to have a date appointed for preliminary investigation fails to make such application within the period allowed therefor, or sufficiently excuse his default to the satisfaction of the Court, with notice to all other Proctors in the action, the defence of the defendant for whom such Proctor appears may be struck out, or such order as to costs or otherwise, or both, may be made, and where order is made striking out the defence of such defendant, the action from the date of such order shall proceed ex-parte against such defendant.

O. 19, r. 7. Mode of securing concurrence.

7. (1) The motion under Rule 2 or 4, or the memorandum under Rule 5 of this Order (or a copy or copies thereof) shall be forwarded by the applicant to the Proctor or Proctors whose concurrence is sought and the Proctor or Proctors shall signify his or their concurrence or otherwise, by endorsement made on the motion or memorandum, adding briefly a note of the reason

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where objection is preferred and return the motion or memorandum not later than forty-eight hours of its receipt, save where a Proctor for a defendant proceeds under paragraph (1) of Rule 5.

Non-return of motion to be endorsed.

(2) Where a motion or memorandum forwarded under the preceding paragraph is not returned within the time specified therein, the applicant shall file a copy thereof in Court with an endorsement of such non-return.

Non-return deemed concurrence.

(3) Where a Proctor fails to return a motion or memorandum, and in the case of a motion under Rule 4 without notifying to the Proctor his intention to proceed under paragraph (1) of Rule 5, he shall be deemed to have signified his concurrence in the application.

Concurrence of Proctor for formal party not necessary.

(4) The concurrence of a Proctor for a party who has been added as a formal party to the action and between whom and any other party no issue arises for determination of Court shall, however, not be necessary.

O. 19, r. 8.
Assent of unrepresented parties unnecessary.

8. Where there are more defendants than one to an action, and one or more of them appear by Proctor while the other or others of them appear in person, the assent of the defendants appearing in person shall not be necessary for proceedings under Rules 2 to 6 of this Order.

O. 19, r. 9.
Order for preliminary investigation at discretion of Court.

9. (1) Where application is made to Court under Rule 3, 4 or 5 of this Order, the Court may in its discretion either grant the application and fix a day for preliminary investigation under Rules 3 or 5 or trial under Rule 4, or refuse the application and fix a day either for trial or for preliminary investigation as the case may be.

Party making application to be heard.

(2) The Court shall hear the party or parties making the application before it makes order refusing it.

Order final and unappealable.

(3) The order made by the Court on any such application shall be final and shall not be subject to appeal.

O. 19, r. 10.
Where defendants appear in person, date of trial to be fixed.

10. Rules 2 to 9 of this Order shall not apply to an action where a sole defendant, or where there are more defendants than one, all the defendants appear in person, and in such a case the Proctor for the plaintiff shall not later than ten days from the close of pleadings move the Court ex-parte for a day for trial and a date shall thereupon be fixed by Court.

O. 19, r. 11.
Where parties do not agree upon dates, Court to fix dates after notice to parties.

11. Where the parties do not agree upon common dates for preliminary investigation or trial, the Court shall fix a date for the appearance of parties before it, and the party applying for the date shall notice the other parties to the action of the date so fixed by Court, and the Court shall proceed on that date to fix a day for preliminary investigation or trial as the case may be either in the presence of all the parties to the action or of such parties as are present on being satisfied that the absent parties have received due notice.

O. 19, r. 12.
Date for preliminary investigation to be fixed so as to avoid postponement.

12. (1) Where an action is set down for preliminary investigation, the date shall be fixed having regard to the volume of business in the Court on the particular day and the convenience of all parties to the action with a view to ensure the disposal of the preliminary investigation on the day so fixed and thereby avoid postponement thereof.

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Similarly date for trial.

(2) In appointing a day of trial the Court shall so far as practicable have regard to the provisions of Rules 15 and 16 of Order XXVII and the parties shall be governed by the provisions of Rule 17 of the said Order.

O. 19, r. 13. Convenience of parties to be ascertained before fixing date.

13. The Proctor on whose application the day for preliminary investigation or trial is fixed shall be responsible for ascertaining the convenience of the other parties to the action and shall within forty-eight hours of the day being fixed notice the other Proctors and unrepresented parties of the day so fixed.

O. 19, r. 14. Date of preliminary investigation may be advanced or postponed.

14. The Court may either on its own motion or on the application of any party for sufficient cause and after notice to and hearing all parties or of such parties as are present, on proof that the absent parties have received notice of the application, advance or postpone the day for preliminary investigation or trial.

O. 19, r. 15. Where plaintiff fails to take steps action to be dismissed.

15. If the plaintiff does not within ten days from the close of pleadings move, as provided in this Order, for a day either for preliminary investigation or for trial, the defendant shall be at liberty to apply for an order to dismiss the action, and upon such application the Court may either dismiss the action on such terms as to it may appear proper or deal with such application in all respects as if it were an application to fix a day for preliminary investigation or trial.

O. 19, r. 16. Dismissal of action in default may be set aside.

16. Where the plaintiff's action is dismissed under the last preceding rule, the provisions of Rule 2 of Order 16 shall *mutatis mutandis* apply.

ORDER XX

Listing of Documents

O. 20, r. 1. Every party to file list of documents relied on.

1. (*a*) After notice to the opposite party, and not less than ten days before—

(i) the day fixed for preliminary investigation, or

(ii) where no preliminary investigation has been ordered, the day fixed for the trial;

or

(*b*) with the consent of the opposite party at any time before the days specified in (*a*) (i) and (ii) above,

every party to the action who relies on any documents (whether in his possession or power or not) as evidence in support of his claim or defence shall file a list of such documents in Court indicating therein the documents (hereinafter called excluded documents), if any, to an inspection of which by the opposite party he objects.

O. 20, r. 2. Documents not in possession of party.

2. Where any such document is not in the possession or power of the party listing it, he shall, if possible state in whose possession or power it is.

O. 20, r. 3. Document not listed inadmissible in evidence.

3. A document which ought to be listed by a party as required by this Order and which is not listed accordingly, shall not, without the leave of Court, be received in evidence on his behalf at the trial.

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O. 20, r. 4. Documents excluded from list.

4. Nothing in this Order applies to documents produced for purposes of cross-examination only, or handed to a witness merely to refresh his memory.

O. 20, r. 5. Inspection to be given on request.

5. (1) A party shall at the request of the opposite party give inspection of all documents set out in the list filed by him, save the excluded documents.

Otherwise Court to compel.

(2) Where difficulty is experienced in obtaining inspection as aforesaid or such inspection cannot be had, application may be made ex-parte by way of motion for leave of Court to issue on the party from whom inspection is sought a notice of inspection.

Form of notice to be served.

(3) The party obtaining leave shall serve notice on the party from whom inspection is sought and such notice shall be in Form No. 41 in Appendix I with such variations as circumstances may require.

O. 20, r. 6. Non-excluded documents to be admitted without proof.

6. (1) Every document other than an excluded document named in a list of documents filed by any party shall be *prima facie* evidence, if produced from proper custody—

(*a*) that the document is what it purports to be, and

(*b*) that any writing, signature, or initials, appearing in the document is that or are those of the person or persons whose writing, signature, or initials, it or they purport to be

and shall be admitted in evidence without proof thereof, except where notice that any such document or any class of such documents is challenged as to its authenticity is given to the party listing such document

(i) at or before the preliminary investigation, where preliminary investigation has been ordered;

(ii) where no preliminary investigation has been ordered within five days of the date of filing such list of documents and such list of documents is filed not less than twenty days before the day fixed for trial.

Contents therein admissible without further proof.

(2) Where a document is admitted in terms of paragraph (1), the contents of such document shall be received as evidence of the facts stated therein (without calling the maker as a witness), provided that the statements contained therein would be admissible if given in evidence orally by the maker of the document.

Costs of proving authenticity or contents of shipping or rail documents to be borne by party objecting.

(3) Where the authenticity or the contents of a document whether executed or made within or without the Island, relating to carriage of goods by sea or to conveyance of goods by rail is or are challenged, the costs of proving the authenticity or the contents thereof shall, irrespective of the decision of the case, be borne by the party challenging such authenticity or contents, as the case may be, unless the Court certifies that in all the circumstances of the case legal proof of the authenticity or of the contents, as the case may be, was properly and reasonably called for.

Explanation.—Documents relating to carriage of goods by sea or to conveyance of goods by rail shall include a charter party, bill of lading, mate's or master's receipt, consignment note, conditions of conveyance, waybill, certificate or policy of, or other document relating to, insurance effected over goods carried or conveyed under any such document aforesaid, and certificates of average.

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O. 20, r. 7. Secondary evidence of non-excluded document may be given without proof.

7. Where inspection of a non-excluded document has not been given though request be made therefor secondary evidence of the contents of such document may be given by the party applying for such inspection.

ORDER XXI

Interrogatories, Discovery and Inspection

O. 21, r. 1. Interrogatories.

1. Any party may at any time not less than fifteen days before—

(*a*) the day fixed for the preliminary investigation, or

(*b*) where no preliminary investigation has been ordered, the day fixed for the trial,

by leave of Court to be obtained on motion ex-parte deliver interrogatories in writing for the examination of the opposite party, or where there are more opposite parties than one, of any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such person is required to answer.

O. 21, r. 2. Form of interrogatory.

2. Interrogatories shall be in Form No. 42 in Appendix I with such variations as circumstances may require.

O. 21, r. 3. Opposite party.

3. For the purposes of this Order, " opposite party " means a party between whom and the party interrogating an issue has been raised.

O. 21, r. 4. Application for leave to deliver interrogatories.

4. On a motion for leave to deliver interrogatories the particular interrogatories proposed to be delivered shall be submitted to the Court; and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the action or for saving costs.

O. 21, r. 5. Matters deemed irrelevant.

5. Interrogatories which do not relate to any matters in question in the action shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

O. 21, r. 6. Actions for defamation.

6. In an action for defamation where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's source of information or grounds of belief shall be allowed.

O. 21, r. 7. Cost of unreasonable interrogatories to be borne by party in fault.

7. 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 in any event by the party in fault.

O. 21, r. 8. Interrogatories to company, etc.

8. Where any party to an action is—

(*a*) a corporation, board or public body,

(*b*) a company or 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, or

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(*c*) a firm duly registered under the Business Names Ordinance,

any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, board, public body, company or other body or firm, and an order may be made accordingly.

O. 21, r. 9. Not more than one set of interrogatories to the same party.

9. No party shall deliver more than one set of interrogatories to the same party without the permission of the Court.

O. 21, r. 10. No interrogatories to plaintiff till defendant has answered.

10. No defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously delivered his answer.

O. 21, r. 11. To be answered by affidavit.

11. Interrogatories shall be answered by affidavit within ten days from the service thereof, or within such other time as the Court may allow, and such affidavit shall be served on the party interrogating.

O. 21, r. 12. Form.

12. Affidavit to answer interrogatories shall be in Form 43 in Appendix I with such variations as circumstances may require.

O. 21, r. 13. When party may refuse to answer.

13. Any party called upon to answer interrogatories, whether by himself or by any member or officer under Rule 8 of this Order may refuse to answer any interrogatory on the ground that it is scandalous or irrelevant or is not put bona fide for the purpose of the action, or that the answer will tend to incriminate himself, or that the matter inquired after is not sufficiently material at that stage of the action or on any other like ground; such refusal shall be in writing and shall be served on the party interrogating.

O. 21, r. 14. Application for further answer.

14. Where any person interrogated omits or refuses to answer or answers insufficiently any interrogatory, the party interrogating may with notice to the party interrogated 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.

Provided that the Court shall not require an answer to an interrogatory which in its opinion need not have been answered under the provisions of the preceding rule.

O. 21, r. 15. Use of answer to interrogatories at trial.

15. Any party may, at the trial of an action, use in evidence any one or more of the answers, or any part of the answer, of the opposite party to the interrogatories without putting in the others, or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last mentioned answers ought not to be used without them, it may direct them to be put in.

O. 21, r. 16. Notice to admit genuineness of documents.

16. (1) Any party may by a notice (which shall be in Form No. 44 in Appendix I with such variations as circumstances may require) served within a reasonable time not less than ten days before—

(*a*) the day for the preliminary investigation, or

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(*b*) where no preliminary investigation has been ordered the day fixed for the trial,

require any 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.

No costs of proof where no notice to admit given.

(2) If such notice be not given, no costs of proving such document shall be allowed, unless the Court otherwise orders.

Party unreasonably refusing to bear costs of proof.

(3) If such notice is not complied with within five 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.

Admission to be served.

(4) The admission shall be made in writing (in Form No. 45 in Appendix I with such variations as circumstances may require) signed by the party or his Proctor, and shall be served on the party requiring the admission.

O. 21, r. 17.
Discovery of documents at instance of party.

17. (1) (*a*) Any party to the action may at any time not less than fifteen days before—

(i) the day fixed for preliminary investigation, or

(ii) where no preliminary investigation has been ordered the day fixed for the trial,

serve notice on any other party to the action requiring him 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.

Affidavit of documents to be served.

(*b*) The affidavit of such documents shall be served on the party serving the notice within ten days from the service of the notice.

In case of non-compliance, Court may compel.

(*c*) Where the affidavit is not served within the time allowed, the party serving the notice may, after notice to the opposite party, apply to the Court for an order to obtain compliance with the notice served under paragraph (*a*) hereof.

Discovery of documents at instance of Court.

(2) The Court may at any time during the pendency of any action order any party to the action to declare by affidavit all such documents as are referred to in paragraph (1) (*a*) within such time as may be specified in the Order or where no time is fixed therein within ten days of the date of the order.

Objection to production of document to be specified.

(3) Every affidavit made under this Rule shall specify which, if any, of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection.

O. 21, r. 18.
Order for production of documents.

18. The Court may at any time during the pendency 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 shall think right ; and the Court may deal with such documents, when produced, in such manner as may appear to it to be just.

O. 21, r. 19.
Notice to produce documents for inspection.

19. (1) Any party to an action may at any time not less than fifteen days before—

(*a*) the day for preliminary investigation, or

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(*b*) where no preliminary investigation has been ordered, the day fixed for trial,

serve notice on any other party in whose pleadings or affidavits reference is made to any document requiring such party 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.

Where notice not complied with, documents not to be put in evidence.

(2) Any party failing to comply with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action, unless he shall satisfy the Court that he had sufficient cause for not complying with such notice.

O. 21, r. 20.

Notice of inspection of documents not disclosed.

20. (1) Any party to an action may at any time not less than fifteen days before—

(*a*) the day for preliminary investigation, or

(*b*) where no preliminary investigation has been ordered the day fixed for trial,

by motion ex-parte obtain leave of Court to issue notice on any other party to the action to inspect such documents as are in the possession or power of such other party and not referred to in the pleadings, list of documents or affidavits filed by such other party.

Notice to be served.

(2) The party obtaining leave shall serve notice on the party from whom inspection is sought.

Application to be supported by affidavit.

(3) The motion shall be supported by 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.

O. 21, r. 21.

Form of notice for inspection.

21. Notice to produce for inspection any document under the provisions of this Order shall be in accordance with the form prescribed under Rule 5 (3) or Order XX with such variations as circumstances may require.

O. 21, r. 22.

Time and place of such production to be specified by party issuing notice.

22. The party served with notice under either of the two preceding Rules or Rule 5 of Order XX shall within six days from the receipt thereof, deliver to the party giving the same a notice (in Form No. 48 in Appendix I with such variations as the circumstances may require) stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his Proctor, or some other convenient place, and stating which, if any, of the documents he objects to produce and on what grounds.

O. 21, r. 23.

Order for inspection to be made by Court.

23. (1) Where the party served with notice under either Rule 19 or Rule 20 of this Order or Rule 5 of Order XX omits to give notice of a time for inspection, or objects to give inspection, or names an inconvenient place for inspection, or where inspection is desired of the excluded documents referred to in Rule 1 of Order XX, the party desiring inspection may apply to the Court, with notice to the opposite party, for an order for inspection in such place and in such manner as to the Court shall seem fit.

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(2) Where the order for inspection is made in the absence of the opposite party, a copy of such order shall be served on such party by the party obtaining the order. Copy of order made in absence of party to be served.

24. Where inspection of any business books is applied for, the party giving inspection may instead of producing the original books, furnish a copy of the relevant entries therein verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations : O. 21, r. 24. Verified copies.

Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

25.(1) Where on an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege. O. 21, r. 25. Court may inspect document for which privilege is claimed.

(2) This rule shall not apply to the Crown. Except where claims made on behalf of Crown.

26. The Court may, on the application of any party to an action at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made, has or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the action or to some of them. O. 21, r. 26. Discovery of particular documents.

27. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought 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 issue or question should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection. O. 21, r. 27. Court may reserve question as to discovery or inspection.

28. (1) Where any party fails to comply with any order of Court to answer interrogatories, or for discovery, production or inspection of documents, either made in his presence or duly served on him, 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. O. 21, r. 28. Consequences of not complying with order of Court.

(2) Service of an order for interrogatories or discovery or production or inspection made against any party on his Proctor shall be sufficient service to found proceedings for the offence of contempt of Court for disobedience to the order. But the party against whom proceedings for contempt are taken may show that he had no notice or knowledge of the order. Service on Proctor of order sufficient to found proceedings for contempt.

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O. 21, r. 29.

Court may inspect records of other Courts.

29. (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 proceedings, and inspect the same.

Application by party to be supported by affidavit.

(2) Every application made under this rule 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.

Document inadmissible under the Law cannot be used as evidence.

(3) Nothing in this rule shall be deemed to enable the Court to use in evidence any document which by the law of evidence would be inadmissible in the action.

O. 21, r. 30.

Provisions as to documents apply to other material objects.

30. The provisions herein contained as to documents shall, as far as may be, apply to all other material objects producible as evidence.

O. 21, r. 31.

In action for personal injuries, injured person may be ordered to submit himself for medical examination by opposite party.

31. (1) Where the action is one for damages for personal injuries sustained as a result of collision between transport and transport or person and transport, whether on land, water or in air, it shall be competent to the Court to order the injured person to submit himself to medical examination by one or more medical practitioners nominated by the opposite party.

At such examination injured party entitled to have his medical witness.

(2) It shall be lawful for the injured person to have one or more medical practitioners of his own choice to be present at such examination.

Consequence of failure to comply with order of Court.

(3) Where the injured party fails or refuses to comply with an order of Court made under paragraph (1) the Court shall be entitled to draw all such inferences against such party as in all the circumstances of the case can properly be drawn by reason of such failure or refusal.

O. 21, r. 31.

Such medical evidence inadmissible unless report made available to injured party.

(4) The evidence of the medical practitioner or practitioners referred to in paragraph (1) shall not be received in evidence unless a copy of his or their report has been made available to the injured party or his proctor at least ten days before the date of trial.

O. 21, r. 32.

Court to authorise issue of extract from information book.

32. (1) Where an action of the nature specified in paragraph (1) of the preceding Rule has been instituted the Court may, on the application of any Proctor who has entered appearance for any of the parties to such action, authorize the issue by the officer-in-charge of a Police Station certified copies of such entries as may be specified in the authorisation and recorded in the Information Book relative to the collision in respect of which the action has been instituted:

Provided that no such authorisation shall be made—

(i) where criminal proceedings are pending in a Court of Law in respect of any offence alleged to have been committed in relation to such collision,

(ii) in respect of any statement made by a person other than the parties to the action or their servants or agents, or those who may be regarded as their servants or agents, except with the consent of such person.

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Duty of Police Officer to issue extract.

(2) It shall be the duty of the Police Officer in charge of such Station, on production of such authorisation, to issue on payment of such copying fees as may be prescribed in that behalf, certified copies of all such entries as may be specified in such authorisation.

O. 21, r. 33.
Crown may be required to comply with this Order.

33. (1) In any action to which the Crown is a party, the Crown may be required by the Court to make discovery of documents, produce documents, give inspection of documents and to answer interrogatories, and a party may apply to the Court for a like order, and such order shall be served on the Crown.

Not where in the opinion of a Minister it would be injurious to the public interest.

(2) Paragraph (1) shall not prejudice the right of the Crown to withhold any document or refuse to answer any question on the ground that the disclosure of the document or the answer to the question would in the opinion of a Minister of the Crown be injurious to the public interest.

ORDER XXII

Admissions

O. 22, r. 1.
Notice to admit facts.

1. Any party may by notice in writing served at any time not later than ten days before—

(*a*) the day for preliminary investigation,

or

(*b*) where no preliminary investigation has been ordered, the day fixed for trial,

require any other party to admit, for the purposes of the action, matter or issue only, any specific fact or facts mentioned in such notice.

O. 22, r. 2.
Admission may be made by party or Proctor.

2. Any admission made in pursuance of such notice may be made by the party called upon to make the admission or by his Proctor on the record.

O. 22, r. 3.
Admissions privileged.

3. Any such admission shall be deemed to be made only for the purposes of the particular action, matter or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving notice; and the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

O. 22, r. 4.
Costs of proving facts not admitted to be paid by party failing to admit.

4. In case of refusal or neglect to make admission of a fact or of facts required to be admitted under Rule 1 within six days from the date of service of the notice to admit or within such further time as may be allowed by the Court, on application made to Court in that behalf, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless the Court otherwise directs.

O. 22, r. 5.
Forms of notice and admissions.

5. A notice to admit facts shall be in Form No. 50 in Appendix I and admissions of facts shall be in Form No. 51 in Appendix I with such variations as circumstances may require.

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ORDER XXIII

Affidavits

O. 23, r. 1. Contents of affidavit.

1. (1) 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, or on the direction or order of Court under the provisions of Order XXVII, when statements of his belief may be admitted, provided that the grounds for such belief be set forth in the affidavit.

Costs of prolix affidavit to be borne by party filing it.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of, or extracts from, documents shall, unless the Court otherwise directs, be paid by the party filing the same.

O. 23, r. 2. Petitions cannot be converted to affidavits.

2. A petition stating facts of observations 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.

O. 23, r. 3. Who may administer oaths.

3. In the case of any affidavit under this Code, any Court or Magistrate or Justice of the Peace or Commissioner of Oaths appointed under the Oaths Ordinance may administer the oath or affirmation to the declarant.

O. 23, r. 4. Evidence on affidavit.

4. 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 this Order shall be sworn or affirmed to by the person professing to make the statement embodied in the affidavit before any Court or Magistrate 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 Magistrate or Justice of the Peace, or Commissioner to administer the oath or affirmation.

O. 23, r. 5. Description of declarant.

5. Every affidavit shall state the description and true place of abode of the declarant.

O. 23, r. 6. Form of affidavit.

6. Every affidavit shall be drawn up in the first person, be fairly and legibly written or typed or printed, and be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be, shall be confined to a distinct portion of the subject.

O. 23, r. 7. Affidavits by two or more declarants.

7. In every affidavit made by two or more declarants the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the declarants is sworn or affirmed to at one time it shall be sufficient to state that it was sworn or affirmed to by both or all of the " above-named " declarants.

O. 23, r. 8. Use of defective affidavit.

8. The Court may receive any affidavit sworn or affirmed to for the purpose of being used in any cause or matter, notwithstanding any defect by mis-description of parties or otherwise in the title or jurat or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

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O. 23, r. 9. Affidavit to be duly entitled and to be signed by declarant.

9. 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, Magistrate, Justice of the Peace, or Commissioner, before whom it is affirmed or sworn.

O. 23, r. 10. Affidavit of illiterate or blind person.

10. (1) Where the declarant is blind or illiterate the affidavit shall be read over to him and the jurat shall express that it was so read over to him in the presence of the Court, Magistrate, 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 such Court, Magistrate, Justice of the Peace or Commissioner.

Scribe of marksman to sign.

(2) Where 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, Magistrate, Justice of the Peace or Commissioner.

O. 23, r. 11. Affidavit to be fair written.

11. (1) Every affidavit must be fairly written and must exhibit no erasures or blotting or blanks.

Alteration of affidavit.

(2) Where any alteration is needed to be made in the original writing before it is sworn or affirmed to, every excision of a word, 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 superimposition or alteration; and every excision and interlineation shall be initialled by the Judge, Magistrate, Justice of the Peace, or Commissioner before whom the affidavit is affirmed or sworn.

O. 23, r. 12. Scandalous matter.

12. The Court may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid by the declarant.

ORDER XXIV

Service of Legal Documents

O. 24, r. 1. Service where not personal, how party may effect.

1. All legal documents of which personal service is not requisite but are required or permitted by the Rules to be served by a Proctor or party not represented by a Proctor on the opposite party shall be sufficiently served—

(*a*) if left within the hours prescribed by Rule 7 of Order 25 at the registered address (as defined by Order 12) of the person to be served, with any person resident at or belonging to such address; or

(*b*) if posted in a registered envelope addressed to the person to be served at such registered address and the time at which the document so posted would be delivered in the ordinary course of post shall be considered the time of service thereof.

O. 24, r. 2. Personal service may be effected though not required.

2. Notwithstanding the provisions of the preceding Rule, all such legal documents as are referred to therein may be served personally on the opposite party or, where he is represented by a Proctor, on such Proctor, by delivering the document to such party or Proctor at any time on any day at any place subject to the limitations contained in Section 21 of the Code.

Explanation.—Where the last day for service of a legal document on the opposite party falls on a Saturday, service may be effected on the opposite party by serving the legal document personally on the Proctor

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if he is at his office even after twelve noon or at his house or any other place (not excluded by section 21 of the Code) at any time before sunset, or where the Proctor is not in his office it may be served as prescribed by Rule 7 of Order 25 by the legal document being left before twelve noon with some person resident at the registered address of the Proctor, or it may be so posted under registered envelope as to be delivered in the ordinary course of post before twelve noon.

O. 24, r. 3. Service of notices by Court.

3. Notices issued by Court of which personal service is not requisite may be sent by registered post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting therof shall be a sufficient service.

O. 24, r. 4. Service where no appearance or no address for service.

4. Where no appearance has been entered for a party, or where a party or his Proctor, as the case may be, has omitted to give an address for service of legal documents in respect of which personal service is not requisite, the provisions of Rule 3 (2) of Order 12 shall apply.

O. 24, r. 5. Service where personal, how effected.

5. Where any legal document of which personal service is required by the rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the service of summons on a defendant.

O. 24, r. 6. Substituted service.

6. Where personal service of any legal document is required by the rules or otherwise, and it is made to appear to the Court that prompt personal service cannot be effected, the Court may make such order for substituted service or for service by public advertisement or otherwise, as to it may appear proper.

O. 24, r. 7. Original of document for service to be filed in Court and duplicate to be served on opposite party.

7. (1) Where any legal document is required to be served on or delivered to one party by another party to the action, the original of such document shall, unless it shall have been previously filed in Court, be either delivered to the officer of Court appointed in that behalf or sent by registered post to the Secretary and at the same time a duplicate copy thereof shall be served on or delivered to the opposite party.

Power of Court to reject or return.

(2) The provisions of Rules 18, 19 and 20 of Order VI shall apply to such document.

O. 24, r. 8. Affidavits of service.

8. Where service has to be verified by an affidavit such affidavit shall state when, where and how and by whom such service was effected.

Explanation.—Where service is effected under registered envelope and the postal receipt is filed of record, or where an acknowledgment of service is obtained on the face of the document filed in Court, no verification of service by affidavit is necessary, as in the former case the postal receipt and in the latter the acknowledgment constitute sufficient proof of service.

ORDER XXV

Postponements, Adjournments and Extensions of Time

O. 25, r. 1. Court may extend time for doing an act.

1. (1) Where a day is fixed or time appointed for doing any act or taking any proceeding by a party to the action, the Court may, from time to time, if sufficient cause be shown, fix another day or enlarge or abridge the time appointed, upon such terms, if any, as to it may seem proper.

Even after expiration of time fixed.

(2) The day may be refixed or the time enlarged although the application for the same is not made until after the expiration of the day or time fixed or appointed.

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Cost of such extensions to be borne by party applying.

(3) Where the time for delivering any pleading or document or filing any affidavit, answer or document, or doing any act, is or has been fixed or appointed by any of the rules or by any order of Court, the costs of any application to refix a day or enlarge or abridge the time shall be borne by the party making such application, unless the Court shall otherwise order.

O. 25, r. 2. Postponement and adjournment of preliminary investigation or trial.

2. The Court may, for sufficient cause, either on the application of the parties or of its own motion, advance, postpone or adjourn the preliminary investigation or the trial to any other day, upon such terms as to costs or otherwise as to it shall seem proper.

O. 25, r. 3. Adjournment of hearing to allow sufficient time to complete taking of accounts, etc.

3. When the hearing of an action is adjourned for the intermediate taking of accounts, making of inquiries into facts, or execution of directions or commissions for the demarcation of land or realization of assets under the provisions of Rule 20 of Order XXXII, the interval of adjournment shall be adjusted so as to allow of the interlocutory matter being conveniently completed before the resumption of the hearing so adjourned. And the order for adjournment shall include or comprehend all such orders and directions as may be requisite 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.

O. 25, r. 4. Time how computed where Act to be done within limited time.

4. Where the doing of any act or the taking of any proceeding in Court is appointed or allowed by this Code to be done or taken within a limited time from, after or of any date or the happening of any event, the date or the day of the event shall be excluded from the computation of such time.

O. 25, r. 5. Where no time fixed, act to be done within ten days of order.

5. Where the Court orders or directs an act to be done or step to be taken without specifying a period of time within which such act or step is to be done, or taken, such act or step shall be done or taken within ten days of the date of the order or direction.

O. 25, r. 6. Number of days how computed.

6. Where any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day.

O. 25, r. 7. Time of day of service.

7. Service of legal documents required or permitted by the rules to be made by a Proctor or a party not represented by a Proctor shall be effected before the hour of four in the afternoon, except on Saturdays, when it shall be effected before the hour of twelve noon. Service effected after four in the afternoon on any week days except Saturday, or after twelve noon on any Saturday shall, for the purpose of computing any period of time subsequent to such service be deemed to have been effected on the following working day.

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8. In any action in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. O. 25, r. 8. Length of notice after delay of one year.

Explanation.—Neither an application to dismiss for want of prosecution nor an application to have an order of abatement requires notice to the other party, as the application is not to proceed with the action.

ORDER XXVI

Consolidation of Actions

1. Two or more actions in which the questions of law or fact in issue are substantially the same, or for matters which might properly be combined in one action, may be consolidated by order of the Court upon such terms as to it shall seem fit. O. 26, r. 1. Same questions in issue in two or more actions may be consolidated.

ILLUSTRATION

Several actions for personal injuries by different plaintiffs against the same defendant arising out of the same accident. Court may consolidate trial of issue of negligence in respect of the several actions and direct separate trials in regard to the issue of damages and make special order as to costs.

2. The Court, if it thinks fit, may order several actions to be tried at the same time, and on the same evidence, or the evidence in one action to be used as evidence in another, or may order one of several actions to be tried as a test action, and the other actions to be stayed to abide the result, subject to the power of the Court at any time thereafter to substitute another of the actions as a test action where the selected action fails to be a real trial of the issues involved. O. 26, r. 2. Several actions may be tried together or one tried as a test action.

ORDER XXVII

Preliminary Investigation

1. On the day appointed for the preliminary investigation, the parties or their Proctors shall bring with them and have in readiness 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 the investigation has ordered to be produced. O. 27, r. 1. Parties to be ready with all documents at preliminary investigation.

2. 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 the preceding rule 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. O. 27, r. 2. Documents not produced shall not be received afterwards.

3. (1) At the preliminary investigation the Court shall have power, in any order as to it shall appear convenient or proper having regard to the averments in the pleadings or other material on record and as often as to it shall seem expedient, to confer and discuss with the parties or their Proctors and question them O. 27, r. 3. Powers of Court at preliminary investigation.

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or call upon them to state their respective cases and to direct the production of documents for its inspection or the inspection of any of the parties, with a view to consider:—

(*a*) the simplification of issues;

(*b*) the necessity or desirability of amendments to the pleadings;

(*c*) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(*d*) the desirability of consolidating two or more pending actions;

(*e*) the limitation of the number of expert witnesses;

(*f*) the appointment of a Court Expert under Order XXIX;

(*g*) such other matters as may aid in the speedy disposal of the action.

Orders may be made for amendment of pleadings, impounding of documents, etc.

(2) Where at such investigation it appears to the Court necessary or desirable, it shall make such order or orders

(*a*) as to amendment of pleadings, discovery and inspection of documents, interrogatories, examination of accounts, or inspection of movable or immovable property,

(*b*) as to the impounding of any documents produced before it;

as to it shall seem fit and proper, and shall for any of such purposes or for any other reason adjourn the preliminary investigation for a further date.

O. 27, r. 4.
Non-appearance of a party on adjourned day of preliminary investigation.

4. Where on any day to which the preliminary investigation is adjourned save under rule 9 of this Order the parties or any of them fail to appear, the Court may proceed to dispose of the action in accordance with the provisions contained in that behalf in Order XVI or Order XVIII for failure to appear on the day appointed for preliminary investigation or make such other order as it thinks fit.

Explanation.—As the preliminary investigation is a proceeding anterior to the commencement of trial, default of a party in appearing at an adjourned date of the preliminary investigation results in ex-parte proceedings as the default had arisen before the commencement of trial inter partes.

O. 27, r. 5.
Admissions and agreements to be recorded.

5. The Court shall keep a record of the proceedings had at the preliminary investigation and without prejudice to the generality of powers vested in it shall make a record of—

(*a*) admissions by parties of facts or documents;

(*b*) agreements of parties in regard to—

(1) the mode of proof of any fact or document,
(2) experts; and

(*c*) consent of parties either wholly excluding the right of appeal or limiting it to questions of law only.

O. 27, r. 6.
Framing of issues.

6. Upon the averments made in the pleadings, the answers to interrogatories delivered in the action, the contents of documents produced by the parties and information and material gathered at the preliminary investigation, and after such examination of any of the parties to the action as may appear necessary to ascertain upon what material propositions of fact or law the parties are at variance, the Court shall settle the issues on which the right decision of the case appears to it to depend and make order that the action shall proceed to trial on such issues.

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O. 27, r. 7. Adjournment for evidence.

7. 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 documents not produced in the action it may adjourn the preliminary investigation to a future day and may compel the attendance of such person or the production of such document by summons or other process.

O. 27, r. 8. Provisions as to documents apply to other material objects.

8. The provisions herein contained as to documents shall, as far as may be, apply to all other material objects producible as evidence.

O. 27, r. 9. Issues of law may be set down for trial first.

9. (1) Where 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 may set down such issues of law for trial first, and adjourn the preliminary investigation to determine the issues of fact arising in the action until after the issues of law have been adjudicated upon.

Decree inter-partes to be entered where a party is in default at adjourned preliminary investigation.

(2) Where, after the disposal of the issues of law the adjourned preliminary investigation is refixed to settle the issues of fact and either party fails to appear on the date so fixed or the day to which it may be subsequently adjourned, the Court shall enter a decree as if the absent party were present and the issues of law decided all matters in controversy between the absent party and the parties present.

O. 27, r. 10. Issues may, with consent of parties, be decided at once where no injustice will result.

10. (1) Where on the issues being framed the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the action and that no injustice will result from proceeding with the action forthwith, the Court may proceed to try such issues (the trial being regulated by the provisions of Order XXXI), and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly; Provided, however, that none of the parties or Proctors present objects.

Where issues do not finally decide action, remaining issues to be set down for trial.

(2) Where the finding is not sufficient for the decision, the Court shall set down for trial the remaining issues.

O. 27, r. 11. Court may give such directions as may be necessary.

11. In disposing of the preliminary investigation the Court may without prejudice to the generality of the powers vested in it,

Proof of facts by affidavit or evidence on commission.

(1) order, subject to rule 12 of this Order, that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be read at the trial, on such conditions as the Court may think reasonable or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with be examined before a commission;

or by statement on information or belief or by production of documents;

(2) order that evidence of any particular fact or facts to be specified in the order shall be given at the trial by statement on oath of information and belief or by production of documents or entries or otherwise as the Court may direct;

limit number of expert witnesses;

(3) order that no more than a specified number of expert witnesses may be called;

order Commission to Court expert;

(4) order the issue of a commission to a Court expert on such terms as to fees and expenses as to it shall seem just;

make other order.

(5) make such other orders as to it shall seem expedient.

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O. 27, r. 12. Where witness reasonably required for cross-examination, affidavit inadmissible.

12. Where it appears to the Court that any party reasonably desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit, but the expense of such witness at the trial shall be specially reserved.

O. 27, r. 13. Proceedings, control subsequent course of action.

13. All orders made by Court and all matters entered of record by consent of parties at the preliminary investigation shall control the subsequent course of the action unless modified at the trial to prevent manifest injustice.

Explanation.—1. An admission of fact made by a party and entered of record cannot subsequently be withdrawn at the trial. But, if for instance, it is shown that the admission was made on the faith of an incorrect translation of a document, the Court may permit the party to withdraw the admission of fact upon such terms as to costs and adjournment of trial if need be.

2. Where the issues upon which the trial of the action is to proceed have been framed by Court, no amendment, alteration, variation or addition thereto shall be made at the trial, save in exceptional circumstances and unless the Court is satisfied that a refusal to permit such amendment, alteration, variation or addition would result in manifest injustice to the party applying for the amendment, alteration, variation or addition.

3. Where during the progress of the trial, the evidence discloses facts, upon which fresh issues arise for determination, additional issues may be framed where the Court is satisfied that manifest injustice will otherwise result.

O. 27, r. 14. Day of trial.

14. After the issues are settled, the Court shall proceed to fix a day for the trial of the action.

O. 27, r. 15. Court to fix day of trial having regard to the length of hearing and convenience of parties.

15. (1) In fixing such day the Court shall ascertain from each party or his Proctor the number of witnesses he proposes to call, his own estimate of the length of hearing in hours, an indication of the quantity of documents in the case, what days are convenient to all persons concerned, including witnesses and Counsel, and where Counsel has already advised, his own estimate of the length of hearing.

More causes than can be disposed of should not be fixed for a day.

(2) The Court shall be careful not to appoint more cases for one day than there is a probability of the Court getting through on that day.

Trial date not to be altered.

(3) When a day has been fixed for trial it shall not be altered save in exceptional circumstances upon application to Court after due notice to all parties.

O. 27, r. 16. Separate lists of trial.

16. In every Court there shall be kept two separate trial lists called the Long Trial List and the Short Trial List, and the Court shall direct that the date of trial of the action shall be entered in either List according to the estimated length thereof. But where it appears to the Court that an action ought to have an early trial it may direct that it be entered in the Short Trial List.

O. 27, r. 17. Settlement to be notified without delay and where appropriate revised estimate of length to be furnished.

17. Where an action which is fixed for trial is settled, or where circumstances affecting its probable length arise, it shall be the duty of all Proctors or parties to furnish to Court without delay notice of the fact of settlement and where appropriate a revised estimate of the length of the hearing.

O. 27, r. 18. Appeals.

18. No interlocutory appeal from an order settling the issues shall lie without the leave of Court.

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ORDER XXVIII

Witnesses

O. 28, r. 1. List of witnesses.

1. (1) After the trial date has been fixed, each party shall, 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, file in Court a list containing the names of the witnesses to be called by such party at the trial.

Summons on witnesses.

(2) Such party may obtain on application to the Court or to such officer as the Court appoints in that behalf, before the day fixed for the trial, summonses to persons whose attendance is required either to give evidence or to produce documents.

No summons to issue unless name on list.

(3) No summons shall be issued to any person unless his name shall have been included in such list.

Form of summons.

(4) The summons shall be in Form No. 53 in Appendix I, with such variations as circumstances may require.

O. 28, r. 2. No witness to be called unless name included in list.

2. (1) No witness shall be called on behalf of any party unless the name of such witness shall have been included in the list filed in Court by such party.

Except with leave of Court.

(2) The Court may, however, 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 the name of such witness may not have been included in such list aforesaid.

Party may be called without his name being in list.

(3) Any party to an action may be called as a witness without his name having been included in any such list.

O. 28, r. 3. Payment of witness's expenses.

3. (1) The party applying for a summons shall, before the summons is granted,

(*a*) pay into Court, or

(*b*) deposit with his Proctor,

such 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.

Witness within four mile limit not entitled to expenses.

(2) Where a witness resides or carries on business or personally works for gain at any place within four miles of the Court at which his attendance is required, no such payment or deposit shall be made.

O. 28, r. 4. Payment of expenses not condition precedent to issue of summons.

4. No such payment or deposit shall in any case be a condition precedent to the issue of a summons, but where (except in the case of a witness residing or carrying on business or personally working for gain at any place within four miles from the Court) summons issues without such payment or deposit having being made, 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.

O. 28, r. 5. Expenses of expert.

5. In determining the amount of the expenses payable to a witness, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

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O. 28, r. 6.
Summons to produce document.

6. 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.

O. 28, r. 7.
Summons to specify time, place and purpose of attendance.

7. (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.

Indorsement of expenses deposited to be made on summons.

(2) Where the expenses for the attendance of a witness have been paid into Court or deposited with a Proctor, the Proctor shall make an endorsement on the summons specifying whether the amount is paid into Court or deposited with him, and the amount of such payment or deposit, with an intimation that the amount will be paid by the Court or by him, as the case may be, to the witness on the day of attendance, save that where a party appears in person such endorsement shall be made by the Officer of Court.

O. 28, r. 8.
Person summoned must attend at time and place named in the summons.

8. Whoever is summoned to appear and give evidence in an action shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

O. 28, r. 9.
When witness may depart.

9. 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.

O. 28, r. 10.
Payment of expenses to witness.

10. (1) Where a witness has given evidence and not been paid his expenses prior thereto, or where the Court has risen for the day, a requisition for the amount payable shall, where the expenses have been paid into Court, be issued to him by the officer of Court authorised in that behalf; and where the expenses are in deposit with a Proctor, the Proctor shall pay the same to the witness.

Proctor to obtain receipt.

(2) Where a Proctor makes such payment, he shall obtain a receipt from the witness and shall make an endorsement of the amount so paid on the summons or other document, if requested thereto by the witness.

Witness's expenses to be paid before he gives evidence.

(3) Where a witness demands the payment of his expenses at the time he is called on to give evidence, he shall be paid the same.

Dispute about expenses to be summarily determined by Court.

(4) Where the person summoned raises a dispute in regard to the amount payable or paid to him such dispute shall be brought to the notice of the Secretary who shall refer the matter for the summary determination thereof by Court.

O. 28, r. 11.
Court may order a sufficient sum to be paid.

11. Where it appears to the Court or to such officer as it appoints in that behalf that the sum paid into Court is not sufficient to cover such expenses or remuneration, the Court may direct such further sum to be paid to the person summoned

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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 in this Order 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.

O. 28, r. 12. Expenses of detention.

12. Where 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 or deposit with his proctor such sum as is sufficient 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.

O. 28, r. 13. Person in Court may be required to produce a document.

13. 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.

O. 28, r. 14. Court may pass decree against party refusing to give evidence.

14. Where any party to an action being present in Court refuses, without lawful excuse, when ordered 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.

O. 28, r. 15. Rules as to witnesses to apply to a party summoned to give evidence.

15. Where any party to an action is summoned to give evidence or produce a document, the provisions of this Order as to witnesses shall apply to him so far as they are applicable.

O. 28, r. 16. Court may summon and examine any person as a witness.

16. Subject to the Rules as to attendance and appearance, where 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.

O. 28, r. 17. Service of summons on witnesses.

17. Every summons to a person to give evidence or produce a document.

Mode of service of summons on witnesses.

(1) may be transmitted for service in accordance with the provisions of rule 10 or 16 of Order 13, and shall be served as nearly as may be in the manner prescribed for the service of summons on the defendant; and the provisions contained in the rules as to proof of service of summons on the defendant shall apply in respect of all summonses served under this rule; or

Summons may be served by party obtaining summons personally.

(2) may be delivered to the party obtaining summons for service by him personally or by any agent of his other than those specified in rule 16 of Order 13; and the service of summons shall be verified by the affidavit of the person effecting service:

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Provided, however, that no service of summons shall be effected under this paragraph by a party or his agent as aforesaid on the opposite party or a near female relative of such opposite party. Any service effected in contravention of this provision shall be void and of no effect.

Explanation.—" Near female relative " includes the wife, daughter, grand-daughter, mother, grand-mother, sister, niece, grand-niece, aunt or grand-aunt.

O. 28, r. 18.
Service must afford reasonable time for attendance.

18. 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.

O. 28, r. 19.
Procedure to be followed when summons cannot be served.

19. (1) Where the Fiscal or an approved process server makes return 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.

Warrant or proclamation may issue.

(2) 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.

O. 28, r. 20.
Proclaimed witness how dealt with.

20. Where such person 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 Rule 22 of this Order.

O. 28, r. 21.
If witness appears, sequestration may be withdrawn.

21. Where, at any time after the sequestration of his property, such person appears and satisfies the Court—

(*a*) that he did not abscond or keep out of the way to avoid service of summons; and

(*b*) that he had not notice of such 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.

O. 28, r. 22.
Fine may be imposed when witness fails to appear.

22. (1) Where 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 summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the 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

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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.

May be permitted to pay by instalments.

(2) A party on whom a fine has been imposed may, in the discretion of the Court, be allowed to pay the same by instalments.

On payment of fine and costs sequestration to be withdrawn.

(3) 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.

O. 28, r. 23.

Mode of seizure and sale.

23. The provisions of this Code with regard to the seizure and sale of property in execution of a decree shall, so far as they are applicable, be deemed to apply to any sequestration and sale under this Order, as if the person whose property is so seized were a judgment-debtor.

O. 28, r. 24.

Witness may be ordered to appear at subsequent hearing or to furnish security for such appearance.

24. (1) On the application of either party and the payment into Court or deposit with the Proctor concerned of all necessary expenses (if any) as provided in Rule 3 of this Order, the Court may order any person summoned and attending to attend or to furnish security for attendance at the next or any other hearing or until the hearing is concluded;

Where security not furnished witness may be remanded.

(2) Where such person is in default in furnishing security as aforesaid, the Court may remand him to the custody of the Fiscal to be retained in jail as a civil prisoner.

Expenses to be paid by party interested.

(3) The expenses of such detention shall be paid to the Fiscal by the party at whose instance such remand is made.

O. 28, r. 25.

Witness or person may be arrested for non-compliance with summons or notice.

25. (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 the provisions of Rule 9 of this Order, or if any person who has been noticed or directed by Court to appear before it fails to comply with the notice or direction, the Court may order him to be arrested and brought before the Court.

But not where there is lawful excuse.

(2) No such order shall, however, 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.

(3) When any person so arrested and brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, notice or direction he shall be deemed guilty of the offence of contempt of Court and punishable therefor.

O. 28, r. 26.

Court may release arrested witness on bail.

26. Where any person so arrested 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, and in default of his giving such bail or security may remand him to the custody of the Fiscal to be detained in jail as a civil prisoner, and the provisions of Rule 24 (3) of this Order shall apply.

O. 28, r. 27.

Procedure where witness absconds.

27. Where any person so failing to comply with a summons, notice or direction, absconds or keeps out of the way, so that he cannot be arrested and brought before the Court, the provisions of Rules 19, 20, 21, 22 and 23 of this Order shall, mutatis mutandis, apply.

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ORDER XXIX

Court Expert

O. 29, r. 1. Appointment of Court expert.

1. In any action involving any question for an expert witness the Court may,

(*a*) on the application of any party—

(i) at or before the preliminary investigation, or

(ii) where no preliminary investigation has been ordered, then before the trial, or

(*b*) ex proprio motu at any time,

appoint an independent expert (to be called " the Court expert ") to inquire and report upon any question of fact or of opinion not involving questions of law or construction (hereinafter called " the issue for the expert ").

O. 29, r. 2. To be agreed upon between parties.

2. The Court expert shall if possible be a person agreed between the parties, and failing agreement shall be nominated by the Court. The question or the instructions submitted or given to the Court expert, failing agreement between the parties, shall be settled by the Court.

O. 29, r. 3. Remuneration.

3. The remuneration of the Court expert shall be fixed by the Court and shall include a fee for making the report or fee for any supplementary report and a proper sum per diem for each day during which the presence of the Court expert may be required in Court. The parties shall be jointly and severally liable to pay the remuneration so fixed without prejudice to the question by whom it shall be ordered to be paid as part of the costs of the action or proceeding:

Provided, however, that in any case in which the appointment of a Court expert is opposed, the Court may require the party applying for the appointment to give such security for the remuneration of the Court expert as the Court may think proper as a condition of making the appointment.

O. 29, r. 4. Expenses of experiment or test.

4. If the Court expert is of the opinion that any experiment or test of any kind is necessary to enable him to report in a satisfactory manner (other than any experiment or test of a trifling character) he shall communicate the fact to the parties or their Proctors and shall endeavour to arrange with them as to the expenses involved and as to the persons to attend and other similar matters. Failing agreement between the parties all such matters shall be determined by the Court.

O. 29, r. 5. Report.

5. The report shall be made in writing to the Court, together with such carbon or other copies as the Court may require, and copies of the report shall be forwarded by the proper officer to the parties or their Proctors.

O. 29, r. 6. Supplementary Report.

6. The Court may at any time direct the Court expert to make a further or supplemental report which shall be treated as annexed to his original report.

O. 29, r. 7. Court expert to be called as a witness.

7. The Court expert shall be called as a witness at the trial at such stage as the Court shall direct and any party shall be at liberty to cross-examine him.

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O. 29, r. 8.
More than one Court expert may be appointed.

8. In any case in which more than one issue for the expert shall arise the Court may appoint more than one Court expert to inquire and report on the separate issues so arising, and the provisions of this Order shall apply to each Court expert so appointed.

O. 29, r. 9.
Actions under Patents Ordinance.

9. (1) In any proceedings for infringement of a patent or in any other proceeding in Court under the Patents Ordinance, the Court may, at any time, and whether or not an application has been made by any party for that purpose, appoint an independent scientific adviser to assist the Court or to inquire and report upon any question of fact or of opinion not involving questions of law or construction.

Court to nominate scientific adviser.

(2) The Court shall nominate the scientific adviser and shall settle the question or instructions to be submitted or given to him.

Court to fix remuneration.

(3) The remuneration of the scientific adviser shall be fixed by the Court and shall include the costs of making a report and a proper daily fee for any day on which the scientific adviser may be required to attend before the Court.

Scientific adviser to be deemed Court expert.

(4) The foregoing provisions of this Order shall apply to a scientific adviser appointed under this Rule as they apply to the Court expert.

O. 29, r. 10.
Interpretation.

10. The word " Expert " in this Order shall include scientific persons, medical men, engineers, accountants, actuaries, architects, surveyors and other specially skilled persons whose opinions on any question relevant to the issues involved would be received by the Court.

ORDER XXX

Evidence De Bene Esse

O. 30, r. 1.
Evidence de bene esse.

1. Where a witness is about to leave the jurisdiction of the Court or where there are reasonable grounds for believing that the evidence of the witness may not be available at the trial owing to failing health or old age or other ground, or where other sufficient cause is shown to the satisfaction of the Court why the evidence of the witness should be taken immediately, the Court may upon the application of any 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 provided in this Code.

O. 30, r. 2.
Application may be made ex-parte.

2. (1) The application may be made ex-parte by way of motion, supported by affidavit verifying the facts either on knowledge or on information and belief.

Opposite party may move to have order set aside.

(2) Where the application has been allowed ex-parte, the opposite party may with notice to the applicant by way of motion apply to have the order set aside.

O. 30, r. 3.
Notice of taking evidence to be given to parties.

3. 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.

O. 30, r. 4.
Evidence may be read at the trial.

4. 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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ORDER XXXI

Trial

1. The trial of an action shall be regulated by the provisions of this Order. O. 31, r. 1. How trial to be regulated.

2. Trial inter partes commences when, on the day fixed for trial or the day to which the trial is postponed, on the Court calling the case to be proceeded with, O. 31, r. 2. When trial inter partes commences.

(*a*) plaintiff and defendant are present either in person or by Proctor or Counsel, and

(*b*) some proceeding is taken in the case, the only result of which is not merely to postpone the trial to another day.

ILLUSTRATION

1. Action fixed for trial after framing of issues at preliminary investigation. On day of trial, Court takes up case for hearing. Plaintiff and defendant are present. Plaintiff applies for postponement as he is not ready. Court refuses application. Trial inter partes has commenced, and whether the plaintiff takes part in the proceedings thereafter or not the decree entered would be one inter partes; but if the application for postponement is granted, trial inter partes does not begin. If, however. the defendant being the party having the right to begin, has started to examine-in-chief his first witness and the plaintiff applies for a postponement which is allowed, trial inter partes has begun as a postponement is not the only result of the proceedings had.
2. Without preliminary investigation action is fixed for trial. On the trial date, on the parties being present and on the case being taken up by Court and even before the framing of issues, plaintiff applies for a postponement and it is refused. Trial inter partes has begun.
3. On the day fixed for trial neither party is ready and both apply for postponement. Court refuses the application. On the issues either framed previously or arising upon the pleadings the onus of proof is cast on the defendant but he fails to discharge the burden. Court enters judgment for plaintiff. The judgment is one entered inter partes.
4. Counsel for plaintiff moves for a postponement on the day fixed for trial and in so doing addresses the Court on the facts with a view to strengthen the application and the need for the postponement. Court allows the application. Trial inter partes does not begin.

3. (1) Where on any day for which the trial is fixed or to which the trial is postponed or adjourned any party appearing 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, or O. 31, r. 3. Trial to proceed inter partes where, though present, party not ready for trial.

(2) where on any day to which the trial may have been adjourned any party fails to appear,

the Court may, notwithstanding such failure, proceed to hear and decide the action on the merits as if such party were present.

4. Where no issues have previously been framed, the Court O. 31, r. 4. Court to settle issues at trial where not settled previously.

(*x*) shall in accordance with the provisions mutatis matandis of Rules 6, 7, and 9 of Order XXVII, settle the issues, or if the parties are agreed as to the questions of fact or of law or both to be decided between them and state the same in the form of issues, the Court may if satisfied that the right decision of the case appears to it to depend on them adopt the same, and in either event make order for the trial of them or such of them as in its opinion should be tried first; and

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(*b*) may at any time before passing decree amend the issues or frame additional issues on such terms as it thinks fit.

Court may amend issues.

O. 31, r. 5.

5. Where issues have been framed either under Order XXVII or under the preceding rule, the Court shall adjudicate upon the same.

Issues to be adjudicated upon.

O. 31, r. 6.

6. 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.

Day to day hearing.

O. 31, r. 7.

7. 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.

Party having right to begin to state his case.

Explanation.—The plaintiff has the right to begin, unless 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 he seeks, in which case the defendant has the right to begin.

O. 31, r. 8.

8. (1) The case enunciated must reasonably accord with the party's pleadings, the proceedings had at the preliminary investigation, if any, and the issues framed.

Case of party to accord with pleadings and issues.

(2) No party shall be allowed to make at the trial a case materially different from that placed on record and which his opponent is prepared to meet.

And not materially different.

(3) 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 by his opponent.

Only material facts not admitted by opponent to be established.

O. 31, r. 9.

9. (1) After stating his case in person or by his Proctor or Counsel the party having the right to begin shall produce his evidence.

Party having right to begin to produce evidence.

(2) In the absence of any agreement between the parties and subject to any special directions given or orders made by Court at the preliminary investigation or otherwise, the witness shall be examined orally in open Court in the presence and under the personal direction and superintendence of the Judge by questioning and eliciting from each of them the relevant and material facts to which such witness can speak of his own observation.

Evidence of witness to be given orally in open Court unless otherwise agreed or ordered.

(3) After the examination-in-chief by the party who called the witness, the cross-examination and the re-examination of the same witness shall follow.

Cross-examination and re-examination.

O. 31, r. 10.

10. The examination, cross-examination and re-examination of a witness shall, without prejudice to the generality of the provisions contained in the Evidence Ordinance in that behalf, be regulated by the provisions of Chapter XII of the said Ordinance.

Examination of witness regulated by Evidence Ordinance.

Explanation.—The questions in examination-in-chief, cross-examination and re-examination 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 not others; further, the questions should not be 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.

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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.

O. 31, r. 11. Ordinarily Court not to interpose during examination of witness.

11. (1) During the course of the examination, cross-examination and re-examination, the Court ought not, as a general rule, to interpose, 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.

Entitled to question witness after examination.

(2) At the end of the examination of the witness, 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.

Court may question witness at any time.

(3) Notwithstanding anything contained in the preceding paragraphs, the Court may at any time, whether before, during or after the examination of a witness by the respective parties put and interpose such questions to the witness as it may consider conducive to the attainment of truth and justice.

Answers to Court to be so indicated.

(4) The answers to questions put by Court shall be made to appear on the face of the record as having been given to the Court.

Court may call witness.

(5) 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.

Wide powers of Court to question witness under Evidence Ordinance &c., not to be affected.

(6) Nothing in this Rule shall be deemed to detract from, modify or diminish in any way the generality of powers vested in the Court by Section 165 of the Evidence Ordinance or by any other written law.

O. 31, r. 12. Evidence of witnesses, how taken.

12. The evidence of each witness shall be taken down in writing in English by the Judge, or in his presence and under his personal direction and superintendence. Such evidence shall be taken down ordinarily in the form of a narrative.

O. 31, r. 13. Any particular question and answer may be taken down.

13. 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.

O. 31, r. 14. The objection to question which is allowed and the decision of Court thereon to be taken down.

14. When any question put to a witness is objected to, and the Court allows the same to be put, the Judge may in his discretion take down or cause to be taken 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.

O. 31, r. 15. The objection to question disallowed and the decision of Court thereon to be taken down.

15. When on objection made the Court refuses to allow the question to be put, the Judge shall, on the request of the questioner, take down or cause to be taken down in writing, the question, the objection, and the name of the party making it together with the decision of the Court thereon.

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O. 31, r. 16. Court may record remarks on demeanour of witness.

16. The Court may record or cause to be recorded such remarks as it thinks material respecting the demeanour of any witness while under examination.

O. 31, r. 17. Witnesses may be kept out of Court.

17. (1) 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.

Court may permit witness remaining in Court to testify.

(2) It shall, however, 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.

Experts may be allowed to remain in Court.

(3) It shall also be lawful for the Court in its discretion to allow an expert witness whose presence it considers necessary or desirable for the proper presentation of the case of a party to remain in Court while the witnesses of the party calling the expert or of the opposite party give evidence.

Officer of company, etc., may be allowed to remain in Court.

(4) Where a company, board or corporation is a party, it shall be lawful for the Court to permit an officer of such company, board or corporation to remain in Court during the trial.

or where parties are out of the Island, any person acquainted with facts.

(5) Where all the parties or the sole party to an action, whether plaintiffs or defendants, are or is out of the Island, it shall be lawful for the Court to permit any person who has knowledge of facts relating to the action to remain in Court during the trial on behalf of such absent parties or party.

O. 31, r. 18. On termination of beginning party's case the opposing party to state his.

18. (1) 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 prove his in like manner as party beginning.

(2) 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.

When rebutting evidence is admissible.

(3) Where there are several issues, the burden of proving some of which lies on the opposing 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 opposing party or parties has or have produced all his or their evidence.

Opposing party to address Court on the whole case.

(4) The opposing party or where there are more than one, each opposing party in reverse order shall then address the Court generally on the whole case.

Party beginning to reply.

(5) The party beginning may then reply generally on the whole case.

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O. 31, r. 19.
Evidence may be taken on affidavit or on commission.

19. (1) 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.

Not where opposite party reasonably desires cross-examination of witness.

(2) Where, however, it appears to the Court that either party reasonably 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 authorising the evidence of such witness to be given otherwise than viva voce.

O. 31, r. 20.
Court may examine witness viva voce notwithstanding affidavit or commission.

20. In the event of an order having been made for the proof of facts by affidavit, or by deposition taken on commission on the ground that the witness is either not in the Island or that being in the Island he cannot be produced in Court for viva voce examination, 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 the Island and can be produced.

O. 31, r. 21.
Parties to be ready with all documents at trial.

21. The parties or their Proctors shall bring with them and have in readiness 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 the trial has ordered to be produced.

O. 31, r. 22.
Documents not produced shall not be received in evidence.

22. (1) 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 the preceding Rule shall be received at the trial unless good cause be shown to the satisfaction of the Court for the non-production thereof.

Where received reasons must be recorded.

(2) The Court on receiving such evidence shall record its reasons for so doing.

O. 32, r. 23.
Tender of documents in evidence.

23. Every document or writing which a party intends to use as evidence against his opponent shall be formally tendered by him in the course of proving his case,

(*a*) at any time if it is admitted by his opponent, or

(*b*) at the time when its contents or purport are first immediately spoken to by the witness.

O. 31, r. 24.
No documents to be placed on record unless proved.

24. (1) No document or writing shall be placed on record unless it has been proved or admitted under the provisions of this Code or 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 distinguishing mark, number or letter and such document shall ever after, when necessary, be referred to throughout the trial by such mark, number or letter.

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.

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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.

O. 31, r. 25.
Documents admitted to be read aloud in Court.

25. Where a document or writing is admitted in evidence the Court shall cause it, or so much of it as the parties may desire, to be read aloud.

O. 31, r. 26.
Procedure to be followed before witness is asked to identify document.

26. Before a witness is allowed, in any way, to 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 hand-writing, he should first be made to state the mode in which this knowledge was acquired.

O. 31, r. 27.
Cross-examination as to knowledge.

27. 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 to be followed, if necessary, by re-examination, before the document is shown to the witness.

O. 31, r. 28.
Court to see capacity of witness tested.

28. Where a witness professes to be able to recognise or identify handwriting, the Court shall see that his capacity to do so is tested, unless the opposite party admits it.

O. 31, r. 29.
And to decide on his competency.

29. Where on the examination effected for this purpose it appears to the Court that the witness was not in fact present at the time when the document was signed or the writing was made, or is not reasonably competent to identify the document or the handwriting, the Court shall not permit him to give evidence of identification in regard to such document or handwriting.

O. 31, r. 30.
Signature written by the pen of another how proved.

30. (1) The signature of a person which purports or which appears by the evidence to have been written by the pen of another shall not be held to have been proved until both the fact of the writing and the authority of the writer to write the name on the document as a signature have been proved.

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By a mark how proved.

(2) The preceding paragraph applies to the case where the signature is a mark explained by the name written adjacent thereto.

O. 31, r. 31. Proof in the case of an illiterate person.

31. (1) 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.

Illiterate attesting witness need not have knowledge of contents of document.

(2) Where the name of such 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 the 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.

O. 31, r. 32. Original filed in another action to be procured.

32. Where the document or writing is an original already filed in the record of some action, or the deposition of a witness made therein, it shall previously be procured from that record by means of, and under an order from, the Court.

O. 31, r. 33. Certified copy of Court record admissible.

33. Where such document or writing 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.

O. 31, r. 34. Records of other actions not to be admitted in bulk.

34. It shall not be competent for the Court to admit in evidence the entire body of proceedings and papers in another action indiscriminately. Each of the constituent documents, pleadings, or processes in the former action which may be required in the pending action shall be dealt with separately as above directed.

O. 31, r. 35. Case of documents whose execution need not be proved.

35. Where 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.

O. 31, r. 36. Copy of absent original how proved.

36. 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.

O. 31, r. 37. Rejection of irrelevant or inadmissible documents.

37. 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.

O. 31, r. 38. Documents to be received by Court.

38. The Court shall receive the documents respectively produced by the parties at the trial, provided that the documents produced by each party be accompanied by an accurate list thereof.

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O. 31, r. 39. Copies of admitted entries.

39. (1) Where a document admitted in evidence in the action is an entry in a letter-book or account-book in current use, to which the provisions of Chapter VI of the Evidence Ordinance do not apply, the party on whose behalf the book is produced may furnish a copy of the entry.

Copy of entry in book produced by witness, to be furnished by party relying thereon.

(2) Where such document is an entry in a book belonging to a person other than a party on whose behalf the book is produced, the Court may require a copy of the entry to be furnished,

(*a*) where the book is produced on behalf of a party, then by that party; or

(*b*) where the book is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

Book may be returned to witness.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court may, after causing the copy to be examined, compared and certified, mark the entry and cause the book in which it occurs to be returned to the person producing it.

Production to form part of record.

(4) Every document which has been admitted in evidence, or a copy thereof, where the copy has been substituted for the original under the preceding paragraph, shall form part of the record of the action.

O. 31, r. 40. Documents which are not proved to be returned to parties unless impounded.

40. All documents produced at the hearing and not proved or admitted shall be returned to the parties respectively producing them unless the Court sees sufficient cause to direct any document or book produced before it 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.

O. 31, r. 41. When document admitted in evidence may be returned.

41. (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 the preceding Rule or Rule 3 (2) of Order XXVII be entitled to receive back the same.

Original when not essential may be returned.

(2) A document may, however, 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 where the original is not essential.

Certain documents not to be returned.

(3) No document which by force of the decree has become void or useless shall in any case be returned without a special order of Court.

Receipt for returned documents.

(4) 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.

O. 31, r. 42. Translations of documents.

42. 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—

(*a*) by an interpreter of the Supreme Court, or by a Government sworn translater, or by a sworn translator or interpreter of some District Court or Court of Requests, or

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(*b*) in the case of a document in a foreign language of a country from which is accredited an ambassador, envoy, minister resident, charge d'affaires, consul, or other representative to the Dominion of Ceylon, by the most senior representative for the time being, who shall subscribe that he is the chief or the most senior of the official representatives of his country and that the translation made by him is, to the best of his knowledge and belief, a true and faithful translation thereof.

O. 31, r. 43. Who shall be deemed a translator.

43. 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.

O. 31, r. 44. Fees of translators.

44. 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 rates specified in Appendix III.

O. 31, r. 45. Provisions as to documents apply to other material objects.

45. The provisions contained in this Order as to documents shall, as far as may be, apply to all other material objects producible as evidence.

O. 31, r. 46. Power of Court to inspect.

46. The Court may at any stage of an action, in the presence of, or after reasonable notice to, the parties or their Proctors, inspect any property or thing concerning which any question may arise.

O. 31, r. 47. In interlocutory orders for taking, falsifying etc., of accounts, dates to be fixed for filing accounts, objections, etc.

47. Where an interlocutory order is made directing an account to be taken, or giving leave to a party to falsify or to surcharge an account, the Court shall appoint a day for the filing of the 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.

O. 31, r. 48. Accounts to be verified on oath.

48. (1) The account directed to be taken, before it is filed, must be verified on oath or affirmation by the acounting party.

Objections to be filed by any party concerned in the taking of accounts.

(2) 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.

Trial of issues arising out of objections to proceed as in regular action.

(3) 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 hereinbefore laid down for the trial of a regular action.

O. 31, r. 49. Reasonable care to be taken in appointing the days for the purpose.

49. 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

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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.

O. 31, r. 50. Procedure where accounting party makes default.

50. 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:

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.

O. 31, r. 51. Similar rules to apply to an order for inquiry into facts.

51. Where an interlocutory order is made in an action for an inquiry into facts, the four last preceding rules shall, mutatis mutandis, apply to the making of the order, the filing of the statement of facts and of the objections thereto, or counterstatement of facts, and to the trial of the issues arising thereout respectively, so nearly as reasonably may be.

ORDER XXXII

Judgment and Decree

O. 32, r. 1. Judgment to be pronounced at conclusion of trial or on future day.

1. (1) The Court, upon the evidence which has been duly taken, or upon the facts admitted, and after the parties have been heard either in person or by their respective advocates or Proctors, 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.

Or at a yet future day.

(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.

Whole judgment to be read or effect shortly stated.

(3) The judgment may be pronounced either by reading the whole of it or by stating shortly the effect of it as regards the disposal of the action and the costs thereof.

O. 32, r. 2. To be written in English and signed.

2. The judgment shall be written in English and shall be signed by the Judge whose judgment it is and shall not, after it has been pronounced, be altered or added to save as provided by Section 56 of this Code.

O. 32, r. 3. Judgment may be pronounced either by the trial judge or another judge.

3. The judgment shall be pronounced and dated in open Court either by the Judge whose judgment it is or by any other judge of the same Court.

O. 32, r. 4. Requisites of judgment.

4. The judgment shall contain a concise statement of the case, the points of 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.

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O. 32, r. 5.
Decree to be drawn up by Proctor.

5. (1) 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 Proctor for the successful party, and when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree..

Where successful party unrepresented, by Court.

(2) Where the successful party is not represented by Proctor, the decree shall be drawn up by the Court.

Form and contents of decree.

(3) The decree—

(*a*) shall be in Form No. 60 in Appendix I with such variations as circumstances may require;

(*b*) shall specify in clear words the order which is made by the judgment in regard to the relief granted or other determination of the action;

(*c*) shall also state by what parties and in what proportions costs are to be paid.

Decree may be amended to conform to judgment.

(4) The Court may, at any time, either ex mero motu or on the application of any party amend the decree in order to bring it into conformity with the judgment.

O. 32, r. 6.
Decree may be signed by successor.

6. A decree may be signed by a Judge other than the Judge pronouncing the judgment.

O. 32, r. 7.
Requisites of decree relating to immovable property.

7. Where 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 surveys, plans or otherwise as may secure, as far as possible, correctness of identification, and in such form as to enable such decree to be registered under the Registration of Documents Ordinance.

O. 32, r. 8.
Requisites of decree relating to movable property.

8. Where the decree is for the delivery of movable property, it shall also state the amount of money to be paid as an alternative, if delivery cannot be had.

O. 32, r. 9.
At what rate may interest on money be decreed.

9. (1) Where the decree is for the payment of a sum of money to the plaintiff, the Court may in the decree order interest to be paid according to the rate (if any) agreed on between the parties by the instrument sued on, or, in the absence of any such agreement, at the rate of five per cent. 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 the rate of 5 per cent. per annum 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.

Interest deemed to be refused after date of decree, if silent.

(2) Where the 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.

O. 32, r. 10.
Interest may be awarded on damages decreed.

10. Where the action is for the recovery of damages based whether on contract or tort, the Court may, if it thinks fit, order interest to be paid at a rate not exceeding five per cent. per annum on the whole or any part of the damages awarded, for the whole or any part of the period between the date when the cause of action arose and the date of judgment.

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O. 32, r. 11.
When specific performance may be ordered.

11. Where 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.

O. 32, r. 12.
Court may decree payment by instalments.

12. In all decrees for the payment of money, except mortgage decrees, the Court may order that the amount decreed 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:

Whole amount payable at once on failure to pay one instalment.

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;

Dismissal of appeal against instalment decree terminates instalments.

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 shall give express direction to the contrary.

No appeal where instalments refused.

Provided also, that no appeal shall lie against the refusal of the Court to make an order for payment by instalments.

Explanation: As the Mortgage Act, No. 6 of 1949, embodies in it the necessary provisions relating to mortgage decrees, the operation of this rule is excluded in respect of such decrees.

O. 32, r. 13.
Decree to state balance after set off amounts allowed.

13. (1) Where 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 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.

Effect of decree in respect of claim in reconvention.

(2) 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 have 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.

O. 32, r. 14.
Mesne profits pending action.

14. Where the action is for the recovery of 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.

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.

O. 32, r. 15.
Mesne profits prior to action.

15. Where 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,

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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.

O. 32, r. 16. Decree in actions for pre-emption.

16. Where 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 defendant shall execute a deed of conveyance in favour of the plaintiff at the cost and expense of the plaintiff and that the plaintiff shall obtain or be delivered 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.

O. 32, r. 17. Interlocutory order in action for dissolution of partnership.

17. Where the action is for the dissolution of a partnership or the taking of partnership accounts, the Court before entering decree may pass order declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved, or be deemed to have been dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

O. 32, r. 18. In actions between principal and agent.

18. Where the action is for an account of pecuniary transactions between principal and agent, and in all other actions not hereinbefore 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 entering decree make an order directing such accounts to be taken as it thinks fit.

O. 32, r. 19. Decree or order postponing hearing.

19. Where 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, such decree or order shall specify the time at which the further hearing of the action shall be proceeded with.

O. 32, r. 20. Piecemeal judgments.

20. Where 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 of 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 adjourn the hearing from time to time for further orders or directions, or for final

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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.

O. 32, r. 21. Liability of parties to be adjudicated upon before interlocutory order for taking accounts.

21. 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.

O. 32, r. 22. Parties entitled to certified copies of proceedings.

22. (1) Copy or copies of the proceedings in any action or any part thereof duly certified by an officer of Court specially authorised in that behalf, hereafter called the certifying officer, shall be issued to any person making application therefor.

Copies may be made by Court or party applying

(2) The copies for such certification shall be prepared by—

(*a*) the officers of Court, or

(*b*) the party applying for such copy or copies.

Copies to be compared.

(3) Prior to certification, the copy or copies shall be examined and compared with the original by the certifying officer.

What fees payable.

(4) The applicant for such copy or copies shall—

(*a*) furnish the necessary stamp for such certificate, and

(*b*) pay—

(i) the fee for preparing the copy or copies where such copy or copies are prepared by the officers of Court, and

(ii) the fee for examining, comparing and certifying such copy or copies.

Fees to be fixed by Minister of Justice.

(5) The fees payable under the last preceding paragaph shall from time to time be fixed by the Minister of Justice with the concurrence of the Judges of the Supreme Court, either at a rate applicable to all the Courts of the Island in common or at varying rates in respect of the several Courts of the Island.

Method of appropriation of fees.

(6) The Minister of Justice shall also be entitled to prescribe the manner of appropriation and allocation of the fees so paid among all or any of the following, namely, the Crown, the certifying officer and other officers of Court.

Several parts may be certified as one document.

(7) Where an application is made at one time for copies of distinct parts of the proceedings of an action to be certified as a single copy, the several parts shall be so certified and only one stamp fee shall be recoverable thereon.

O. 32, r. 23. Decree or copy to be primary evidence of decision.

23. The decree or such certified copy thereof shall constitute the sole primary evidence of the decision or order made by the Court.

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ORDER XXXIII

Lis Alibi Pendens

O. 33, r. 1. Where same matter in issue in two actions, one may be stayed.

1. (1) Where the matter in issue in an action before a Court of original jurisdiction is also directly and substantially in issue in another action between the same parties or their privies, whether the actions be pending in the same Court or different Courts of original jurisdiction having jurisdiction to grant the same relief, it shall be competent to either of the Courts in which the actions may be pending, having regard to the conduct of the parties, the state of the action, the comparative expense and general convenience, to stay the action before it or direct that it be proceeded with.

And the other proceeded with.

(2) Where, after an order to stay or to proceed with the action has been made in one of the actions, no contrary order shall be made in the other action but the other action shall either be proceeded with or stayed as the case may be.

After decision of one case, appropriate order may be made in the others.

(3) After the pronouncement of the final judgment in the case which has been proceeded with, an appropriate order shall, as the justice of the case may require, be made in the case in which the order of stay was entered.

O. 33, r. 2. Action may be stayed where same matter is pending in appeal in another action.

2. Where the matter in issue in an action before a Court of original jurisdiction is also directly and substantially in issue between the same parties or their privies in another action pending in appeal before the Supreme Court or Her Majesty in Council, it shall be competent to the aforesaid Court of original jurisdiction, if it appears to it in all the circumstances proper to do so, to stay the action before it.

O. 33, r. 3. Privies.

3. The term " privies " shall have the same meaning as that in Rule 8 of Order XXXIV.

O. 33, r. 4. Pendency of action in foreign Court no bar.

4. The pendency of an action in a foreign Court does not preclude the Courts in Ceylon from trying an action founded on the same cause of action.

ORDER XXXIV

Res Judicata

O. 34, r. 1. Res Judicata as a plea in bar.

1. Where a final judgment, decree or order granting or refusing in whole or in part the relief claimed in respect of a cause of action or matter in dispute has been entered by a Court of competent jurisdiction over the parties to and the subject matter of the litigation in any litigation before it (called in this Order the former litigation) such judgment, decree or order shall operate as a bar to the re-litigating of the same cause of action or matter or substantially the same cause of action or matter in any subsequent litigation between the same parties or their privies, or in the case of a judgment, decree or order in rem, between any parties whatsoever.

Explanation: The expression " relief claimed " shall include every claim, demand or remedy set up, claimed, or put in issue by one party and either denied or admitted expressly or impliedly by the opposite party, as well as every right to property or to money or to damages or to

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remedy of any kind which could have been set up, claimed, or put in issue between the parties, whether it was actually so claimed, set up or put in issue between them or not.

O. 34, r. 2. Res Judicata by way of estoppel.

2. (1) Subject to the provisions in regard to co-defendants or co-plaintiffs contained in Rules 3 and 4 of this Order, where a final decision on a controverted question of law or issue of fact has been pronounced in any litigation before it (also called in this Order as the former litigation) by a Court, any party or privy to such litigation as against any other party or privy thereto, and in the case of a decision in rem any person whatsoever as against any other person, shall in any subsequent litigation wherein such question of law or issue of fact shall be directly and substantially in issue between them be estopped from disputing or questioning such decision.

Decision necessarily involved.

(2) Where the determination of the question of law or issue of fact is not expressly recorded but is necessarily involved in the adjudication, such adjudication is itself a decision on the controverted question of law or issue of fact.

Incidental or execution proceedings.

(3) The provisions of this rule shall apply to all final decisions pronounced in any incidental or execution proceedings in any litigation.

O. 34, r. 3. Co-defendants.

3. Where in order to give the plaintiff in an action (called in this Order the former action) the relief he claims in his plaint it becomes necessary for the Court to adjudicate upon a conflict of interest between two or more defendants to the action and a final decision upon such conflict is either expressly pronounced by the Court or impliedly involved in the adjudication upon such conflict, such decision or adjudication pronounced or made between the defendants inter se shall operate as res judicata between the said defendants or their privies in respect of the same conflict or substantially the same conflict in any subsequent litigation.

O. 34, r. 4. Co-plaintiffs.

4. Where for the purpose of giving the relief claimed against the defendant to an action (also called in this Order the former action) it becomes necessary for the Court to adjudicate upon a conflict of interest between two or more plaintiffs to the action and a final decision upon such conflict is either expressly pronounced by the Court or impliedly involved in the adjudication upon such conflict, such decision or adjudication pronounced or made between the plaintiffs inter se shall operate as res judicata between the said plaintiffs or their privies in respect of the same conflict or substantially the same conflict in any subsequent litigation.

O. 34, r. 5. Res judicata by analogy.

5. Where in a subsequent litigation between the parties to a former litigation or their privies a plea of res judicata either as a bar under Rule 1 or as an estoppel under Rule 2 of this Order has not been completely established but the circumstances disclosed in the subsequent litigation are such as to render any relitigation of the questions adjudicated upon in the former litigation a scandal to the administration of justice and an abuse of the process of Court, it shall be competent to the Court to apply the doctrines formulated in the said rules to the subsequent litigation, as to it may appear proper.

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ILLUSTRATIONS

(*a*) P, as heir of X, institutes action rei vindicatio in respect of a land forming part of the estate of X against D, who sets up title to the land on the basis that he is a legitimate son of X. Judgment entered for P, Court holding that D is not a son of X. P institutes a second action to vindicate title to the same land against T, a trespasser. T's defence is that while he himself has no title, P cannot succeed as the real title to the land is in D, who he alleges is the son of X. Though the decision on the question of legitimacy of D in the earlier action between P and D cannot be directly established as a res judicata between P and T as T is not a privy in title to D, nevertheless, as a relitigation of the question of the legitimacy of D would be a scandal to the administration of justice and an abuse of the process of Court, it will be competent to the Court to order that T shall not be permitted to relitigate the question of the legitimacy of D.

(*b*) A, a vicar sues his bishop for a declaration that he is vicar of the benefice on the ground that his resignation therefrom was void and to restrain the bishop from presenting any other person to the benefice. A's action is dismissed on the ground that his resignation was valid. B, who is appointed by the bishop in succession to A as vicar, institutes action against A for a declaration that he is the duly appointed vicar and for an injunction to restrain A from depriving him of the use and occupation of the house and lands. In his defence A sets up the same case as that on which he had been defeated in his action against the bishop. Though B is no privy to the previous litigation and no res judicata between B and A can be strictly established, it is competent to the Court to make order refusing to permit A to relitigate the same questions as were raised by him in the earlier action against his bishop on the ground that the relitigation is a scandal to the administration of justice and an abuse of the process of Court.

(c) Action for libel dismissed on the ground of fair comment. Second action for libel in respect of the publication of the proceedings of the trial of the first action. As the defamatory matters are different in the two actions and hence the doctrine of res judicata is not strictly applicable, it is nevertheless competent to the Court to apply the principle underlying a plea of res judicata and prevent a relitigation of substantially the same question as that decided in the first action.

O. 34, r. 6. Competency of Court.

6. Rules 2, 3, 4 and 5 of this Order shall have no application unless the Court which pronounced the decision or adjudication in the former litigation or action as the case may be is a Court (*a*) of original jurisdiction, (*b*) of competent jurisdiction over the parties to and the subject matter of the litigation, and (*c*) competent to try the subsequent litigation.

O. 34, r. 7. Representative litigation.

7. Where persons litigate bona fide in respect of a public right, or of a private right claimed in common for themselves and others, all persons interested in such right shall for the purposes of this Order be deemed to be privies to such litigation.

O. 34, r. 8. Privies.

8. The terms ' Privy ' and ' Privies ' shall comprise any person who succeeds to the rights or liabilities of a party on his death or insolvency or who is otherwise identified with him in title or interest.

O. 34, r. 9. Former litigation.

9. The expression ' former litigation ' and ' former action ' in relation to a subsequent litigation or action shall denote respectively a litigation or action which has been decided prior to the other litigation or action, whether instituted prior or subsequent thereto.

O. 34, r. 10. Form of subsequent litigation.

10. The provisions of this Order shall apply whether the subsequent litigation be raised in subsequent proceedings in the former litigation or action or by proceedings in any other litigation or action and whether in the same or a different Court.

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O. 34, r. 11. Rule of might and ought.

11. (1) Any matter which might and ought to be made ground of defence or attack in the former litigation or action shall be deemed to have been a matter in issue in such litigation or action, whether in fact made a ground of defence or attack or not.

Applies to defendant up to delivery of judgment.

(2) All pleas in and grounds of defence available to a defendant till the delivery of judgment in a litigation shall be deemed to have been put in issue by the defendant, whether in fact put in issue or not.

O. 34, r. 12. Finality.

12. A judgment, decree, order, decision or adjudication is not final where such judgment, decree, order, decision or adjudication is the subject of an appeal either to the Supreme Court or to Her Majesty in Council.

O. 34, r. 13. Contrary judgment of appellate tribunal deemed judgment of original Court.

13. (1) Where the judgment, decree, order, decision or adjudication of a court of original jurisdiction is reversed, varied or modified or is affirmed upon grounds other than those given by the original Court, the judgment, decree, order, decision or adjudication of the appellate tribunal shall be deemed for the purpose of this Order to be the judgment, decree, order, decision or adjudication of the Court of original jurisdiction.

Judgment affirmed on appeal stands as that of original Court.

(2) Where the judgment, decree, order, decision or adjudication of a Court of original jurisdiction is affirmed simpliciter by an appellate tribunal, such judgment, decree, order, decision or adjudication continues as that of the original Court.

ORDER XXXV

Costs

O. 35, r. 1. Costs.

1. 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 defendants and witnesses, and of other processes, or of procuring copies of documents, fees and charges of Advocates and Proctors and of expert witnesses, 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.

O. 35, r. 2. Compensatory costs in respect of false or vexatious claim or defence.

2. (1) If in any action or other proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned, or withdrawn in whole or in part, the Court, may after recording its reasons for holding such claim or defence to be false or vexatious to the knowledge of the party by whom it has been put forward, make an order for payment to the objector, by the party by whom such claim or defence has been put forward of costs by way of compensation in addition to the costs of action, if any.

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Not to exceed Rs. 1,000 in D. C. or Rs. 300 in C. R.

(2) The amount of costs awarded by way of compensation shall not exceed Rs. 1,000 in the case of a District Court or Rs. 300 in the case of a Court of Requests.

O. 35, r. 3.
Court always to have power to give or reserve costs.

3. When disposing of any application or action under this Code, whether of regular or of summary procedure, the Court may, unless elsewhere in this Code or in any other law 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.

O. 35, r. 4.
Court shall direct by whom costs to be paid.

4. The judgment, 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.

O. 35, r. 5.
Court may apportion costs.

5. 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 reason in writing.

O. 35, r. 6.
Set off of costs.

6. 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 of any Proctor upon the amount decreed in respect of the costs payable to him under the decree.

O. 35, r. 7.
Court may give interest on costs.

7. The Court may give interest on costs at any rate not exceeding five per centum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the action.

O. 35, r. 8.
Costs may be ordered to be paid by instalments.

8. An order for the payment of costs only is a decree for payment of money within the provisions of Rule 12 of Order XXXII as to payment by instalments.

O. 35, r. 9.
Proctor appearing for several parties entitled to one set of costs only.

9. Where the same Proctor appears for several plaintiffs or defendants, the Proctor's costs chargeable as between party and party shall not be heavier than if such Proctor had appeared for a sole plaintiff or defendant, as the case may be.

Provided, however, that where the Court is satisfied that any extra work of such a nature as should be specially remunerated has devolved on the Proctor as a result of his appearance for several plaintiffs or defendants, the Court may make such order as to it shall seem meet and proper.

O. 35, r. 10.
One of several plaintiffs or defendants liable to pay only his share of costs.

10. Where several plaintiffs or defendants retain and are jointly represented by the same Proctor, each of such plaintiffs or defendants shall, as between Proctor and client be chargeable only with his proportion of the general costs of the proceedings taken on behalf of all.

O. 35, r. 11.
Costs of improper or vexatious pleadings, etc., delivered by a party to be disallowed.

11. (1) The Court may at the hearing of any cause or matter or upon any application or proceeding in any cause or matter and whether the same is objected to or not, direct the costs (to be fixed by Court in the order) of—

(*a*) any pleading, affidavit, evidence, interrogatory, notice to discover, inspect, produce or admit documents, or notice to admit facts;

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(*b*) applications for time;

(*c*) bill of costs;

(*d*) service of motion, notice or summons which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed.

(2) In such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties, which shall also be fixed by Court.

Such party to pay costs of opposite party in addition.

ILLUSTRATION

Interrogatories for the examination of the defendant held to have been delivered by the plaintiff vexatiously or at improper length; Court may order the costs of such interrogatories fixed at, say Rs. 10/50, to be disallowed, and at the same time order the plaintiff to pay the costs of the defendant fixed at, say, Rs. 21. Plaintiff succeeds in the action; he would be entitled to his costs in the appropriate category in the scale, less Rs. 10/50 and would be liable to pay to the defendant Rs. 21. As between plaintiff and his Proctor, the Proctor will be entitled to the prescribed fee less Rs. 10/50 which the Court made order disallowing out of his bill.

O. 35, r. 12.
Personal Liability of Proctor for costs.

12. Where upon the trial of any action, cause or matter it appears that the same cannot conveniently proceed by reason of the Proctor for any party having neglected to attend personally, or by some proper person on his behalf or having omitted to deliver any document necessary for the proper progress of the trial, such Proctor shall personally pay to all or any of the parties such costs as the Court shall think fit to award.

O. 35, r. 13.
Costs may be disallowed to or ordered to be paid by Proctor on account of delay or misconduct.

13. If in any case it shall appear to the Court that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order or of any misconduct or default of the Proctor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court may call on the Proctor of the person by whom such costs have been incurred to show cause why such costs should not be disallowed as between the Proctor and his client, and also (if the circumstances of the case shall require) why the Proctor shall not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require.

O. 35, r. 14.
Court to fix amount of costs of incidental or interlocutory proceeding.

14. Where on any incidental or interlocutory proceeding the Court makes an order for costs payable by one party to another, the Court shall fix the amount of such costs either at the time of the making of such order or at any time subsequent thereto.

O. 35, r. 15.
Necessary costs to be allowed in taxation.

15. On every taxation the taxing officer shall allow all such costs, charges and expenses, as appear to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same no costs, charges or expenses shall be allowed which appear to the taxing officer to have been incurred through overcaution, negligence or mistake or by payment of special fees to Counsel or special charges or expenses to witnesses or other persons or by summoning an unnecessary number of witnesses or by other unusual expenses.

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O. 35, r. 16. Expenses of witnesses to be disallowed in certain cases.

16. Where evidence of matters proof of which could have been adduced by calling upon the opposite party to admit facts or the genuineness of documents or by taking any other proceeding under Order XXI is placed before Court by means of witnesses testifying orally to such facts, the costs of summoning and the expenses payable to such witnesses shall be disallowed by Court either at the time such evidence is placed before Court or at any time subsequently.

O. 35, r. 17. Disallowance of costs of unnecessary appearance in Court.

17. Where any party appears by Proctor or Counsel or both upon any application or action or proceeding in Court in which he is not interested or upon which appearance by Proctor or Counsel or both is not necessary, the Court shall disallow the costs of such appearance.

O. 35, r. 18. Costs according to scale prescribed.

18. (1) All bills of costs, whether between party and party or between Proctor and client, shall be according to the scale specified in Appendix IV.

Scale may be increased or decreased.

(2) Notwithstanding the provisions of the above paragraph, it shall, however, be competent to the Court on specifying the reasons therefor either at the time it makes an order for costs or prior to or at the time of taxation of a bill of costs,

(*a*) on special grounds arising out of the nature, importance, or the unusual difficulty or length, of trial of any case, to order a higher fee than that prescribed in the scale under category E. F. or H;

(*b*) for special reasons to order a lower fee than that prescribed by the scales in Appendix IV.

Court may fix costs where not provided.

(3) In regard to any matter not provided for in the scale of fees the Court may fix such costs as to it shall seem reasonable.

ILLUSTRATION

Husband sues wife for divorce on the ground of adultery, claiming Rs. 5,000 by way of damages against co-defendant and denies paternity of a child given birth to by the wife. The trial lasts a month after proceedings for preliminary investigation had been taken. Instead of merely allowing the appropriate fee according to the scale, the Court may order such higher fee as it considers reasonable in view of the unusual length of the trial.

O. 35, r. 19. Costs to be taxed.

19. (1) All bills of costs shall be taxed by the taxing officer.

Taxing Officer.

(2) " Taxing Officer " shall mean in reference to the Supreme Court the Registrar or a Deputy Registrar of such Court, in reference to the District Court the Secretary or other officer approved by the District Judge, and in reference to the Court of Requests the Chief Clerk of such Court.

Date of taxation to be fixed.

(3) On the presentation of a bill of costs for taxation the taxing officer shall fix a date for the taxation.

Notice of date of taxation to be given to opposite party.

(4) Such date shall be endorsed and initialled by the taxing officer on the bill of costs and notice thereof shall be given by the party presenting the bill or by his Proctor to the Party or to the Proctor of the party against whom the bill is to be taxed.

Where bill taxed against client, Proctor to give notice.

(5) Where a Proctor is taxing a bill of costs against his own client, the notice prescribed by the preceding paragraph shall be given by such Proctor to the client against whom the bill is to be taxed.

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O. 35, r. 20. Proctors to be heard before taxation.

20. (1) On the day fixed for the taxation or on any subsequent day to which the taxing officer may adjourn the taxation, the taxing officer, after hearing Proctors for the parties, if they are present and desire so to be heard, shall tax the bill.

Taxing officer may call for explanation of items.

(2) The taxing officer may call for an explanation in writing from, or if necessary require the personal attendance at the taxation of, the Proctor for any party presenting, or objecting to, a bill of costs, to explain any item or items therein, and may adjourn the taxation in order to enable such explanation to be furnished or such Proctor to be present.

Explanation not furnished, item may be disallowed.

(3) Where, after reasonable notice, any Proctor fails to furnish an explanation in writing of, or to attend the taxation to explain, any item or items in the bill of costs or any item or items objected to, when required so to do under paragraph (2), the taxing officer may, in his discretion disallow any such item or items.

O. 35, r. 21. Taxation to be reviewed by Court.

21. (1) Where either party is dissatisfied with the decision of the taxing officer, such party may within ten days from such decision apply in writing to the taxing officer to refer the taxation for the determination of the Court.

Subject to an appeal except in the case of the Supreme Court.

(2) Such determination, where the Court is the Supreme Court, shall be final, and where the Court is the District Court or the Court of Requests, shall be subject to an appeal to the Supreme Court.

Grounds of review to be started.

(3) Every such application shall state the ground or grounds on which a review of the taxation is applied for.

O. 35, r. 22. Action for costs by Proctor.

22. 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.

O. 35, r. 23. Proctor to bear costs of taxation in what case.

23. If more than one-sixth of the amount of any bill of costs is disallowed, the Proctor shall bear the expense of taxation.

ORDER XXXVI

Execution of Decrees

O 36, r. 1. Meanings.

1. In this Order and Orders XXXVII-LIII unless there is anything repugnant in the subject or context, the following expressions have the following meanings:—

(1) " Judgment-debt " or " decretal amount " means the sum of money as well as costs awarded, decreed or ordered in favour of a judgment-creditor against a judgment-debtor;

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(2) " decree " includes an " order " capable of execution;

(3) " executing officer " means the Fiscal or his deputy or other officer of the Fiscal.

O. 36, r. 2. Judgment-debtor to comply with judgment.

2. Forthwith on the judgment or order being pronounced or made, the judgment-debtor shall comply with and carry out the terms thereof according to its tenor.

O. 36, r. 3. Right of decree-holder to execute decree.

3. Where the judgment or order remains unsatisfied, the judgment-creditor may apply to Court to have the decree executed by the hands of the Fiscal.

O. 36, r. 4. Requisites of application for execution.

4. The application for the execution of the judgment or 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 judgment or decree;

(*d*) whether any appeal has been preferred from the judgment or decree;

(*e*) whether any, and what, adjustment of the matter in dispute has been made between the parties subsequently to the judgment or decree;

(*f*) whether any, and what previous applications have been made for execution of the judgment or decree, and with what result, including the dates and amounts of previous levies, if any,

(*g*) the relief granted by the judgment or decree;

(*h*) the amount of costs, if any, awarded;

(*i*) the name of the judgment-creditor;

(*j*) the name of the judgment-debtor;

(*k*) the mode in which the assistance of the Court is required, whether—

(i) by seizure and sale of the judgment-debtor's property,

(ii) by delivery of any property specifically decreed,

(iii) by the arrest and imprisonment of the judgment-debtor,

(iv) by the appointment of a receiver, or

(v) otherwise as the nature of the relief sought may require.

O. 36, r. 5. Court to satisfy itself as to conformity of application.

5. (1) Upon the application for execution of the judgment or decree being made, the Court shall satisfy itself by reference, if necessary, to the record of the action in which the judgment or decree sought to be executed was pronounced or passed, that the application is substantially in conformity with the fore-going directions, and that the applicant is entitled to obtain execution of the judgment or decree which is the subject of the application.

When application should be refused by the Court.

(2) 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.

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(3) The Court, however 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; every amendment so made shall be attested by the signature of the Judge making it.

Court may make amendment if convenient. Amendment to be signed by Judge.

(4) In the event of the Court refusing to entertain the application, the order of refusal specifying the grounds thereof shall be endorsed on the application, and the same shall be filed of record in the action.

Order of refusal to be endorsed on the application.

(5) If the Court is satisfied in the respects above indicated, it shall direct a writ of execution to issue to the Fiscal.

Court may issue writ of execution.

6. Upon receiving the writ the Fiscal or his deputy or other officer shall forthwith execute it according to the tenor and exigencies thereof, in conformity with the rules hereinafter contained.

O. 36, r. 6.

Fiscal to execute writ forthwith.

ORDER XXXVII

Decrees for Payment of Money

1. (1) Where the judgment or decree is for the payment of a sum of money, the debtor shall pay the decretal amount—

(*a*) to the judgment-creditor, or
(*b*) into Court.

O. 37, r. 1.

Judgment-debtor to pay amount decreed to judgment-creditor or into Court.

(2) Where the payment is made into Court, notice of such payment shall be given to the judgment-creditor, and where interest is payable under the decree, such notice shall operate as a bar to the accrual of such interest upon the amount so paid after the date of receipt of such notice by the judgment-creditor.

In the latter case notice to be given to judgment-creditor.

2. (1) If the judgment or 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 seizure and sale of any such property in the hands or under the control of the party against whom the judgment or decree is pronounced or made.

O. 37, r. 2.

Execution of decree against legal representative of a deceased person.

(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 the property not duly applied by him, in the same manner as if the decree had been against him personally.

When decree may be executed against legal representative personally.

3. The judgment-creditor may at any time after judgment or order has been pronounced or made, apply to the Court for an order—

O. 37, r. 3.

Examination of judgment-debtor as to debts.

(*a*) that the judgment-debtor, or
(*b*) where the judgment-debtor is a board, corporation or company, that any officer thereof, be orally examined before the Court on oath or affirmation, as to whether any and what debts are owing to the judgment-debtor, and whether the judgment-debtor has any and what other property or means of satisfying the judgment or decree; and the Court may thereon make an order for the attendance and examination on oath or affirmation of such judgment-debtor or officer, and for the production by such judgment-debtor or officer of any books or documents.

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O. 37, r. 4. Application need not be supported by affidavit.

4. It shall not be necessary to support any such application by affidavits of the applicant's belief that any debts are owing to the judgment-debtor, or that he has any other property or means of satisfying the decree.

O. 37, r. 5. Costs.

5. The costs of any such application and of any proceedings arising thereout or incidental thereto shall be in the discretion of the Court.

O. 37, r. 6. Where judgment-debtor fails to attend, he may be arrested on warrant.

6. If such judgment-debtor or officer for whose attendance an order has been made under Rule 3 of this Order fails to comply with such order, the Court may, on its own motion or on the application of the judgment-creditor, issue a warrant for the arrest of such judgment-debtor or officer.

O. 37, r. 7. Judgment-debtor not appearing liable to be dealt with for contempt.

7. Where such judgment-debtor or officer is produced under arrest, he may be examined, and unless he satisfies the Court that he had reasonable cause for his non-appearance, shall be liable to be punished as for a contempt of Court.

O. 37, r. 8. Warrant to be executed as one for contempt of Court.

8. The warrant issued under rule 6 of this Order shall be executed as if it were a process issued in proceedings for contempt.

ORDER XXXVIII

Seizure

O. 38, r. 1. Duties of Fiscal.

1. (1) Upon receiving a writ directing the seizure and sale of the property of a judgment-debtor, the Fiscal or his deputy or other officer shall forthwith proceed to seize such property other than property mentioned in section 10 of the Code of the judgment-debtor as may be pointed out by the judgment-creditor or the judgment-debtor, or such property as is specified in the writ according to the Rules hereinafter contained.

Judgment-debtor may surrender property.

(2) Where property is pointed out by the judgment-debtor, such property shall be unclaimed property and shall be surrendered by the judgment-debtor to the officer executing the writ.

O. 38, r. 2. Property seized must be sufficient to satisfy debt.

2. Seizure shall be effected of property sufficient to satisfy the amount due under the writ, or if there be more than one writ, all the writs, and the charges and expenses of levying execution.

O. 38, r. 3. Order of seizure in discretion of officer.

3. (1) Where it becomes necessary to seize more than one property, the seizure shall be made in such order as may be specified by the judgment-creditor, and in the absence of any such instruction then by the officer executing the writ according to his discretion.

May be varied by Court.

(2) It shall, however, be competent to the Court on the application of the judgment-debtor to vary, as to it shall seem proper, the order in which such seizure or sale shall be made.

O. 38, r. 4. Seizure of movable property in possession of debtor to be manual.

4. If the property sought to be seized and sold, or otherwise, realized in satisfaction of the judgment or decree to be executed is movable property in the possession of the judgment-debtor, the seizure shall be manual.

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O. 38, r. 5. Disposal of property seized until sold.

5. The executing 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 decree-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.

O. 38, r. 6. When Fiscal not responsible for custody of property seized.

6. If such security is not given or such expenses are not advanced or secured, the executing officer shall make a special return thereof to the Court, and shall not be responsible for the due custody of the property seized.

O. 38, r. 7. Expenses of keeping property first charge on proceeds.

7. 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.

O. 38, r. 8. Provision as to perishable property.

8. If the property seized is subject to speedy and natural decay, or if the expense of keeping it in custody will exceed its value, the executing officer may sell it at once.

O. 38, r. 9. Seizure of negotiable instrument.

9. 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.

O. 38, r. 10. Seizure of debts, shares, salary and movable property not in possession of debtor and not deposited in Court to be by written notice of prohibition.

10. (1) If the property is—

(i) a debt other than a debt secured by a negotiable instrument, due from a third party (hereinafter called the garnishee to the judgment-debtor,

(ii) a share in the capital of any company or corporation,

(iii) the seizable part of the salary and allowances not exempted under section 10 of the Code,

(iv) 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,

(v) the right, title or interest of the judgment-debtor in a pending action,

the sequestration or seizure shall be made by a written notice signed by the Fiscal,

prohibiting—

(*a*) in the case of the debt as aforesaid, the judgment-debtor from recovering the debt, and the garnishee from making payment thereof until the further order of the Court from which the writ of execution authorising the seizure issues;

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(*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 salary and allowances the employer from paying such seizable part thereof to the judgment-debtor;

(*d*) 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;

(*e*) in the case of the right, title and interest in the action the judgment-debtor from proceeding to enforce his rights, receiving payment or satisfaction or entering into any adjustment in respect of such action, and the party from whom such right is claimed called hereinafter the action debtor from paying, satisfying or entering into an adjustment in respect of the action.

Publication of seizure.

(2) A copy of such notice 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 garnishee, in the case of the share to the proper officer of the company or corporation, in the case of the salary and allowances to the employer, and in the case of the other movable property (except as aforesaid) to the person in possession of the same, and in the case of the right, title and interest in the action, to the Secretary or Chief Clerk of the Court, whereupon the Court shall make a memorandum thereof in the journal of the action and stay further proceedings until the notice is withdrawn, or the purchaser under the sale effected in pursuance of such seizure applies to be substituted in place of the judgment-debtor.

Compromise ineffectual after receipt of notice of seizure.

(3) (*a*) No payment, satisfaction or adjustment made by the garnishee, employer, or the action debtor,

(*b*) no registration made by the company or corporation, and

(*c*) no delivery of the other movable property except as aforesaid by the person in possession thereof,

in contravention of such seizure after receipt of notice or with the knowledge thereof, shall be recognized by any Court so long as the seizure remains in force.

Salary may be seized before or after it falls due.

(4) The seizure of the seizable part of the salary and allowances may be effected before, on or after the date when the salary and allowances become payable to the employee.

In the case of Crown debt, notice to Attorney-General or disbursing officer.

(5) In the case of a debt due and owing by the Crown to the judgment-debtor, the copy of the notice may be delivered or sent by post either to the Attorney-General or to the disbursing officer.

Explanation.—" Disbursing Officer " includes the head of the department or local head making payment.

O. 38, r. 11.

Seizure of property deposited in any Court.

11. (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 authorising the seizure issues.

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(2) Upon any such notice being received by any Court, a memorandum thereof shall be made in the journal of the action or the record of the case in which, or to the credit of any party to which, the money or property is deposited, or is in the custody of the Court. Memorandum to be made in journal of action.

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 rule, money deposited in or in the custody of, the Court in which the action is.

(3) The Court receiving such notice shall stay execution accordingly, unless and until— On notice, Court to stay execution.

(i) the Court which passed the decree sought to be executed cancels the notice; or

(ii) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

12. Where 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 seizure, assignment, or otherwise, shall be determined by such Court. O. 38, r. 12. Question of title or priority.

13. The notice to effect seizure under Rules 10 and 11 of this Order may be signed and served by the Fiscal under the authority of the writ of execution alone. O. 38, r. 13. Notice by Fiscal.

14. 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 application for seizure shall be made by the judgment-creditor by motion ex-parte in the action in which the decree sought to be executed is entered, and if the Court allows the motion, the seizure shall be made by an order of the Court endorsed in the journal of the action in which the decree is sought to be seized, directing the proceeds of the decree entered therein to be applied in satisfaction of the decree sought to be executed. O. 38, r. 14. Seizure of a money decree in favour of judgment-debtor of the same Court.

15. (1) If the property is a decree for money passed by any other Court, the application for seizure shall be made by the judgment-creditor by motion ex-parte in the action in which the decree sought to be executed is entered, and if the application is allowed, the seizure shall be made by notice to such other Court. O. 38, r. 15. Of another Court.

(2) Such notice shall be in writing signed by the Secretary or Chief Clerk of the Court which passed the decree sought to be executed requesting the Court, the decree of which is sought to be seized, to stay the execution of its decree until such notice is cancelled by the Court from which it was sent, and on receipt of such notice, a memorandum thereof shall be made in the journal of the action in which the decree is sought to be seized. Terms of notice.

16. If the property is a decree other than a decree for payment of money passed in favour of the judgment-debtor by the Court which passed the decree sought to be executed, the application for seizure shall be made as provided in Rule 14 of this Order, and if the application is allowed, the seizure shall be O. 38, r. 16. Seizure of any other decree of the same Court.

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made by a notice in writing signed by the Secretary or Chief Clerk of the Court which passed the decree sought to be executed to the holder of the decree sought to be seized prohibiting him from transferring or charging the same in any way; and a memorandum thereof shall be made in the journal of the action in which the decree is sought to be seized.

O. 38, r. 17. Of another Court.

17. If the property is a decree other than a decree for payment of money passed by any other Court, the application for seizure shall be made as provided in Rule 15 of this Order, and if the application is allowed, notice as specified in the preceding Rule shall be given to the holder of the decree sought to be seized, and a notice signed by the Secretary or Chief Clerk of the seizing Court shall be sent to such other Court requesting it to abstain from executing the decree sought to be seized until such notice is cancelled by the seizing Court; and the Court receiving such notice shall make a memorandum thereof in the journal of the action in which the decree is sought to be seized. Every Court receiving such notice shall give effect to the same until it is so cancelled.

O. 38, r. 18. Notice to judgment-debtor under decree.

18. Notice of seizure effected under Rules 14, 15, 16 and 17 of this Order shall be given to the judgment-debtor bound by the decree seized, and no payment, satisfaction or adjustment of the decree seized made by such judgment-debtor in contravention of such seizure after receipt of notice or with the knowledge thereof shall be recognized by any Court so long as the seizure remains in force.

O. 38, r. 19. Seizing creditor of money decree assignee thereof.

19. When a money decree is seized under Rule 14 or Rule 15 of this Order, 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.

O. 38. r. 20. Seizure of interest of judgment-debtor in partnership property.

20. If the property is the interest of the judgment-debtor in a partnership or firm, the seizure shall be made by an order of Court charging the interest of such judgment-debtor in the partnership property and profits with payment of the amount due under the decree, and the Court may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require, but no property belonging to the partnership shall be seized in execution of such decree.

O. 38, r. 21. Notice to be given to judgment-debtor and his partners.

21. Notice of such seizure shall be given by service of copies of the charging order on the judgment-debtor and on his partners or such of them as are within the Island, or on the person who has the control or management of the said partnership business.

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22. The other partner or partners shall be at liberty at any time to have such seizure released on payment of the amount of the writ and the expenses and charges of seizure.

O. 38, r. 22. Partner of judgment-debtor entitled to have seizure released.

23. Notice of such payment shall be served on the decree-holder and on the judgment-debtor.

O. 38, r. 23. Notice of payment to be given to decree-holder and judgment-debtor.

24. Service under Rule 21 shall be deemed to be service on all the partners.

O. 38, r. 24. When service deemed to be effected on all partners.

25. Where a decree has been passed against the partners of a firm or partnership as such, seizure may be made of any property—

O. 38, r. 25. Execution of decree against partners as such.

(*a*) of the partnership;

(*b*) of any person who has appeared in his own name under Rule 5 or 6 of Order LXVI, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(*c*) of any person who has been individually served as a partner with a summons and has failed to appear.

26. Where the judgment-creditor claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in paragraphs (*b*) and (*c*) of the preceding Rule as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in an action may be tried and determined.

O. 38 r. 26. Decree may be executed against partner who has not appeared on being served.

27. The application under the last preceding Rule shall be by motion supported by an affidavit of facts showing that the person against whom the decree is sought to be executed is a partner in the firm or partnership. Notice of such motion, together with a copy of the affidavit shall be served on the person alleged to be a partner, and such person, where he disputes the liability, may file a counter-affidavit.

O. 38, r. 27. Application, how made.

28. Where the liability of any person has been tried and determined, the order made thereon shall subject to appeal be final and conclusive.

O. 38, r. 28. Determination of liability final.

29. Where a seizure of any negotiable instrument, debt, share, seizable part of the salary and allowances, money, partnership interest, decree, or any other movable property has been effected and made known in manner hereinbefore provided, any private alienation of the property seized, whether by sale, gift mortgage or otherwise, and any payment of the debt or partnership interest or seizable part of the salary and allowances, or dividend, or delivery of the share to the judgment-debtor during the continuance of such seizure, shall be void as against all claims enforceable under the seizure.

O. 38, r. 29. Alienation by debtor subsequent to seizure void as against claims enforceable under seizure.

Explanation: For the purpose of this Rule claims enforceable under a seizure include claims for the rateable distribution of assets.

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O. 38, r. 30. Seizure of immovable property to be by written notice of prohibition.

30. 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. 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 Order XCI.

O. 38, r. 31. Publication of notice.

31. Such 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.

O. 38, r. 32. Effect of publication of seizure and registration of notice of seizure.

32. Where a seizure of immovable property is effected under a writ of execution and made known as provided by the last two preceding Rules and notice of the seizure is registered before the first day of January, 1928, in the book formerly kept under section 237 of the Civil Procedure Code of 1889, or is registered on or after the first day of January, 1928, under the 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.

O. 38, r. 33. Effect of registration of seizure priority notice

33. If at any time while a seizure priority notice registered under section 31 of the Registration of Documents Ordinance remains in force, a seizure of any land described in the seizure priority notice is effected under a writ of execution and made known as provided by the last two preceding Rules and notice of seizure is registered under the Registration of Documents Ordinance, any sale, conveyance, mortgage, lease or disposition of the property seized made after the registration of the seizure priority notice 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 a purchaser.

O. 38 r. 34. When seizure deemed withdrawn.

34. (1) 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 certified to the Court, or if the decree is set aside or reversed, the seizure shall be deemed to be withdrawn, unless there be in the hands of the Fiscal other unsatisfied writs.

Court may order release of seizure.

(2) The Court may also on the application of the judgment-debtor make order releasing the seizure, but subject to the continuance of the seizure if there be other unsatisfied writs in the hands of the Fiscal.

O. 38, r. 35. List to be made of property seized.

35. As soon as any property shall be seized by the Executing Officer, a list of such property shall forthwith be made and signed by himself 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.

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ORDER XXXIX

Claims to Property Seized

O. 39, r. 1. Claims to property seized to be reported by Fiscal.

1. Where any claim is preferred to or objection is made to the seizure of any property seized in execution of a decree on the ground that such property is not liable to such seizure or sale, the Fiscal or Deputy Fiscal shall, as soon as the same is preferred or made, report to the Court which passed such decree.

O. 39, r. 2. Claim to be reported to Court where property situate.

2. Where, however, any such claim or objection is preferred or made, in the case of any property so seized outside the local limits of the jurisdiction of the Court which passed the decree under which such seizure is made, such report shall be made to, and the investigation of such claim or objection as hereinafter provided shall thereupon be held by the Court of the district or division within the local limits of which such seizure was made:

Provided 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.

O. 39, r. 3. Proceedings of such Court to be forwarded to Court allowing writ.

3. 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.

O. 39, r. 4. Claim to be made within thirty days.

4. The claim or objection shall be preferred or made at the earliest opportunity and in any event not later than thirty days from the date of such seizure. Any claim or objection preferred or made after the expiry of the said period of thirty days shall not be entertained.

O. 39, r. 5. Sale may be stayed pending investigation of claim.

5. Where the claim or objection has been preferred or made within the time allowed as aforesaid, the sale may, if it appears to the Court necessary, be postponed for the purpose of making the investigation mentioned in Rule 15 or 21 of this Order.

O. 39, r. 6. Punishment as well as damages may be awarded for groundless claim.

6. 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.

O. 39, r. 7. Rules specially applicable to claims to movable property.

7. Rules 8 to 19 of this Order apply to claims to, or objections to seizure of, movable property.

O. 39, r. 8. Claimant of movable property to pay expenses or give security.

8. (1) Where the claim or objection relates to movable property, the claimant may—

(*a*) deposit with the Fiscal or Deputy Fiscal the sum which he is allowed to charge as costs for keeping possession of the goods until the decision of the Court can be obtained on the claim, or

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(*b*) (i) deposit in Court or with the Fiscal the value of the goods claimed, or

(ii) furnish security for the value thereof to the Court or the Fiscal.

Amount of security to be fixed by Court if in dispute.

(2) In case of dispute as to the value of the goods claimed, the Court shall make an appraisement thereof after holding an inquiry thereinto in a summary manner.

O. 39, r. 9. When movable property claimed may be sold.

9. In default of the claimant complying with the provisions of the preceding Rule and subject to the order of Court, if any, the Fiscal shall sell the movable property as if no such claim had been made and shall pay into Court the proceeds of the sale to abide the decision of the Court.

O. 39, r. 10. Claimant to file statement of his claim.

10. Within ten days of the receipt by Court of the Fiscal's report of such claim, the claimant shall file in Court a statement of his claim, setting out the particulars of any property alleged to be his and the grounds of his claim thereto, and shall at the same time serve a copy of the statement on the writ-holder.

Explanation.—A mortgagee claimant need not file a statement of claim under this rule in view of section 105 of the Mortgage Act, No. 6 of 1949.

O. 39, r. 11. Requisites of statement.

11. The statement shall be headed and bear the same number as of the action, and shall set out the full name, place of residence or business and occupation, of the claimant, and shall be stamped as of the class either of the action or of the value of the goods claimed, whichever is less, and shall, as far as practicable, conform to the requisites of a plaint.

O. 39, r. 12 Writ-holder may file counter-statement.

12. The writ-holder may within ten days of the service of the statement on him file a counter-statement in Court and serve the claimant at the same time with a copy thereof.

O. 39, r. 13. Requisites of counter-statement.

13. The counter-statement shall set out all grounds upon which the claim is resisted, including any plea that the property had been transferred in fraud of creditors. The counter-statement shall be duly stamped as the statement and conform, as far as practicable, to the requisites of an answer.

O. 39, r. 14. Parties to apply to fix date for investigation.

14. Within ten days of the date of the counter-statement being filed, or of the expiry of the period allowed for filing the counter-statement where no counter-statement is filed, either party may apply for a date for trial or preliminary investigation as provided in Order XIX, and the proceedings thenceforth shall mutatis mutandis follow the Rules prescribed for the trial of a regular action either without or after preliminary investigation as the case may be, the claimant being considered the party plaintiff and the judgment-creditor the party defendant.

O. 39, r. 15. Title to be investigated.

15. Upon such trial the Court shall determine the title to the property claimed and whether the property or any part thereof is liable to be sold under the seizure, and make order either releasing the seizure or disallowing the claim, subject to conditions or otherwise.

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O. 39, r. 16. Court may direct sale, subject to the rights of the holder of a lien.

16. If the Court is satisfied that the property is subject to a lien in favour of the claimant, the Court may order that the property be sold subject to the lien, or that the property be sold free of the lien and the proceeds of the sale be applied first in discharge of the lien.

O. 39, r. 17. Costs of investigation.

17. The Court shall also make order as to the party by whom the charges and expenses consequent on the claim or objection shall be borne as well as the costs of the proceedings.

O. 39, r. 18. Claimant filing no statement, or steps not taken to have investigation, claim dismissed.

18. Where the claimant fails to file his statement as required by Rule 10 of this Order, or where neither party applies for a date for trial or preliminary investigation as required by Rule 14, the Court may dismiss the claim.

O. 39, r. 19. Judgment final and subject to appeal.

19. Subject to appeal, the judgment of the Court shall be final and conclusive.

O. 39, r. 20. Rules specially applicable to claims to immovable property.

20. Rules 21 to 25 of this Order apply to claims or objections to seizure of immovable property.

O. 39, r. 21. Claims to immovable property.

21. Where the claim or objection is to immovable property seized, the Court shall, on receipt of the Fiscal's report, 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.

O. 39, r. 22. Claimant to adduce evidence.

22. 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.

O. 39, r. 23. Discretion of Court to release the property claimed.

23. 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 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 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 order as to payment of fees and charges already incurred by the Fiscal as it may deem fit.

O. 39, r. 24. When may Court disallow claim.

24. 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.

O. 39, r. 25. Action by party claiming right.

25. The party against whom an order under either of the two preceding Rules 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 upon any ground whatsoever, including the ground that the property had been transferred in fraud of creditors. Subject to the result of such action, if any, the order shall be conclusive.

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ORDER XL

Realization without Sale of the Property of the Judgment-Debtor

O. 40, r. 1. Money received without sale or currency seized, how dealt with.

1. (1) Where the amount of the writ is paid by the judgment-debtor to the Fiscal before the sale in execution of any property belonging to him, or where the property seized is current coin or currency notes, the Fiscal shall deal with the money received or seized by him in the manner hereinafter directed in respect of money received by the Fiscal on the sale of property sold at the execution sale.

Deemed to be received to separate account of judgment-creditor.

(2) The money so received or seized by the Fiscal shall, on being deposited to the credit of the action from which execution issued, be deemed to have been paid into or received by the Court to the separate account of the judgment-creditor in execution of whose writ the money was received or seized, and the money may be paid out to such judgment-creditor on his ex-parte application.

O. 40, r. 2. Money decree seized may be executed on the application of seizing creditor.

2. Where a Court has made an order of seizure or received notice of seizure of a money decree under either Rule 14 or Rule 15 of Order XXXVIII, it shall on application of the judgment-creditor who has seized the decree proceed to execute the decree seized and apply the nett proceeds in satisfaction of the decree sought to be executed.

O. 40, r. 3. Judgment-debtor's debtor may be summoned, or execution may issue against him.

3. A garnishee prohibited under sub-paragraph (*a*) or an employer prohibited under sub-paragraph (*c*) of paragraph (1) of Rule 10 of Order XXXVIII may, upon the ex-parte application of the judgment-creditor, be summoned by Court to show cause on a day fixed in the summons, which shall be in Form No. 70 in Appendix I, why, in the case of the garnishee 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, and in the case of the employer he should not withhold from payment to the employee such seizable part of the salary and allowances, either in one sum or by monthly instalments, as may be sufficient to satisfy the judgment.

O. 40, r. 4. Garnishee may be ordered to pay amount to Court.

4. Where such garnishee does not dispute the debt due or claimed to be due from him or where the employer has no cause to show against the withholding of such seizable part of the salary and allowances due from him to the employee and where the garnishee or employer as the case may be fails within such time as may be allowed by the Court to pay into Court the amount of the debt or the seizable part of the salary and allowances or an amount of the debt or of the seizable part of the salary and allowances equal to the judgment, or where the garnishee or employer does not appear upon summons, then the Court may order execution to issue, and it may issue accordingly, to levy the amount of the debt or of the seizable part of the salary and allowances due from such garnishee or employer, as the case may be, or so much thereof as may be sufficient to satisfy the judgment.

O. 40 r. 5. Garnishee to return subsequent summons to Court.

5. (1) Where the seizable part of the salary and allowances of an employee is already being withheld and paid into a Court in pursuance of a previous and unsatisfied order made under the preceding Rule, the employer if served with a subsequent summons under Rule 3 of this Order shall forthwith return the

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summons to the Secretary or the Chief Clerk of the Court from which the summons shall have issued, with a full statement of all the particulars of the order under which the part of the salary and allowances is being withheld and paid into Court by him.

(2) On the receipt of such summons by the Court, the judgment-creditor at whose instance such summons issued may apply to the Court into which the salary and allowances are being paid by the employer for a further order on the employer after notice to him to withhold and pay into Court any additional sum available for seizure and for a rateable distribution of the amount received in Court and not previously paid out with notice to all judgment-creditors who may be affected thereby.

Other judgment creditors entitled to share.

6. If such garnishee or employer disputes the debt or the liability to pay any part of the salary and allowances due or claimed to be due from him, the Court shall examine the garnishee or the employer in order to ascertain if the dispute raised is made bona fide and make such order as the justice of the case may require.

O. 40, r. 6.
Where debt disputed, garnishee may be examined.

7. After an order on an employer has been made directing him to pay into Court monthly the seizable part of the salary and allowances due to an employee, it shall be competent to the Court to vacate or modify such order upon being satisfied on the application of the employer with notice to the judgment-creditor that circumstances have so altered since the date of the order as to render it proper to do so.

O. 40, r. 7.
Order to pay salary may be vacated or modified.

8. (1) Where the property in deposit or in the custody of a public officer is money, the public officer 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 the said sum of money or so much thereof as may be sufficient to satisfy the judgment debt into Court.

O. 40, r. 8.
Money seized in hands of public officer.

(2) If no cause be shown, order may be made directing the payment of such sum of money into Court.

Where no cause shown payment may be ordered.

(3) If there be a dispute as to any money being due to the judgment-debtor, or if any money admitted to be due to the judgment-debtor is claimed to be subject to a lien or charge created in favour of a public officer or the Crown, the Court shall examine the public officer and make such order as the justice of the case may require.

Where there is a dispute, the public officer may be examined.

ILLUSTRATION

Money in deposit with the Post-master General for the faithful performance of duties by a subordinate officer, the judgment-debtor, is seized in the hands of the Post-master General. Summons thereafter issues to the Postmaster-General to show cause against the payment of the money into Court to satisfy the debt. The Postmaster-General admits the amount in his hands but denies liability to pay over such money, as the money is held by him by way of security for the faithful performance of the duties of the subordinate officer, and that the money is liable to be refunded to the subordinate officer, only on termination of such service, and that the subordinate officer continues yet in service. The Court would release the seizure and dismiss the summons.

9. Where an order is made against a garnishee, employer or public officer on his failure to appear upon summons, it shall be competent to the Court upon application made therefor by

O. 40, r. 9.
Order made on default of garnishee may be vacated.

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such garnishee, employer or public officer with notice to the judgment-creditor, to vacate such order on being satisfied that there was good cause for such failure to appear.

O. 40, r. 10. Costs of garnishee proceedings.

10. The costs of all applications made and proceedings had under this Order shall be in the discretion of the Court.

O. 40, r. 11. Payment by him to be a discharge as against judgment-debtor.

11. Payment made by, or execution levied upon, such garnishee, employer or public officer in manner provided in this Order shall be a valid discharge to him as against the judgment-debtor to the amount paid or levied, although any proceeding directing the payment or levy may be set aside or the judgment in respect of which any payment or levy is made may be reversed.

ORDER XLI

Rights and Obligations of Fiscal in Regard to Sales.

O. 41, r. 1. Procedure in case of other property seized by Fiscal.

1. In the case of property seized by the Fiscal other than current coin or currency notes he shall proceed to the sale thereof as provided in this and the succeeding Orders XLII-XLIV.

O. 41, r. 2. Notice of sale: in respect of movable property.

2. Where the seizure is of movable property, the Fiscal, Deputy Fiscal or other officer 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 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.

O. 41, r. 3. In respect of immovable property.

3. Where the seizure is of immovable property the like notice of sale shall be given as is prescribed in the preceding Rule in respect of movable property, and the Fiscal, Deputy Fiscal or other officer shall also cause to be made four copies of the notice of sale in English and four in the language prevailing within the district, one of each of which he shall cause to be posted at his office, at the Courthouse 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 least before such sale takes place.

O. 41, r. 4. Advertisement where property exceeds one thousand rupees in value.

4. (1) Where the property seized under one writ shall exceed the value of one thousand rupees, the Fiscal or Deputy Fiscal shall in addition to the notice hereinbefore required, advertise the sale thereof, enumerating briefly the goods for sale, the

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nature and situation of the land, and the time and place of the sale, in the *Government Gazette;* and no such sale shall take place until it shall have been so advertised once at least twenty days prior to the sale.

(2) 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.

In newspaper named by judgment-creditor or debtor.

(3) 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.

Charges to be paid in advance.

Explanation.—Property seized under one writ shall include all property under seizure (whether effected at one time or at different times) up to the time of the sale of any property under such writ.

5. The Fiscal or Deputy Fiscal 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 hereinbefore mentioned, although it does not exceed the value of one thousand rupees.

O. 41, r. 5. Advertisement in other cases.

6. 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.

O. 41, r. 6. Proceedings at the sale.

7. The Fiscal or Deputy Fiscal shall recover

(*a*) A fee of five per centum on the first three hundred rupees of the proceeds of sale, whether of movable or immovable property; and

(*b*) a fee of three per centum on the next seven thousand two hundred rupees of the proceeds of sale of movable property; and

(*c*) a fee of two per centum on the next seven thousand two hundred rupees of the proceeds of sale of immovable property; and

(*d*) a fee of five rupees for every complete sum of one thousand rupees over and above the sum of seven thousand five hundred rupees of the proceeds of sale, whether of movable or immovable property.

O. 41, r. 7. Fees recoverable by Fiscal.

Explanation.—Sale shall include a re-sale of property.

8. No officer having any duty to perform in connection with any execution sale shall either by himself or another bid for, acquire, or attempt to acquire any interest in any property sold at such sale.

O. 41, r.8. No officer conducting sale to bid.

9. 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

O. 41, r.9. Fiscal may adjourn sale.

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.

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ORDER XLII

Sales of Immovable Property

O. 42, r. 1. Place of sale of immovable property.

1. 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.

O. 42, r. 2. Court may postpone sale to enable judgment-debtor to raise money by mortgage lease or private sale.

2. (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.

Certificate authorising such mortgage, lease or sale to be granted.

(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 Rules 32 and 33 of Order XXXVIII, to make the proposed mortgage, lease or sale.

Moneys raised to be paid into Court.

(3) All moneys payable under such mortgage, lease or sale shall be paid into Court and not to the judgment-debtor.

Such mortgage lease or sale requires confirmation of Court.

(4) No mortgage, lease or sale under this Rule shall become absolute until it has been confirmed by the Court.

O. 42, r. 3. Fiscal to satisfy himself as to bona fides of bidder.

3. The Fiscal, Deputy Fiscal or other officer conducting any sale of immovable property under this Order 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.

O. 42, r. 4. Bid by a co-owner.

4. When the property sold in execution of a decree is an undivided share of immovable property, and two or more persons, of whom one is a co-owner, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of such co-owner.

O. 42, r. 5. Sale charges and deposit by purchaser.

5. (1) On every sale of immovable property under this Order the person declared to be the purchaser shall pay immediately after such declaration in every case the fees, commissions and expenses of sale, and 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 payment and deposit the property shall forthwith be put up again for sale.

Expenses of sale received to be paid to judgment-creditor.

(2) Such expenses of sale as have been incurred by the judgment-creditor shall be repaid to him.

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O. 42, r. 6. Payment in full.

6. 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.

O. 42, r. 7. Default in payment, consequence of.

7. In default of payment within the period mentioned in the last preceding rule, the deposit shall be forfeited to, and shall go in reduction of the claim of, the judgment-creditor, and the property shall be re-sold, 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.

O. 42, r. 8. Fresh notification on re-sale.

8. Every re-sale 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 hereinbefore prescribed for the sale.

O. 42, r. 9. Deficiency on re-sale to be paid by first purchaser on Fiscal's certificate.

9. (1) The second sale, taking place in consequence of such non-payment of balance of purchase money, shall be made in the manner hereinbefore 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.

Similarly by subsequent purchasers.

(2) The like course shall be observed in respect of any subsequent sale rendered necessary by failure in payment of the purchase amount.

O. 42, r. 10. On highest bidder not making deposit, next highest may be declared purchaser.

10. (1) If at the sale of immovable property the highest bidder on being declared the purchaser shall not forthwith pay down the amount of the fees and expenses of sale and the 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 payment and deposit and security as aforesaid; and in the same manner the other bidders in rotation.

Difference to be paid by highest bidder on Fiscal's Certificate.

(2) Each person failing to make such payment and 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 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.

Or sell afresh or adjourn.

(3) 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.

O. 42, r. 11. Forfeiture of deposit.

11. 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

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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 be paid to the judgment-debtor.

O. 42, r. 12. Differences realised to augment the purchase money.

12. The differences between the biddings of any person failing to make the deposit and give the security required by Rule 10 of this Order 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 or Assistant Government Agent's office in augmentation of the purchase money of the final sale.

O. 42, r. 13. Sale not absolute until after thirty days and confirmation by Court.

13. 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.

O. 42, r. 14. And may be set aside for material irregularity.

14. (1) The decree-holder, or any person whose immovable property has been sold under this Order, or any person establishing to the satisfaction of the Court an interest in such property, may apply to the Court by petition on summary procedure 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 upon the facts proved the Court is satisfied that the applicant 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.

Who to be made respondents.

(2) The purchaser and all other persons affected by the application shall be made respondents to the petition.

O. 42, r. 15. Order setting aside the sale.

15. If such application as is mentioned in the preceding rule of this Order is allowed, the Court shall pass an order setting aside the sale.

O. 42, r. 16. Order confirming the sale.

16. If no such application as is mentioned in Rule 14 of this Order is made within the thirty days, or if such application is made and is disallowed, the Court shall at any time after the expiration of the thirty days and subject to the provisions of the next two succeeding Rules 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.

O. 42, r. 17. Sale not to be confirmed where decree satisfied prior thereto.

17. No order confirming the sale, however, shall be made if it appear to the Court that the judgment-debt was satisfied at the time of the sale, and in that event the Court shall pass an order setting aside the sale.

O. 42, r. 18. Confirmation of sale to be postponed pending inquiry into adjustment, etc., of decree.

18. Where an application is pending to have an adjustment or satisfaction of decree entered or made before the date of sale certified of record, the Court may, if the justice of the case so demands, postpone the confirmation of sale till after its decision on such application.

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O. 42, r. 19.
When purchaser may apply to set aside sale.

19. The purchaser at such sale unless he be the judgment-creditor 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.

O. 42, r. 20.
When purchaser may get back his purchase money.

20. (1) When a sale of immovable property is set aside under Rule 15, 17 or 19 of this Order, the purchaser shall be entitled to be paid the purchase money if in deposit in Court, or where the purchase money has been paid out to any other person, then to an order for repayment against such person to whom it has been paid out.

Who may be ordered to pay expenses, etc., of sale.

(2) The Court may also make such order as it thinks fit against any person in regard to the repayment of fees, commissions and expenses of sale paid by the purchaser to the Fiscal.

Order may be enforced as a decree for money.

(3) Any such order for the repayment of such purchase money or of fees, commissions and expenses of sale may be enforced against the person against whom the order is made as if such order were a decree for the payment of money.

O. 42, r. 21.
Conveyance to purchaser.

21. (1) 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 Form No. 74 in Appendix I hereto, 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.

In conformity with directions of Court, if any.

(2) 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.

O. 42, r. 22.
Conveyance to contain sufficient map of the premises where the purchaser so requires.

22. (1) Where the purchaser so requires, but not otherwise, 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.

Map to be prepared by approved surveyor.

(2) Such diagram or map shall be prepared by a competent surveyor approved by a District Court for that purpose, and such surveyor shall be an officer of the Fiscal within the meaning of Rule 1 of Order XLIX, and shall for the purposes of the Penal Code be deemed to be a public servant.

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O. 42, r. 23. Fiscal's Fees for conveyance.

23. 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; and

(*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 shall direct.

O. 42, r. 24. Fiscal to transmit duplicate to Registrar.

24. 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.

O. 42, r. 25. Court may order delivery of possession to purchaser.

25. (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 Rule 21 of this Order, the Court shall, on the application of the purchaser, order delivery to be made by putting such 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.

Order may be enforced as decree to yield possession of immovable property.

(2) An order for delivery of possession made under this rule may be enforced as a decree to yield up possession of immovable property, the purchaser being considered the judgment-creditor, and inter alia the provisions of Orders XLVIII and XLIX shall apply.

O. 42, r. 26. Mode of delivery where property is in occupancy of person entitled to occupy.

26. 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 Rule 21 of this Order, the Court shall, on the application of the purchaser, order delivery to be made by affixing a notice of the sale having taken place, both in English and in the 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.

O. 42, r. 27. Right and title of judgment-debtor not divested by sale till confirmation and execution of Fiscal's conveyance.

27. 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

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pursuance of the sale, the grantee in the conveyance is deemed to have been vested with such right and title from the time of sale.

O. 42, r. 28. Fiscal may enter property sold.

28. The Fiscal and Deputy 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 authorised 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.

O. 42, r. 29. Person in possession may use and enjoy until confirmation of sale.

29. 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.

O. 42, r. 30. On confirmation and execution of conveyance Fiscal to deliver possession to grantee.

30. (1) On the sale being confirmed by the Court and the conveyance executed in pursuance of the sale, the Fiscal, Deputy 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.

Where sale not confirmed judgment debtor to be restored to possession.

(2) If the sale is not confirmed, the Fiscal, Deputy 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, Deputy Fiscal, or his agent was in possession.

O. 42, r. 31. Judgment-debtor may be restrained from waste.

31. 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.

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O. 42, r. 32. Punishment for committing waste.

32. 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.

O. 42, r. 33. And for disobeying order.

33. 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.

ORDER XLIII

Sales of Movable Property

O. 43, r. 1. Sale of a share in any public company.

1. When the property to be sold is a negotiable instrument or a share in any public or private company or corporation, or Government stock, 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.

O. 43, r. 2. Property other than money in Court to be sold by Fiscal.

2. (1) Where property other than money in the custody of or lying in deposit in a Court is seized in terms of Rule 11 of Order XXXVIII, it shall be competent to the Court having the custody of such property on the application of the judgment-creditor to direct the Fiscal to sell such property or to make such other order as to it shall seem fit.

Property to be made available to Fiscal.

(2) Where the Court directs the sale, such property shall be made available and delivered to the Fiscal.

Proceeds to be deposited in Court having custody of property, and that Court to determine claims to fund.

(3) The proceeds of such sale shall be paid into Court to the credit of the action or case in which the property shall have been held in deposit or custody and such Court shall determine all claims to such proceeds of sale.

O. 43, r. 3. Public Officer to be noticed to deliver property other than money to Fiscal for sale.

3. (1) Where property other than money is seized in the hands of a public officer, the Court shall on the application of the judgment-creditor issue notice on such public officer to show cause why he should not deliver such property to the Fiscal for sale.

Where no cause shown, property to be delivered to Fiscal.

(2) Where the public officer shows no cause or where the objection preferred by him, is disallowed, the Court may direct the delivery of such property to the Fiscal for sale.

O. 43, r. 4. Interest in action to be sold as if it were movable property.

4. Where the right, title and interest of the judgment-debtor in a pending action has been seized in terms of Rule 10 of Order XXXVIII, such right, title and interest shall be sold by the Fiscal as if it were movable property; and the purchaser on the execution of an assignment thereof by the Court in his favour, shall be entitled to have himself substituted in place of, or added as a party in addition to, the judgment-debtor in such action, and to proceed with such action.

O. 43, r. 5. Decree other than one for money to be sold like movable property.

5. Where a decree other than one for the payment of money has been seized in terms of Rule 16 or 17 of Order XXXVIII, such decree shall be sold by the Fiscal as if it were movable property.

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O. 43, r. 6.
Sale of other movable property.

6. (1) Where movable property is sold by the Fiscal by public auction, the price of each lot shall be paid at the time of sale or as soon afterwards as the officer holding the sale directs, and in default of payment the property shall forthwith be resold.

Receipt to be issued for the purchase money by Fiscal's Officer.

(2) On payment of the purchase money, the officer holding the sale shall grant a receipt for the same, in Form No. 78 in Appendix I, and the sale shall become absolute.

O. 43, r. 7.
Irregularity not to vitiate sale.

7. (1) No irregularity in publishing or conducting the sale of movable property shall vitiate the sale.

But any injured person may sue for compensation.

(2) Any person sustaining injury by reason of such irregularity at the hand of any other person may institute an action against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

O. 43, r. 8.
Delivery to purchaser.

8. 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.

O. 43, r. 9.
Delivery where third party is in possession.

9. 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.

O. 43, r. 10.
Delivery of unsecured debt or share.

10. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public or private 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 judgment-debtor from receiving the debt or any interest thereon, and the garnishee 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.

O. 43, r. 11.
Endorsement of negotiable instrument or share.

11. (1) Where the endorsement or the execution of a document by the party in whose name a negotiable instrument or a share in any public or private company or corporation is standing is required for the transfer of such negotiable instrument or share, the Judge may make or execute such endorsement or document as may be necessary, and such endorsement or execution shall have the same effect as an endorsement or execution by the party.

Form of endorsement.

(2) The endorsement or execution shall be in the following form or to the like effect:

"A. B. by C. D., Judge of District Court of ..... (or as the case may be) in action by E. F. against A. B."

Interest or dividend to be paid to person appointed by Court.

(3) Until the transfer of such negotiable 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

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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.

O. 43, r. 12. Power of Court to make vesting order.

12. In the case of any movable property not hereinbefore provided for, the Court may make an order and execute such document as may be necessary vesting such property in the purchaser or as it may direct; and such property shall vest accordingly.

O. 43, r. 13. Terms and conditions of sale may be imposed by Court.

13. The Court may upon the application of the judgment-creditor or judgment-debtor impose such terms and conditions, if any, as to it shall seem proper in regard to the sale of any movable property.

ORDER XLIV

General Provisions Relating to Sales

O. 44, r. 1. Stay of proceedings and adjournment of sale by Court. Order for fees, etc., may be made by Court.

1. (1) The Court may for sufficient cause stay execution proceedings at any stage thereof, and make order for adjournment of a sale.

(2) The Court may also make such order as it thinks fit as to the person by whom the fees, commissions or expenses of sale shall be paid.

All parties interested to be made respondents to application.

(3) 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.

O. 44, r. 2. Judgment-creditor or Judgment-debtor with concurrence of former may request Fiscal to stay sale on payment of fees.

2. It shall be competent either to the judgment-debtor with the consent of the judgment-creditor, or to the judgment-creditor without obtaining a previous order of Court in that behalf to request the Fiscal to postpone or stay the sale, and the Fiscal shall forthwith postpone or stay the sale and report such postponement or stay to Court.

O. 44, r. 3. Half-fees recoverable by Fiscal.

3. In every case, after the seizure of property and publication of sale thereof, in which the sale shall be postponed or stayed on the orders of Court or at the request or with the concurrence of the party suing out the writ, the Fiscal or Deputy Fiscal shall recover half of the fees specified in Rule 7 of Order XLI on the estimated value of such property from the party ordered by Court to make such payment or at whose instance the sale is 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 whether the stay be of the sale of one property or more than one, such fee shall never exceed fifty rupees and the actual expenditure already incurred by the Fiscal towards carrying out the sale. The fees recovered under this Rule shall be brought to account and appropriated in such manner as the Secretary to the Treasury shall from time to time direct.

O. 44, r. 4. The amount certified by Fiscal to be recovered as by execution of decree.

4. The amount certified by the Fiscal to be payable to him for half fees under the preceding rule and the amounts of the differences certified by the Fiscal and directed to be reported to the Court by Rules 9 and 10 of Order XLII 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

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Fiscal, or of the judgment-creditor, or of the judgment-debtor, be recoverable from the persons declared in those rules to be liable to pay the same, in the same way as if the certificates were a decree for money passed by the Court to which it is returned against those persons.

O. 44, r. 5. Holder of decree may bid or purchase.

5. 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.

O. 44, r. 6. And purchase money may be set off against decree.

6. 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.

ORDER XLV

Moneys Paid to and Realized by the Fiscal

O. 45, r. 1. Payments to and by Fiscals and Fiscals' Officers, how made.

1. Payments to and by Fiscals and Fiscals' Officers, shall be made in manner and subject to the rules following, and not otherwise:—

Receipts to be issued by Fiscals, Deputy Fiscals, or Fiscals' Officers for all payments.

(1) Whenever any person, whether the original debtor or a purchaser of property sold in execution shall have occasion to make payment of money or of ready money whether under the provisions of rule 6 of Order XLIII or otherwise, or under the provisions of rule 5 of Order XLII, to the Fiscal, Deputy Fiscal, or Fiscal's Officer, he shall pay such money to such Fiscal, Deputy Fiscal, or Fiscal's Officer, who shall in acknowledgment of the sum so paid to him issue a receipt in Form No. 78 in Appendix 1.

Fiscals' Officers to make payment to Fiscal or Deputy Fiscal.

(2) The Fiscals' Officers shall make payment of all monies received by them, within such time after the receipt thereof as the Fiscal shall prescribe, to the Fiscal or Deputy Fiscal.

Fiscals or Deputy Fiscals to transmit money to Government Agent or Assistant Government Agent with deposit note or paying-in-voucher.

(3) The Fiscal and Deputy Fiscal shall make payment of all monies received by them to the office of the Government Agent or Assistant Government Agent along with a suitor's deposit note in Form No. 79 in Appendix 1, for the amount to be credited to the action, and one or more paying-in-vouchers in Form No. 80 for the amounts to be credited to revenue and to the Fiscal's Deposit Account.

A register of suitor's deposit not to be maintained.

(4) A register of such suitors' deposit notes in Form No. 81 in Appendix 1 or in any other form as the Secretary to the Treasury may from time to time prescribe shall be kept by the Fiscal liable to the call of Government at any period.

Receipts to be issued by Government Agents or Assistant Government Agents for all payments.

(5) In every case in which a payment shall have been made under paragraph (3) the Government Agent or the Assistant Government Agent shall within forty-eight hours forward a receipt for such payment to the Fiscal or Deputy Fiscal.

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Moneys paid ino Government Agent's Office to be subject to order of Court.

2. All moneys which may be paid into the office of any Government Agent or Assistant Government Agent to the credit of an action 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.

ORDER XLVI

Arrest and Imprisonment

O. 46, r. 1. Issue of warrant for arrest of debtor in execution of decree for money.

1. (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 the Island 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 order, 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.

Decree for costs only to be deemed money decree.

(2) A decree for the payment of costs only shall, for the purposes of the application of the provisions of paragraph (1), be deemed to be a decree for the payment of money.

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O. 46, r. 2. Warrant may be cancelled on ground of illness of judgment-debtor.

2. At any time after a warrant has been issued for the arrest of a judgment-debtor under this Code, the Court may cancel it on the ground of the serious illness of the judgment-debtor.

O. 46, r. 3. Issue of notice on debtor as alternative to warrant.

3. The Court may, in its discretion, instead of issuing a warrant under the last preceding rule, 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 rule.

O. 46, r. 4. Application for warrant to be made by petition and affidavit.

4. Every application under Rule 1 of this Order 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.

O. 46, r. 5. Warrant to issue where debtor fails to appear on notice.

5. Where a judgment-debtor to whom a notice under Rule 3 of this Order has been issued fails to appear on the day specified in the notice, the Court may issue a warrant for his arrest.

O. 46, r. 6. Execution of warrant of arrest.

6. Subject to the provisions of sections 21 and 22 of the Code, a judgment-debtor for whose arrest a warrant has been issued under Rule 1 or 5 of this Order 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.

O. 46, r. 7. Officer effecting arrest to release debtor on payment of amount of decree and costs of arrest.

7. 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.

O. 46, r. 8. Discharge of debtor where amount of decree and costs of arrest paid into Court.

8. Where the judgment-debtor is brought before the Court after arrest on a warrant or appears in Court in pursuance of a notice issued under Rule 3, of this Order, and—

(*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, or

(*c*) if in the opinion of the Court is not in a fit state of health to undergo imprisonment,

the Court shall release him from arrest or discharge him from such notice, as the case may be.

O. 46, r. 9. Where not so paid, debtor to be committed.

9. Where such payment is not made or where such security is not given, the Court shall call upon the judgment-debtor to show cause why he should not be committed to jail.

O. 46, r. 10. Debtor who has no cause to show to be committed to jail.

10. Where the judgment-debtor, on being called upon to show cause under the last preceding rule, has no cause to show, the Court shall commit him to jail.

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O. 46, r. 11. Debtor who has cause to show to be discharged or committed to jail after inquiry.

11. Where the judgment-debtor, on being called upon to show cause under Rule 9 of this Order 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:

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.

O. 46, r. 12. Written statement to be filed by debtor who desires to show cause.

12. 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.

O. 46, r. 13. Debtor to be committed to jail or to give security for appearance pending inquiry.

13. 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.

O. 46, r. 14. Judgment-debtor may be arrested for purposes of inquiry.

14. A judgment-debtor who is not detained in prison pending such 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.

O. 46, r. 15. Adjournment of inquiry.

15. The inquiry referred to in Rule 13 of this Order may be adjourned from time to time by order of the Court.

O. 46, r. 16. Issue of warrant of committal to jail.

16. Where a judgment-debtor is committed to jail, the Court shall issue a warrant substantially in Form No. 85 in Appendix I.

O. 46, r. 17. Debtor discharged under rule 8 or 11 of this Order not to be re-arrested.

17. Where a judgment-debtor has been released after arrest on a warrant or discharged from a notice under Rule 8 or 11 of this Order, save under paragraph (c) of rule 8, no further proceedings shall be taken as hereinbefore provided with a view to the committal to jail of that judgment-debtor in execution of the decree in respect of which such warrant or notice was issued.

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O. 46, r. 18
Sufficient interim subsistence to be deposited before arrest.

18. (1) 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 warrant.

Subsistence need not be paid by Crown.

(2) The preceding paragraph shall not apply where the decree-holder is the Crown.

O. 46, r. 19.
Subsistence allowance during imprisonment to be fixed on commitment.

19. 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.

O. 46, r. 20.
Allowance to be paid monthly in advance.

20. (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, save where the party is the Crown, by monthly payments in advance before the first day of each month.

When first payment to be made.

(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.

O. 46, r. 21.
Power to vary allowance or order additional payments.

21. Where a judgment-debtor who has been committed to jail is, with the approval of the Inspector-General of Prisons, either given any special diet on medical advice or admitted to any hospital for examination or treatment, and the monthly allowance fixed under Rule 19 of this Order 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 application the decree has been executed and such other evidence as the Court may deem necessary—

(*a*) vary the monthly allowance fixed under Rule 19 of this Order 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.

O. 46, r. 22.
Subsistence allowance may be further varied.

22. Any order made by the Court under the last preceding Rule 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.

O. 46, r. 23.
Varied monthly allowance to be paid in advance.

23. The provisions of Rule 20 of this Order 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.

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O. 46, r. 24. Additional sum to be paid by decree-holder.

24. Any additional sum for the payment of which an order is made under this Rule shall be supplied to the Fiscal by the party on whose application the decree has been executed, save where the party is the Crown, in the manner and at the time specified in the Order of the Court.

O. 46, r. 25. Disbursements by decree-holder to be deemed costs, but judgment-debtor not liable to arrest for same.

25. (1) Sums of money disbursed by the decree-holder under Rule 20 or 21 or 22 of this Order shall be deemed to be costs in the action.

(2) The judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

O. 46, r. 26. Unexpended balance to be refunded to judgment creditor.

26. 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.

O. 46, r. 27. When debtor entitled to be discharged from jail.

27. (1) The judgment-debtor shall be discharged from jail—

(*a*) on an order of the committing Court—

(i) on the decree being fully satisfied; or

(ii) at the request of the person on whose application he has been imprisoned; or

(iii) on such person omitting to pay the allowance as hereinbefore directed; or

(iv) if the judgment-debtor be declared an insolvent, and an order in insolvency is made by the District Court protecting him from arrest; or

(*b*) on an order of the committing Court or any Court having jurisdiction over the place at which such jail may be situate on the ground of the judgment-debtor suffering from any serious illness; or

(*c*) on an order of the Inspector-General of Prisons when the term of the judgment-debtor's imprisonment as limited by section 12 of the Code is fulfilled; or

(*d*) on an order of the Inspector-General of Prisons or of two visitors to the jail on the ground of the judgment-debtor suffering from any infectious or contagious disease.

Judgment-debtor discharged not to be re-arrested.

(2) A judgment-debtor discharged under this rule is not thereby discharged from his debt, but he cannot be re-arrested under the decree in execution of which he was imprisoned.

O. 46, r. 28. Judgment-debtor may be re-arrested.

28. A judgment-debtor released under paragraph (*c*) of Rule 8 of this Order or under sub-paragraph (*b*) or (*d*) of paragraph (1) of the last preceding rule may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed six months.

O. 46, r. 29. Endorsement on the warrant.

29. 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.

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ORDER XLVII

Decrees for Delivery of Movable Property

O. 47, r. 1.
Application for execution of decree for delivery of movable property: how to be made.

1. (1) Where the judgment or decree is for the delivery of any specific movable property or for any share in a specific movable property, application to the Court for execution thereof by seizure and delivery may be made by the judgment-creditor in the manner prescribed by Rule 4 of Order XXXVI, subject to such variations as may be necessary.

May include application for recovery of money decree in the alernative.

(2) Such application may also set out the amount of money decreed to be paid in the alternative if delivery cannot be had.

Relief claimed may be set out in the alternative.

(3) In regard to the mode in which the assistance of the Court is required the judgment-creditor may set out that he applies for the delivery of the movable property, and if delivery of the property cannot be had, then for the levy, by seizure and sale of the judgment-debtor's property, of the amount decreed to be paid in the alternative.

O. 47, r. 2.
Form of writ.

2. Where 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 Form 86 in Appendix I.

O. 47, r. 3.
Fiscal to seize and deliver specific movable forthwith.

3. Upon receiving the writ the Fiscal or his officer shall forthwith, if possible, seize the said specific movable or share thereof and deliver the same to the judgment-creditor or to the person authorised by him to receive it.

O. 47, r. 4.
Oral examination of judgment debtor to obtain discovery of movable property decreed.

4. (1) The judgment-creditor in whose favour a judgment or decree of the nature specified in Rule 1 of this Order has been entered may at any time after judgment or order has been pronounced or made by motion apply to the Court for an order

(*a*) that the judgment-debtor, or

(*b*) where the judgment-debtor is a board, corporation or company, that any officer thereof,

be orally examined by the Court on oath or affirmation as to the person in whose possession or custody such movable property is, the place where it is kept or is, and any other information that may be required or necessary in order to effect seizure thereof.

Provision as to examination of judgment-debtor as to debts to apply.

(2) The provisions of Rules 4 to 8 of Order XXXVII shall *mutatis mutandis* apply to such application and to a failure of the judgment-debtor to appear.

May be examined as to debts due.

(3) The judgment-debtor may also be examined in terms of Rule 3 of Order XXXVII in order to enforce the decree in the alternative as provided by paragraph 3 of Rule 1 of this Order.

O. 47, r. 5.
Where movable property cannot be seized, execution may be levied on other property of the judgment-debtor.

5. If the Fiscal is unable to obtain for the judgment-creditor delivery of the specific movable or share thereof mentioned in the writ, he shall forthwith proceed to recover the amount of money specified in the writ to be paid as an alternative by seizure and sale of the judgment-debtor's property, as if the writ were a writ of execution issued for the enforcement of a decree for the payment of money.

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O. 47, r. 6. Procedure on inability to deliver specific movable property.

6. Where the Fiscal is unable to obtain for the judgment-creditor delivery of the specific movable or share thereof mentioned in the writ, and if the writ does not direct the Fiscal to levy in the alternative execution of the amount to be paid by the judgment-debtor, 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 to issue to the Fiscal.

O. 47, r. 7. Amount to be levied and manner of execution.

7. The amount of money directed to be levied in the writ of execution by seizure and sale issuing under the preceding Rule shall be the amount of money specified in the decree to be paid as an alternative in terms of Rule 8 of Order XXXII, or if not so specified 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.

O. 47, r. 8. Writ for recovery of money in the alternative to be executed as money writs.

8. The execution of such writ shall be effected according and subject to the rules prescribed for the enforcement of decrees for payment of money.

ORDER XLVIII

Decrees for Possession of Immovable Property

O. 48, r. 1. Application for execution of decree for delivery of immovable property, how to be made.

1. If the judgment or decree 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 prescribed by Rule 4 of Order XXXVI, subject to such variations as may be necessary.

O. 48, r. 2. Form of Writ.

2. Where 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 Form No. 87 in Appendix I.

O. 48, r. 3. Fiscal, how to proceed thereunder.

3. Upon receiving the writ the Fiscal or his officer shall forthwith 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.

O. 48, r. 4. Executing Officer may apply to peace officer for assistance to deliver possession.

4. (1) Where the executing officer has reason to believe that the delivery of possession would be attended by force or violence offered by the judgment-debtor, it shall be lawful for the executing officer to apply to the nearest peace officer for such assistance as may be necessary, and such peace officer is empowered and hereby required to render all such assistance as may be necessary to deliver possession of the property to the judgment-creditor.

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(2) Where the judgment-creditor has reason to believe that the delivery of possession to him may be attended by force or violence offered by the judgment-debtor he may apply to the Court from which the writ issues for an order on the officer in charge of any Police Station to render to the Fiscal all such assistance as may be necessary, and the officer in charge of such Police Station is empowered and hereby required to render all such assistance as may be necessary to enable the Fiscal to deliver possession of the property to the judgment-creditor.

Judgment-creditor may apply to Court for Police Officer to assist Fiscal in delivering possession.

(3) The judgment-creditor shall repay to the Peace Officer all such expenses as may be incurred in providing the assistance required.

Expenses of Peace Officer to be borne by judgment-creditor.

Explanation.—" Peace Officer " shall have the same meaning as in the Criminal Procedure Code.

5. Where possession of any building or enclosure is to be delivered and the person in possession being bound by the decree does not afford free access, the Fiscal or the executing officer may remove or open any lock or bolt or break open any door or gate or do any other act necessary for putting the decree-holder in possession.

O. 48, r. 5.
Fiscal to break open lock or gate to give possession.

6. Where possession of an undivided share in immovable property is to be delivered, such possession shall be delivered by affixing a copy of the writ in some conspicuous place on the property and proclaiming by beat of tom-tom or in such other customary mode at some convenient place the substance of the writ.

O. 48, r. 6.
Mode of delivery of undivided share.

7. Where decree is entered in a tenancy action for placing the landlord in possession of the premises let by ejecting the tenant therefrom, the Fiscal shall deliver over possession by ejecting the tenant and sub-tenants, if any:

O. 48, r. 7.
Delivery of possession to landlord.

Provided that where the sub-tenancy has been created with the knowledge and consent of the landlord or where the sub-tenant has been in occupation of the premises prior to the letting of the premises to the tenant, the sub-tenant shall not be liable to be ejected by the Fiscal without a special order of Court, but possession of the property shall be delivered in manner prescribed by the next succeeding Rule.

Sub-tenant in certain cases not to be ejected.

8. (1) Except in cases of delivery of possession of property to a landlord as provided in the preceding Rule, where the property or any part thereof 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 of such property or part thereof 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 writ in regard to the property.

O. 48, r. 8.
Delivery to be constructive where property in possession of tenant.

(2) 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.

Notice of constructive delivery to be served on occupant.

9. The cost (to be fixed by the Court) of the proclamations under the last two preceding rules shall in every case be prepaid by the judgment-creditor.

O. 48, r. 9.
Costs.

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ORDER XLIX

Resistance to Execution of Proprietary Decree

O. 49, r. 1. Procedure in event of resistance to execution of writ by delivery of property.

1. Where under Orders XLVII and XLVIII in the execution of a decree for the posession of movable or immovable property the officer charged with the execution of the writ is resisted or obstructed by the judgment-debtor or any other person, or where after the officer has delivered possession the judgment-creditor is hindered by the judgment-debtor or any other person in taking complete and effectual possession thereof, the judgment-creditor may at any time within one month from the time of such resistance or obstruction or hindrance complain thereof to the Court by a petition in which the judgment-debtor and the person, if any, resisting or obstructing or hindering shall be named respondents, and which shall be dealt with by the Court in accordance with the alternative (*b*) of Rule 5 of Order LVI.

O. 49, r. 2. Court may order notice of resistance, etc., to be published and call upon persons objecting to delivery of possession to notify their claims.

2. Where a petition under Rule 1 of this Order is presented, the judgment-creditor may apply to the Court for an order directing the Fiscal to publish a notice announcing that the Fiscal has been resisted or obstructed in delivering possession of such property, or that the judgment-creditor has been hindered in taking complete and effectual possession thereof, as the case may be, by the judgment-debtor or other person, and calling upon all persons who object to possession being delivered to the judgment-creditor to notify their claims to Court within thirty days of the receipt by Court of the Fiscal's report of the publication of the notice on pain of their being committed to jail in the event of any resistance, obstruction or hindrance being offered to the judgment-creditor being put into or restored to possession of the property in the event of the Court ordering that the judgment-creditor be put into or restored to possession of the property after the holding of the inquiry into the complaint of the resistance, obstruction or hindrance and the claims, if any, notified to Court.

O. 49, r. 3. Application to be made ex-parte.

3. The application for an order under the preceding Rule shall be made by motion ex-parte and, if allowed, a precept of Court in Form No. 89 in Appendix I hereto shall be issued to the Fiscal directing him to publish such notice.

O. 49, r. 4. Notice to be published by Fiscal.

4. (1) On receipt of the precept the Fiscal shall make publication by affixing a copy of the notice both in English and the language or languages prevailing within the district in some conspicuous place on the property and proclaiming by beat of tom-tom or in such other mode as may be customary the contents of the notice.

also at the Courthouse and the Fiscal's office;

(2) Copies of such notice shall also be affixed to the Courthouse and the Fiscal's office.

and in the Government Gazette.

(3) The notice shall also be published in the *Government Gazette*.

O. 49, r. 5. Expenses to be incurred by judgment-creditor.

5. The expenses of such publication shall in every case be prepaid by the judgment-creditor.

O. 49, r. 6. Fiscal to report publication of notice.

6. When the Fiscal has effected publication in manner aforesaid, he shall forthwith make a report to Court specifying in what manner the publication has been made by him and shall annex thereto a copy of the notice as an exhibit.

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O. 49, r. 7.
Persons claiming rights of possession to file written statements.

7. (1) Any person claiming the right to possess the property as against the judgment-creditor shall file a written statement of his claim within thirty days of the receipt by Court of the Fiscal's report, setting out his right or interest entitling him to the present possession of the property and shall serve a copy of such statement on the judgment-creditor.

Tenant of judgment-debtor in certain cases need not file.

(2) It shall not, however, be necessary for a person to whom the provisions of Rule 8 of Order XLVIII apply to file a statement of his claim.

O. 49, r. 8.
One investigation to be held into complaint of resistance and claim to possession.

8. The investigation into such claim shall be taken up along with the inquiry into the petition in respect of the resistance, obstruction or hindrance complained of, and the inquiry into such petition may be postponed or adjourned if necessary.

O. 49, r. 9.
Where resistance of claim is unfounded, judgment-creditor to be put into possession.

9. (1) On the hearing of the matter of the petition and of the claim made, if any, the Court if satisfied—

(*a*) that the resistance, obstruction or hindrance complained of was occasioned by the judgment-debtor or by some person at his instigation or on his behalf;

(*b*) that the resistance, obstruction or hindrance complained of was occasioned by a person other than the judgment-debtor, and that the claim of such person to be in possession of the property, whether on his own account or or on account of some person other than the judgment-debtor, is frivolous or vexatious,

(*c*) that the claim made, if any, has not been established,

may direct the judgment-creditor to be put into or restored to the possession of the property and may, in the case specified in sub-paragraph (*a*) above, in addition commit the judgment-debtor or such other person to jail for a term which may extend to thirty days.

Costs.

(2) The Court may make such order as to the costs of the application, the charges and expenses incurred in publishing the notice and the hearing and the re-issue of writ.

ILLUSTRATIONS

1. Judgment-creditor makes a complaint that A resisted the Fiscal in delivering possession of the property to him. A admits the resistance complained of but claims to be in possession under a usufructuary mortgage executed in his favour by the judgment-debtor prior to the seizure of the judgment-debtor's interest. If the Court is satisfied of A's claim, the complaint shall be dismissed whether A was in possession or not of the property at the time of resistance, and may direct possession to be delivered in terms of Rule 8 of Order XLVIII.

2. A complaint is made by the judgment-creditor against B of obstruction to the Fiscal's officer in delivering possession of the property to him. The creditor after filing petition has a notice published in terms of Rule 4 of this Order. C, a tenant under the judgment-debtor, prefers a claim to be in possession of the property under his tenancy. Court finds that B's obstruction was at the instance of the judgment-debtor and that C's claim is made out. The Court may commit B to jail and direct that posession as against C be delivered to the judgment-creditor in manner prescribed by Rule 8 of Order XLVIII.

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O. 49, r. 10. Procedure on subsequent obstruction.

10. (1) Where in pursuance of an order of Court made under the last preceding rule directing the judgment-creditor to be put into or restored to the possession of the property, the officer charged with the execution of the writ is resisted or obstructed by any person, or where after the officer has delivered or restored possession the judgment-creditor is hindered by any person, the judgment-creditor may at any time within one month from the time of such resistance, obstruction or hindrance, complain thereof to the Court by a petition in which the persons resisting, obstructing or hindering shall be made respondents.

Contents of petition.

(2) The petition shall set out the facts of the earlier obstruction and of the publication of the notice and that the persons then resisting, obstructing or hindering had not previously preferred a right to be in possession of the property.

Affidavit.

(3) The petition shall be verified by an affidavit of facts.

O. 49. r. 11. Notice to be issued on party resisting, etc.

11. The Court on being satisfied of the matters stated in the petition shall issue notice on such respondents to appear in Court on a day to be specified therein and requiring them to show cause why they should not be committed to jail and the judgment-creditor be put into or restored to the possession of the property.

O. 49, r. 12. Limitation on the grounds of objection.

12. The person so noticed shall not be permitted to show cause other than that the material averments in the petition are untrue or incorrect.

O. 49, r. 13. Persons resisting, etc., to be committed to jail, where petition established.

13. (1) Where the Court is satisfied that the averments in the petition are made out, the Court may commit all such persons to jail for a term which may extend to six months, and direct the judgment-creditor to be put into or restored to the possession of the property.

Subsequent resistance to be dealt with similarly.

(2) Where in pursuance of an order of Court under the preceding paragraph a judgment-creditor is directed to be put into or restored to the possession of property, any further resistance, obstruction or hindrance shall be dealt with in accordance with the provisons of this Rule and of Rules 10 to 12 of this Order.

O. 49. r. 14. Complaint of obstruction not to be preferred after six months.

14. No complaint of hindrance to taking complete and effectual possession of the property shall be entertained by Court after the expiry of a period of six months from the last date on which the judgment-creditor was put into or restored to possession of the property.

O. 49 r. 15. If resistance made by bona fide claimant in possession, Court to dismiss petition.

15. Where the resistance or obstruction or hindrance caused is found by the Court to have been occasioned by any person other than the judgment-debtor claiming in good faith to be entitled to or to be in possession of the property on his own account or on account of some person other than the judgment-debtor, or where the claim notified is found by the Court to have been made by a person claiming to be entitled to the property or to the possession thereto on his own account or on account of some person other than the judgment-debtor, the Court shall make order dismissing the petition.

O. 49. r. 16. Bona fide claimant dispossessed may apply for restoration to possession.

16. Where any person other than the judgment-debtor or a person in occupation under him is dispossessed of any property in execution of a decree, he may apply to the Court by petition in which the judgment-creditor shall be named respondent complaining of such dispossession.

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17. Where the Court is satisfied that the person dispossessed was in possession of the property, on his own account or on account of some person other than the judgment-debtor, it shall direct that the petitioner be put into possession of the property.

O. 49, r. 17. Bona fide claimant to be restored to possession.

18. The orders made under Rules 9, 13, 15 and 17 of this Order against any party other than a judgment-debtor shall not bar the right of such party to institute an action to establish his right or title to such property.

O. 49, r. 18. Right of party other than judgment-debtor to institute action not barred.

ORDER L

Decrees for Execution of Conveyance or Transfer of Property

1. Where the judgment or decree is for the execution of a conveyance, contract or other document or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the judgment or decree, the judgment-creditor may prepare a draft of the conveyance, contract or other document or endorsement in accordance with the terms of the judgment or decree, and apply to the Court by petition, not naming a respondent, to have a copy of the said draft served on the judgment-debtor.

O. 50, r. 1. Application for enforcement of decree for execution of any conveyance how to be made.

2. Where the Court allows the application, the judgment-creditor shall cause a copy each of such petition and draft to be served on the judgment-debtor together with a notice requiring him to file his objections, if any, on a day to be specified therein.

O. 50, r. 2. Service of draft conveyance, on judgment-debtor.

3. Where no objections are filed on the date fixed for filing the same, or where objections are filed, then on the day fixed for inquiry into the objections, the Court may, after hearing the parties and after altering the draft, if necessary, so as to bring it in accordance with the terms of the judgment, and on the judgment-creditor supplying stamps of the proper amount, if stamps are required by law, execute it.

O. 50, r. 3. Execution of conveyance by Court.

4. The execution of a conveyance, contract or other document, or the endorsement of a negotiable instrument by the Court under the last preceding Rule shall be in the following form:—

O. 50, r. 4. Form and effect of execution of conveyance by Court.

"C. D., Judge of the Court of ..... (or as the case may be), for A. B., in an action by E. F. against A. B."

and shall have the same effect as the execution of the conveyance, contract or other document or the endorsement of the instrument by the party ordered to execute or endorse the same.

5. (1) Where such conveyance, contract or other document relates to immovable property, such conveyance, contract or other document shall be executed in triplicate. The original of such conveyance, contract or other document shall be delivered to the judgment-creditor, the duplicate transmitted 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 triplicate filed of record.

O. 50, r. 5. Form and effect of conveyance relating to immovable property.

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Such conveyance valid though not notarially executed.

(2) Such conveyance, contract or other document shall be binding and of force though not executed before a Notary Public

ORDER LI

Mandatory or Restraining Decrees

O. 51, r. 1. Application for enforcement of mandatory or restraining decrees, how to be made.

1. When a judgment or decree commanding the person against whom it operates to do any act other than to pay money, deliver movable property, yield up possession of immovable property, or grant, convey or otherwise pass from himself any right to or interest in any property, has been passed, or when a judgment or decree enjoining the person against whom it operates not to do a specified act or to abstain from specified conduct or behaviour, has been passed, and the judgment-debtor has had an opportunity of obeying the judgment or decree but has wilfully failed to obey it, application to the Court for execution or enforcement of the judgment or decree 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 judgment or decree.

O. 51, r. 2. Court may issue writ of execution by seizure and sale.

2. Where the Court on the hearing of such application is satisfied that the judgment-creditor is entitled to obtain execution or enforcement of the judgment or decree, it shall issue a writ to the Fiscal directing the execution of the act to be done as far as practicable, and either at the same time or subsequently thereto issue a writ for the recovery of the expenses of executing the act and of damages that may have been sustained by the judgment-creditor by reason of the default on the part of the judgment-debtor.

O. 51, r. 3. Judgment-debtor to be committed to jail, where he does not abstain from specified conduct or behaviour.

3. (1) Where the decree enjoins the judgment-debtor not to do a specified act or to abstain from specified conduct or behaviour, and the judgment-debtor does not refrain from doing the specified act or abstain from the specified conduct or behaviour, the Court may commit him to jail, and if necessary by having him produced under a warrant of arrest issued for that purpose, for such period not exceeding six months at a time and as often as may be necessary to secure obedience to the order of Court, and the expenses of such imprisonment shall be recovered by issue of writ against the property of the judgment-debtor.

In the case of a corporation, directors liable to be committed.

(2) Where the judgment-debtor is a corporation or company, the directors or principal officers shall be liable to be committed to jail and to have writs issued against their personal property as if each of them was the judgment-debtor.

O. 51, r. 4. Amount to be levied under writ.

4. The damages for which writ may be issued under rule 2 of this Order shall be the amount of the 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 judgment or decree and which the Court shall award by way of compensation to the judgment-creditor.

O. 51, r. 5. Writs for levy of expenses and damage to be executed as money writs.

5. The execution of the writs for the levy of expenses and damages issuing under Rules 2 and 3 of this Order shall be effected according and subject to the rules prescribed for the enforcement of decrees for the payment of money.

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ORDER LII

Concurrence and Preference

O. 52, r. 1.
How and to whom money paid into Court may be paid out.

1. 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 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.

O. 52, r. 2.
Proceeds of execution sale to be rateably distributed among decree-holders subject to right of perference.

2. Where—

(*a*) before money realized in execution of a decree other than money received or seized by the Fiscal in terms of Rule 1 of Order XL is paid to or carried to the separate account of the decree-holder in the action in which the execution issued, or

(*b*) before money other than money realised in execution of a decree but lying in or in the custody of a Court is paid to or carried to the separate account of a judgment-creditor seizing such money,

notice is given to the Court of any claim to such money—

(i) by a person claiming to be entitled to preferential payment by reason of any mortgage, charge or lien in his favour,

(ii) by a person holding a decree against the same judgment-debtor, whether passed by the same or another Court,

(iii) by the Fiscal in respect of claims of other writ-holders whose writs he had in his hands at the time of the sale in cases where a sale is carried out by him in execution,

the money—

(1) shall first be paid to the persons, if any, entitled to receive payment preferentially ;

(2) shall next be rateably distributed among the decree holders in the action or the judgment-creditor seizing such money and all other decree-holders whose claims have been notified to Court under paragraphs (ii) and (iii) above.

O. 52, r. 3.
Notice to all persons interested before order of distribution is made.

3. (1) Before the Court makes order under the preceding Rule, notice shall be given to the parties to the action and all persons whose claims have been notified to Court under that rule that the Court will on a day to be specified in the notice (which shall be in Form No. 90 in Appendix I hereto) proceed to hear and determine the claims to the money in Court.

Parties may be referred to separate action.

(2) On the day so specified 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 claim cannot be conveniently heard and adjudicated upon, refer the parties to a separate action, and may by its order carry the money or any part thereof to the separate account of such parties pending the decision of the separate action.

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O. 52, r. 4.
Where rateable distribution ordered, amount may be carried to separate account of person entitled.

4. Where the Court makes order for rateable distribution, the Court may, if it think fit, carry the entire sum so distributed as a whole to the separate account of all persons so entitled to such sum, or carry specific sums to the separate account of one or more of the decree-holders to whom such sums shall have been allocated.

O. 52, r. 5.
Share of such proceeds paid to wrong person may be recovered by action by person entitled.

5. If all or any portion of the money realized in execution of a decree is in the distribution made under Rule 2 of this Order paid to a person not entitled to receive the same, any person who is entitled may sue such person to compel him to refund the money.

O. 52, r. 6.
Where property is sold subject to encumbrance, incumbrancer not entitled to share proceeds.

6. Where any property is sold which is subject to a mortgage, charge or lien, or for any other reason remains subject to the mortgage, charge or lien notwithstanding the sale, the mortgagee, incumbrancer, or person exercising the lien shall not as such be entitled to share in any proceeds arising from such sale.

ORDER LIII

General Provisions relating to Execution

O. 53, r. 1.
Discretion of Court to issue execution.

1. 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 where the judgment-creditor is entitled to apply for both simultaneously.

O. 53, r. 2.
No application to execute decree after ten years to be granted.

2. (1) No application (whether it be the first or a subsequent application) to execute a decree not being a decree granting an injunction shall be granted after the expiration of ten years from

(*a*) the date of the decree sought to be executed or of the decree, if any, on appeal confirming 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 or at recurring periods the date of the default in making the payment or delivering the property in respect of which the applicant seeks to execute the decree.

Except where execution prevented by fraud or force.

(2) Nothing in this Rule shall be deemed to preclude the court from ordering the execution of a decree upon an application made 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.

O. 53, r. 3.
Writ may be renewed or re-issued till satisfaction of decree is obtained.

3. Subject to the provisions contained in the preceding Rule, a writ of execution, if unexecuted, shall remain in force for one year only from its issue, but—

(*a*) such writ may at any time before its expiration be renewed by the judgment creditor for one year from the date of such renewal, and so on, from time to time, or

(*b*) a fresh writ may at any time after the expiration of an earlier writ be issued,

till satisfaction of decree is obtained.

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O. 53, r. 4. Execution against surety.

4. Where any person has become liable as surety—

(*a*) for the performance of any decree or any part thereof, or

(*b*) for the restitution of any property taken in execution of a decree,

the decree may be executed against him to the extent to which he has rendered himself personally liable in the manner herein provided for the execution of decrees 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 made respondent.

O. 53, r. 5. Decree-holder to certify payment, etc., to the Court.

5. (1) Where 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, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

Judgment-debtor entitled to have payment, etc., certified.

(2) The judgment-debtor also may 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 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.

No payment to be recognized by executing Court unless certified.

(3) No such payment or adjustment shall be recognized by the Court executing the decree unless it has been certified or recorded as aforesaid.

O. 53, r. 6. Application by one of several decree-holders for execution of the decree for the benefit of all.

6. (1) Where 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 the legal representatives of the deceased.

Procedure on such application.

(2) 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.

Application may be allowed subject to the interests of co-decree-holders being protected.

(3) Where the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Dispute as to legal representative to be decided by Court.

(4) In the event of any dispute arising as to who is the legal representative, the provisions of Rule 6 of Order LVII shall, *mutatis mutandis*, apply.

O. 53, r. 7. Application by assignees of a decree for execution thereof, how to be made.

7. (1) Where a decree, or if a decree has been passed jointly in favour of more persons than one the interest of any decree-holder in the 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 the Court thinks fit, the transferee's name may be

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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.

No respondent necessary where decree transferred by operation of law.

(2) Where the decree has been transferred by operation of law, the transferor need not be made respondent to the petition.

Money decree transferred to a co-debtor not to be executed.

(3) Where a decree for the payment of money against several persons has been transferred to one of them, it shall not be executed against the others.

O. 53, r. 8. Transferee bound by equities.

8. 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.

O. 53, r. 9. Legal representative of deceased debtor, how made liable.

9. (1) Where a judgment-debtor dies before the decree has been fully satisfied, 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.

Extent of liability of legal representative.

(2) Where the decree is executed against such legal representative, he 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.

O. 53, r. 10. All questions arising in execution to be determined by order of Court and not by separate action.

10. (1) All questions arising between the parties to the action in which the decree was passed, or their legal representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by order of the Court executing the decree, and not by a separate action.

Dispute as to legal representative to be decided by Court.

(2) Where a question arises as to whether a person is or is not the representative of a party, such question shall, for the purpose of this rule, be determined by Court.

Execution purchaser deemed party.

(3) An execution purchaser shall, for the purpose of this Rule, be deemed a party to the action.

O. 53, r. 11. Execution to issue for excess in case of cross-decrees.

11. (1) Where applications are made to a Court for the execution of cross-decrees in separate actions for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

(*a*) if the two sums are equal, satisfaction shall be entered upon both decrees; and

(*b*) if the two sums are unequal, execution may be taken out only by the holder of the 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.

Assignee of decree may be treated as holder of cross-decree

(2) This rule shall be deemed to apply 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.

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Cross-decrees not to be set-off unless each party is creditor and debtor in both actions.

(3) This rule shall not be deemed to 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.

Decree against several debtors may be set off against a decree in favour of one or more of them.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

ILLUSTRATIONS

(*a*) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(*b*) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

(*c*) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

(*d*) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint decree is being executed. F may treat his joint decree as a cross-decree under this rule.

O. 53, r. 12. Execution in case of cross-claims under same decree.

12. Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then—

(*a*) if the two sums are equal, satisfaction for both shall be entered upon the decree; and

(*b*) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

O. 53, r. 13. Where the same property is seized in execution of decrees of more Courts than one.

13. 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 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.

O. 53, r. 14. Cost of notice, publication or proclamation.

14. The cost (to be fixed by the Court) of any notice, publication, or proclamation required under any of the provisions of Orders XXXVIII, XLI, XLII, XLVIII and XLIX, 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.

O. 53, r. 15. Order for payment of money enforced as a decree.

15. 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.

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O. 53, r. 16. Fine imposed by civil Court how to be levied.

16. In the event of an order being made by a civil Court under the provisions of this Code 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.

ORDER LIV

Approved Process Servers

(Appointment and Duties)

O. 54, r. 1. District Judge may make appointments.

1. (1) It shall be lawful for the District Judge to appoint from time to time as many persons of education and of good character and repute as to him shall appear requisite for the purpose of serving all processes of Court not being writs, warrants, mandates, precepts or commands for execution, or a process either generally or particularly excluded by Court.

Appointees termed approved process servers.

(2) The persons so appointed shall be known as approved process servers.

Explanation 1: No appointment need be made unless the Court deems such a course either necessary or desirable.

Explanation 2: Where appointments are made, they shall be additional to those made by the Fiscals under the Fiscals Ordinance and shall not derogate from the powers vested in the Fiscal and his officers to effect service of process.

O. 54, r. 2. Letters of appointment.

2. (1) On appointment the Judge shall issue under his hand and the seal of the Court letters of appointment in Form No. 91 in Appendix I which shall be sufficient authority for the persons so appointed to effect service.

Oath of office to be taken.

(2) Before entering upon the exercise of the functions of his office, an approved process-server shall take an oath of office before the Judge. Such oath of office shall be filed in Court and a list shall be maintained of all persons who have received such appointments with a note of the date on which the oath was taken.

Appointment to be gazetted.

(3) Every such appointment shall be published in the *Government Gazette*.

O. 54, r. 3. Deemed an officer of Court.

3. Every approved process server shall be deemed to be an officer of Court.

O. 54, r. 4. Powers Island-wide.

4. It shall be competent to an approved process server:

(*a*) to serve process in any part of the Island;

(*b*) to serve process issued by any Court.

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ILLUSTRATION

An approved process server appointed by the District Judge of Colombo may serve a summons issued by the Commissioner of Requests of Galle on a defendant living in Kandy.

O. 54, r. 5. Rights and obligations as of Fiscal's Process Server.

5. (1) An approved process server shall have all the rights, privileges and immunities, and shall be liable to all the obligations, disabilities and penalties, to which a Fiscal's process server is now by law entitled or subject.

Misconduct to be punished as for contempt of Court.

(2) Without prejudice to the generality of the provisions contained in the preceding paragraph, where in any proceeding before it the Court is satisfied that an approved process server has made a false return of service, or has given false evidence before it, or has misconducted or misbehaved himself in the discharge of his duties, either in or outside Court, the Court shall have power to punish such offender as for a contempt of Court.

O. 54, r. 6. Judge may cancel or terminate appointment.

6. It shall be lawful for the Judge at any time, in his sole discretion, to cancel and terminate the appointment of any such approved process server. No action shall lie against the Judge for such cancellation or termination of the appointment.

O. 54, r. 7. Taxable cost of service.

7. (1) As between party and party, the cost of serving any process by an approved process server shall not exceed the sum payable if service had been effected by the Fiscal.

Fee by agreement.

(2) The preceding paragraph shall not affect the right of an approved process server to be paid such fee for service as may be agreed to by the party employing him.

O. 54, r. 8. Return and report to be similar to those of Fiscal.

8. The provisions contained in Rules 7 and 8 of Order LV shall, where applicable, apply to approved process servers.

ORDER LV

Execution and Service of Process

O. 55, r. 1. Writs or warrants to be usually issued to the Fiscal of the district where Court is situate for execution.

1. (1) Writs, warrants, mandates or commands 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, or to break any building or part thereof, or to break open the door of any building or to remove any obstruction shall usually be directed to the Fiscal of the Province or District in which the Court issuing the writ, warrant, mandate or command is situate; but any such writ, warrant, mandate or command may be issued to any headman, constable, or officer of Police empowered to act within such province or district.

May also be issued to Fiscal of district where party resides, etc.

(2) Where any such writ, warrant, mandate or command 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, warrant, mandate or command 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.

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O. 55, r. 2. Person executing always to have process with him.

2. The person employed in carrying into effect any process of execution against either person or property shall always have with him the writ, warrant, mandate, or command, 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.

O. 55, r. 3. Manner of personal service of process.

3. Where personal service of any process is required by this Code or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the service of summons on a defendant.

O. 55, r. 4. Substituted service of process.

4. Where personal service of any process is required by these rules or otherwise, and it is made to appear to the Court that prompt personal service cannot be effected, the Court may make such order for substituted service or for service by public advertisement or otherwise as to it may appear proper.

O. 55, r. 5. Service of notice relating to execution proceedings by Court.

5. Notices issued by Court under this Order and of which personal service is not requisite may be served in manner provided by Order XXIV, Rule 3.

O. 55, r. 6 Form of precept.

6. Unless otherwise in this Code enacted, the precept of Court to the Fiscal directing the service on a party to the action of any process, or other legal document shall be in Form No. 21 in Appendix I with such variations as circumstances may require.

O. 55, r. 7. Fiscal to note date of receipt and service of process.

7. (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.

Fiscal's return to process.

(2) When the writ, warrant, mandate, or command for execution, or precept for service has been carried into effect, or on the day appointed in the writ, warrant, mandate, command or precept for the return thereof, whichever date shall first occur, the Fiscal or Deputy Fiscal shall return the writ, warrant, mandate, command or precept to the Court from which it issued, with his report of what has been done under it.

O. 55, r. 8. Report to be accompanied by affidavit as an exhibit.

8. The report of the Fiscal or Deputy Fiscal constituting his return to the writ, warrant, mandate, or command for 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 executed or served, or the steps which have been taken to effect execution or service; and shall be accompanied by an affidavit made by the officer charged with the duty of executing or serving the process, which affidavit shall set out the facts of the execution or service effected, or of the endeavour made by the officer to effect the execution or 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.

O. 55, r. 9. Power of Fiscal or other person to administer oath.

9. The Fiscal or Deputy Fiscal, or other person specially appointed by the Minister of Justice in that behalf, is hereby authorised to administer the oath or affirmation which is requisite to the making of the affidavit in Rule 8 mentioned. And every

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officer who makes a false statement of fact in any such affidavit shall (in addition to any offence of which under the provisions of the Penal Code he may by so doing be guilty) be liable to be punished as for contempt of Court.

ORDER LVI

Summary Procedure

O. 56, r. 1. Summary procedure by petition.

1. Every application to the Court, or action, of summary procedure shall be instituted by presenting a written petition which shall comply with the provisions of Order VI in so far as applicable.

O. 56 r. 2. Requisites of petition.

2. The petition shall contain the folowing particulars:—

(*a*) the name of the Court and the date of presenting the petition;

(*b*) the name, description and place of residence or business or registered address of the petitioner;

(*c*) the name, description and place of residence or business or registered address of the respondent as far as can be ascertained;

(*d*) facts showing that the Court has jurisdiction, save where the application is made as incidental to a pending action;

(*e*) 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;

(*f*) a prayer for the relief or order which the petitioner seeks.

O. 56, r. 3. If incidental to an action, petition to be entitled therein.

3. 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.

O. 56, r. 4. Affidavits and exhibits to be attached to petition.

4. 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 or caused to be taken down by the Court in writing.

O. 56, r. 5. If grounds are sufficient, order may be made nisi or interlocutory.

5. 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, 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

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(*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.

O. 56, r. 6. Order as to costs.

6. In the alternative (*a*) of the preceding Rule, the order nisi may comprise an order against the respondent, or any of the respondents, to pay the costs of the petitioner.

O. 56, r. 7. Form of Order.

7. In either of the alternatives (*a*) and (*b*) of Rule 5 of this Order, the order made shall be put into writing and shall contain a prefactory 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 on the respondents—

Service of order on respondent.

(*a*) where he has not appeared or entered appearance in the manner and subject to the Rules prescribed in Order XIV for service of summons in a regular action, or

(*b*) where he has appeared or entered appearance in Court in the manner and subject to the Rules prescribed in Order XXIV for service of legal documents.

O. 56, r. 8. If grounds are insufficient petition to be refused.

8. 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.

O. 56, r. 9. Petition and order thereon to be filed.

9. 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 Rule 5 of this Order, or is an order refusing the petition.

O. 56, r. 10. Non-appearance of petitioner on day appointed.

10. If on the day appointed in an order made under Rule 5 of this Order 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.

O. 56, r. 11. When Court may make order nisi absolute.

11. (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

(*a*) if the order is an order nisi made under paragraph (*a*) of Rule 5 of this Order, the Court shall make it absolute;

(*b*) if the order is an interlocutory order under paragraph (*b*) of Rule 5 of this Order, 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 respondents should pay them.

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(2) Nothing in this rule 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.

Even where respondent is absent, Court may dismiss petition.

12. (1) If on such day the parties appear in Court, and the respondent—

O. 56, r. 12.

Where respondent shows no cause, order may be made absolute.

(*a*) shows no cause against the application of the petitioner, the Court shall proceed to make any order it could have made under the preceding Rule;

or desires to show cause, date to be given for objections.

(*b*) desires to show cause, the Court shall fix a date for the respondent to file a statement of objections, unless he tenders such a statement.

Objections to be governed by rules of pleadings.

(2) The statement of objections shall comply with the provisions of Order VI, so far as they are applicable, and with it 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 therein.

Note.—From the stage of the appearance of parties in Court, whether the order made was one under pargaraph (*a*) or paragraph (*b*) of Rule 5 of this Order, the procedure is identical.

O. 56, r. 13. Where objections filed, date for counter-affidavit to be fixed where necessary.

13. On the respondent filing a statement of objections, the Court shall where necessary fix a date for the petitioner to file counter-affidavits, to which the petitioner shall attach such documentary evidence as is referred to in Rule 4 of this Order.

O. 56, r. 14. Where objections filed, date for determination of application to be fixed.

14. On the statement of objections being filed where no counter-affidavit is deemed necessary, or on the day fixed for the filing of counter-affidavit whether filed or not, the Court shall fix a day for the determination of the matter of the application inter-partes.

O. 56, r. 15. Decision to be made upon pleadings and other documents.

15. (1) On the day so fixed the Court may proceed to determine the matter of the petition upon the pleadings, affidavits and documents filed by the petitioner and respondent after hearing them in person or by Proctor or Counsel.

Petitioner to support his application.

(2) The proceedings shall commence, unless the Court otherwise directs, by the petitioner supporting his application, meeting the objection raised to it and reading, if admissible, such affidavits and other documentary evidence, whether filed by him or the respondent.

Respondent to state his objections.

(3) The respondent shall then support his objections, reading, if admissible, such affidavits and other documentary evidence, whether filed by him or by the petitioner, and shall address the Court generally on the entire matter of the application.

Petitioner to comment upon respondent's case.

(4) The petitioner shall then by way of reply comment upon the respondent's case.

Court may permit cross-examination of deponent.

(5) Where the Court is of opinion that it is desirable or necessary that cross-examination of the deponent or affirmant of an affidavit should be permitted in regard to any disputed fact deposed to therein, the Court may grant leave for such cross-examination at such stage of the proceedings as to it shall appear fit and proper, and in that event the cross-examination and re-examination, if any, shall be confined to the elucidation of such disputed fact.

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O. 56, r. 16. Court may frame issues and try them as in a regular action.

16. Where, however, the Court is of opinion that it is desirable to frame issues of fact or law or both, such issues shall be settled by Court upon the pleadings and other documents filed of record and after such examination of the petitioner and respondent as may appear necessary, and shall proceed to determine the issues in conformity with, as nearly as may be, the Rules prescribed for the determination of issues arising upon a trial in an action of regular procedure.

O. 56, r. 17. Final order to be pronounced in open Court.

17. At the conclusion of the proceedings had under either of the preceding Rules, the Court 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 at the termination of the hearing.

O. 56, r. 18. Endorsement on order nisi, etc.

18. (1) The final order so pronounced may be endorsed on the order nisi or on the interlocutory order, as the case may be.

Form of final order on order nisi.

(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".

Order nisi may be discharged in part.

Provided that an order nisi, if it consists of separable parts, may be discharged in part and made absolute in 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.

Appropriate order to be made on interlocutory order.

(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.

O. 56, r. 19. Procedure where parties are in default on date fixed for determination inter-partes.

19. Where on the day fixed for the determination of the matter inter-partes, either party fails to appear, the Court shall proceed to deal with the matter of the application in one of the modes provided by Rule 10 or 11 of this Order, and if neither party appears, the Court shall dismiss the application.

O. 56, r. 20. Procedure where plaintiff in default on adjourned date.

20. Where the hearing is adjourned and one of the parties fails to appear on the adjourned date of hearing, the Court shall proceed to determine the matter as if the party in default were present. Where both parties fail to appear on the adjourned date of hearing, the Court shall dismiss the application.

O. 56, r. 21. Application dismissed for default of petitioner may be set aside.

21. Where an application has been dismissed under Rule 10 or 19 of this Order for default of appearance, the petitioner may apply with notice to the respondent within a reasonable time from the date of dismissal by way of summary procedure to have the order of dismissal set aside, and if on the hearing of such application the Court is satisfied that there was good cause for the non-appearance of the petitioner, the Court shall make order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the determination of the matter as from the stage at which the dismissal for default was made.

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O. 56, r. 22.
Final order entered against respondent for default may be set aside.

22. Where a final order has been made under Rule 11 or 19 of this Order against the respondent consequent upon his non-appearance, he may, within a reasonable time after the passing of the order against him, apply with notice to the petitioner by way of summary procedure to have the order set aside, and if the Court on such application be satisfied—

(*a*) that the order nisi or interlocutory order had never been served upon him, or

(*b*) that having been served with the order nisi or interlocutory order there was good cause for his non-appearance,

the Court shall make order setting aside the final order upon such terms and conditions as the Court shall consider just and right to impose upon him, and upon the 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.

O. 56, r. 23.
No appeal from order entered for non-appearance.

23. (1) No appeal shall lie aganist any order entered for non-appearance under Rules 10, 11 and 19 of this Order.

Order refusing or setting aside subject to appeal.

(2) The order setting aside or refusing to set aside an order entered for non-appearance shall be accompanied by a judgment adjudicating upon the facts and specifying the grounds upon which it is made and shall be subject to an appeal to the Supreme Court.

O. 56, r. 24.
Rules relating to regular procedure where not inconsistent to apply.

24. The Rules relating to actions of regular procedure contained in this Code, so far as they are applicable and are not inconsistent with the provisions of this Order, shall apply to an application or action of summary procedure, subject to such modifications as may be necessary and as if the references to the "plaintiff", "defendant", or "parties to an action" were to the petitioner, respondent, or the petitioner and respondent to an application or action of summary procedure, as the case may be.

Explanation.—In particular, provisions relating to recognised agents and proctors, pleadings generally, motion, journal, registered address, listing of documents, interrogatories, discovery and inspection, admissions, affidavits, service of legal documents, postponements, adjournments and extensions of time, witnesses, court expert, evidence de bene esse, costs and execution are *mutatis mutandis* applicable.

O. 56, r. 25.
When summary procedure is applicable.

25. Where under any written law no special procedure is prescribed for the making of an application to Court, such application shall, unless there be something in the subject or context repugnant thereto, be made by petition in the way of summary procedure.

ORDER LVII

Continuation of Action after Alteration of Party's Status

O. 57, r. 1.
On death of a party, action does not abate if right to sue survives.

1. 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.

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O. 57, r. 2.
On death of one of several plaintiffs or defendants, if right to sue survives to or against the rest action to proceed.

2. Where there are more plaintiffs or defendants than one and any of them dies, and 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 made in that behalf, 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.

O. 57, r. 3.
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.

3. (1) Where there are more plaintiffs than one, and any of them dies, and 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.

Legal Representative.

(2) For the purposes of this Order, legal representative shall mean an executor or administrator or, in the case of an estate below the value of Five Thousand Rupees, the intestate heirs of the deceased.

O. 57, r. 4.
On death of sole plantiff, legal representative may be substituted.

4. 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.

O. 57, r. 5.
When Court may order action to lie in abeyance.

5. Where no such application is made to the Court by any person claiming to be the legal representative of the deceased plaintiff and a period exceeding twelve months in the case of a District Court or six months in a Court of Requests elapses subsequent to the date of the death of such plaintiff, the Court may pass an order that the action shall lie in abeyance; 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 reach a final determination of the matter in dispute or for both those purposes.

O. 57, r. 6.
In case of dispute, Court to decide who is legal representative.

6. In the event of any dispute arising as to who is the legal representative of a deceased plaintiff, it shall be 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.

O. 57, r. 7.
Of substitution of legal representative of deceased defendant at instance of plaintiff.

7. (1) Where there are 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,

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and whom he desires to be made the defendant in his stead. The Court shall thereupon, on being satisfied 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 :

No intestate heir who has not inter-meddled with estate liable to be substituted.

Provided, however, that in the case of an estate below the value of Five Thousand Rupees no intestate heir who has not intermeddled with the estate of the deceased shall be liable to be substituted as the legal representative of the deceased defendant.

Objection may be taken to substitution.

Provided further 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.

Of substitution of legal representative of deceased defendant, at instance of legal 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 rule, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon.

ILLUSTRATIONS

1. Action upon bill of exchange. Defendant dies after answer filed. Summons on administrator of deceased defendant would issue after his substitution calling upon him to appear on a day to be fixed for that purpose to defend the action. Where administrator appears in person he would be given a period of time within which he would have to file his answer, or where a Proctor appears for him and the proctor files his proxy, the Proctor would take the next step of filing the answer within the time limited by order of Court, and in the former case before the defendant files his answer he must file a memorandum of his address as required by Order XII.

2. Action for goods sold and delivered. Defendant dies after answer filed, leaving an estate below the value of Rs. 5,000 Plaintiff on ex-parte application has X substituted as widow who had intermeddled with the estate of her deceased husband. On summons X appears in Court and is entitled to show (*a*) that she is not the widow, or (*b*) that being the widow she has not intermeddled with the estate of the deceased. These questions would be determined by Court and if the Court finds that X is either not the widow or that being the widow she has not inetrmeddled with the estate, it would vacate the order of substitution made ex-parte. If, however, the Court finds that X is the widow and that she has intermeddled with the estate it would dismiss X's objections and fix a period within which the plaintiff is to take the next step.

O. 57, r. 8. Action not abated by marriage of female party.

8. (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.

And decree may be executed by or against husband where law so permits.

(2) Where 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.

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O. 57, r. 9. Effect of insolvency.

9. The 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 declined to continue the action and to give security for the costs thereof within such time as the Court may order.

O. 57, r. 10. When assignee does not continue action.

10. Where 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 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.

O. 57, r. 11. When Court itself may order action to abate.

11. 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.

Explanation: Where the plaintiff dies pending action, no order can be made under this rule.

O. 57, r. 12. No fresh action to be brought where action has abated; but Court may set aside order.

12. Where an action abates or is ordered to be in abeyance or is dismissed under this Order, 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 plaintiff or the assignee of an 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 of abatement, abeyance 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 order of abatement, abeyance or dismissal upon such terms as to costs or otherwise as it thinks fit.

O. 57, r. 13. Continuation of action in other cases of assignment of party's interest.

13. 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.

O. 57, r. 14. Applications under this Order, how to be made.

14. The application under Rule 7 of this Order may be ex-parte, but in all other applications for the exercise of the discretion of the Court under this Order, all the parties to the action not being the applicants or such of them as may be affected by the order sought, shall be made respondents on the face of the application. The application shall be in the form of a petition, and the facts contained therein shall be verified by affidavit.

O. 57, r. 15. Court to appoint day or fixed period within which next step is to be taken.

15. On the continuation of an action after alteration of a party's status, the Court shall, where necessary, appoint the day on which, or fix the period within which, the next step is to be taken, having regard to the nature of the action and the stage of the proceedings.

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ILLUSTRATIONS

1. Action for goods sold and delivered. The defendant dies after entering appearance, but before the period allowed for filing answer. The administrator of his estate is substituted in place of the deceased defendant and is summoned under Rule 7 to appear on a day fixed to defend the action. The administrator fails to appear on the date so fixed. Court would make an entry that the defendant is in default but fix no date for the next step as none is necessary, for it is competent to the plaintiff at any time thereafter to move for judgment as provided by Order XVIII, as the action is one that is governed by the new procedure.

2. If, however, in illustration 1 the administrator appears and desires to defend the action, the Court would fix a period within which the administrator would be required to file answer. A period of ten days from date of appearance may be allowed to the administrator to file his answer or such longer or shorter period as the Court may in all the circumstances consider reasonable. The further proceedings either on default being made in the filing of answer or in the event of the answer being filed would be governed by the provisions of Orders XVIII and XIX.

3. Action for declaration of title. Defendant dies after his appearance in Court on date fixed in summons and before the date fixed for filing answer. Administrator of his estate is summoned to appear on a day fixed to defend the action. Administrator is in default in appearing. Court would fix date for ex-parte hearing, as the action is one governed by the old procedure.

4. If in illustration 3, the administrator appears and desires to defend the action but does not deliver his answer on that day, a date will be fixed for his answer and the action will continue as provided by Order XV.

ORDER LVIII

Withdrawal and Adjustment of Actions

O. 58, r. 1.

Plaintiff may withdraw or abandon part of his claim.

1. (1) At any time after the institution of an action the plaintiff may, as against all or any of the defendants, withdraw his action or abandon part of his claim.

(2) Where the Court is satisfied—

(*a*) that an action must fail by reason of some formal defect, or

(*b*) that there are other sufficient grounds for allowing the plaintiff to institute a fresh action for the subject-matter of an action or part of a claim,

Court may grant permission to institute fresh action.

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such action or abandon such part of a claim with liberty to institute a fresh action in respect of the subject-matter of such action or such part of a claim.

Where action withdrawn without permission, no fresh action.

(3) Where the plaintiff withdraws from an action or abandons part of a claim, without the permission referred to in paragraph (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh action in respect of such subject-matter or such part of the claim.

One plaintiff cannot withdraw without consent of the others.

(4) Nothing in this Rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

O. 58, r. 2.

Prescription law not affected by first suit.

2. In any fresh action instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of prescription in the same manner as if the first action had not been instituted.

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O. 58, r. 3. Adjustment of actions out of Court.

3. Where an action is adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect to the whole or any part of the subject-matter of the action, such agreement, compromise, or satisfaction shall be notified to the Court by motion made in the presence of, or on notice to, all the parties concerned, and if all the parties either consent or do not object to such agreement, compromise or satisfaction being entered of record, the Court shall record it and pass a decree in accordance therewith so far as it relates to the action.

O. 58, r. 4. Representative actions and actions relating to trusts, etc., not to be compromised without notice to all persons concerned.

4. (1) Where an adjustment is in respect of an action—

(*a*) instituted or defended in a representative character, or

(*b*) relating to a public or charitable trust or fidei commissum,

no decree in accordance with such adjustment shall be passed by Court unless after notice to and hearing the objections, if any, of all persons on whose behalf the action has been instituted or defended and of all persons beneficially interested.

Notice by personal service or public advertisement.

(2) The notice required to be given under the preceding paragraph shal be either by personal service or (if from the number of persons or any other cause such service is not reasonably practicable then) by public advertisement, as the Court may direct.

O. 58, r. 5. Compromise entered into otherwise voidable.

5. Any decree passed under the last preceding rule without complying with the provisions thereof, or any agreement or compromise recorded without complying with the provisions of Rule 23 of Order LXVIII shall be voidable against all parties other than the persons represented or beneficially interested.

ORDER LIX

Payment of Money into Court in satisfaction of Claims

O. 59, r. 1. Payment of money into Court.

1. The defendant in any action brought to recover a debt or damages 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.

O. 59, r. 2 Notice thereof.

2. Notice 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.

O. 59, r. 3. Interest on deposit not allowed to plaintiff after notice.

3. No interest shall be alowed 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 satisfaction of the claim or fall short thereof.

O. 59, r. 5. Procedure where plaintiff accepts payment in part satisfaction of his claim.

4. Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his action for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs incurred after the deposit and the costs previous thereto so far as they were caused by excess in the plaintiff's claim.

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O. 59, r. 5.
Procedure where plaintiff accepts payment in full satisfaction of his claim.

5. Where 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 thousand 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. 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.

(*a*) 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 thousand rupees, and is willing to pay him that sum without action. B claims one thousand five hundred rupees, and sues A for that amount. On the plaint being filed, A pays one thousand rupees into Court, and disputes only his liability to pay the remaining five hundred rupees. B accepts the one thousand rupees in full satisfaction of his claim. The Court should order him to pay A's costs.

O. 59, r. 6.
Money must be actually paid.

6. 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.

O. 59, r. 7.
This order to apply to any party.

7. The provisions of this Order 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.

ORDER LX

Mode of Payment of Money into Court

O. 60, r. 1.
Definition of " depositor ".

1. In this order " depositor " shall mean any person who has occasion to pay money into Court, or a Proctor acting on behalf of such person.

O. 60, r. 2.
Depositor to be issued deposit note.

2. (1) The depositor shall signify his intention to pay money into Court, in the case of a District Court to the Secretary, or in the case of a Court of Requests to the Chief Clerk of the Court, either personally or by letter, and the Secretary or Chief Clerk or other officer duly authorised for the purpose by the Court shall furnish such depositor with a deposit note in such form as may be prescribed by the Financial Regulations of Government for the time being.

Deposit note to be delivered to Kachcheri.

(2) Such depositor shall deliver the deposit note or send it by post together with the money to the Kachcheri or Treasury of the District.

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O. 60, r. 3.
Payer's slip duly receipted to be issued to depositor.

3. (1) Receipt of the money at the Kachcheri or the Treasury shall be acknowledged by the signature of the Government Agent or Assistant Government Agent or other officer duly authorised in that behalf on that part of the deposit note which bears the heading " Payer's Slip ", and such part shall be detached and delivered or sent by post to the depositor, the other part being retained at the Kachcheri or Treasury as the authority for receiving the money.

Kachcheri to forward usual receipt.

(2) The usual Kachcheri or Treasury receipt shall be forwarded to the Court forthwith.

O. 60, r. 4.
When and how payment may be made through Post Office.

4. (1) Where—

(*a*) there is no Kachcheri or Treasury in the town in which the Court is situated; or

(*b*) the depositor signifies his desire to pay the money through a Post Office though there be a Kachcheri or Treasury in the town in which the Court is situated;

the Secretary or Chief Clerk or other officer duly authorised by the Court for the purpose shall issue to the depositor, in addition to the deposit note referred to in Rule 2 of this Order, an application, in case (*a*) to the nearest Post Office, and in case (*b*) to the Post Office specified by the depositor, for an official Money Order in favour of the Government Agent or Assistant Government Agent of the District, and a franked envelope addressed to the same Government Agent or Assistant Government Agent.

Deposit note, and application for official Money Order to be delivered to Postmaster.

(2) Such depositor shall deliver the money to the Postmaster, together with the deposit note, and the application for the official Money Order.

O. 60, r. 5.
Payer's slip to be handed to depositor.

5. (1) The Postmaster shall on receipt of the money acknowledge receipt on the deposit note and shall also enter therein the number of the official Money Order issued by him and shall detach and hand the payer's slip to the depositor to be retained by him in proof of payment.

Money Order to be forwarded to Kachcheri by depositor.

(2) The remaining portion of the deposit note together with the Money Order shall also be handed to the depositor, who shall forward it to the Kachcheri in the franked envelope given him by the Court.

Kachcheri to forward usual receipt to Court.

(3) The Kachcheri shall then forward the usual receipt to the Court forthwith.

O. 60, r. 6.
Depositor out of Ceylon may remit money direct to Court.

6. (1) Where a depositor residing outside Ceylon desires to make a payment of money into any Court in Ceylon, he may forward a remittance direct to that Court.

Court to forward remittance to Kachcheri.

(2) Such remittance should be accepted by the Court and forwarded duly endorsed to the Kachcheri, together with a deposit note, for action in terms of Rule 3.

O. 60, r. 7.
Date of payment.

7. Where money is paid through a Post Office the date of issue of the Money Order by such Post Office shall be deemed to be the date of payment of money into Court. In other cases the date of the Kachcheri or Treasury Receipt shall be deemed to be the date of payment.

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ORDER LXI.

Security for Costs

O. 61, r. 1. Plaintiff resident out of the Island may be required to give security.

1. Where 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 Island, and that such plaintiff is not or that no one of such plaintiff is, possessed of substantial property, whether movable or immovable, within the Island, other than property the subject-matter of the action, the Court may in its discretion, and either of its own motion or on the application of any 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.

O. 61, r. 2. Also where defendant resident outside the Island.

2. Where 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 Island, and that the plaintiff is not or, where there are more plaintiffs than one, that no one of such plaintiffs is, possessed of substantial property, whether movable or immovable, within the Island other than the property the subject-matter of the action, 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.

O. 61, r. 3. What amounts to residence out of the Island.

3. Whoever leaves, or is about to leave, the Island 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 Island within the meaning of the two last preceding rules.

O. 61, r. 4. If security not furnished when ordered, action may be dismissed.

4. 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 Rule 1 of Order LVI, or show good cause why such time should be extended, in which case the Court may extend it.

O. 61, r. 5. Time for giving security for costs, when not to be reckoned.

5. The day on which an order for security for costs is made, and the time thenceforward until and including the day on which such payment or security is given shall not be reckoned in the computation of time allowed by the rules to plead, answer interrogatories, or take any other proceeding in the action.

O. 61, r. 6. Dismissal may be set aside.

6. Where an action is dismissed under Rule 4 of this Order 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.

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ORDER LXII

Commissions

O. 62, r. 1. Power of Court to issue commissions.

1. Subject to the rules hereinafter contained, in this Order, the Court may issue a commission—

(*a*) to examine any person,

(*b*) to make local investigations,

(*c*) to examine acounts,

either of its own motion or on the application supported by affidavit or otherwise of any party to the action.

Commissions to examine witnesses

O. 62, r. 2. Commission to examine sick person etc., within jurisdiction.

2. Any Court may in any action issue a commission for the examination on interrogatories or otherwise, and on oath or affirmation, of any person resident within the local limits of its jurisdiction who from sickness or infirmity is unable to attend the Court.

O. 62, r. 3. To whom may commission issue.

3. A 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.

O. 62, r. 4. Commission to examine in other cases.

4. (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*) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(*c*) any civil or military officer of the Government who cannot in the opinion of the Court attend without detriment to the public service.

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.

O. 62, r. 5. When may Court issue commission to examine person outside the Island.

5. Where 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 the Island is satisfied that the evidence of such person is necessary, the Court may issue a commission or a letter of request.

O. 62, r. 6. Court to execute the commission.

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

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O. 62, r. 7. Return thereof.

7. Where the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from 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 rule) form part of the record of the action.

O. 62, r. 8. Evidence taken under commission, when admissible.

8. 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 civil or military officer of the Government who cannot in the opinion of the Court attend without detriment to the public service, 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 paragraph (*a*) and authorises the evidence of any person being read as evidence in the action, notwithstanding proof that the cause for taking such evidence by a commission has ceased at the time of reading of the same.

O. 62, r. 9. Foreign Courts to which provisions apply.

9. The provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by—

(*a*) Courts situate within the limits of the Republic of India; or

(*b*) Courts situate in any part of the Commonwealth countries other than the Republic of India; or

(*c*) Courts of any foreign country for the time being in alliance with Her Majesty's Government in Ceylon.

Commissions for Local Investigations

O. 62, r. 10. Commission to make local investigations.

10. 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, 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.

O. 62, r. 11. Return thereof.

11. 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.

O. 62, r. 12. Report and depositions to be evidence in action.

12. The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the action and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

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O. 62, r. 13. Further inquiry may be directed.

13. Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit or issue a fresh commission to another person.

Commissions to examine Accounts

O. 62, r. 14. Commission to examine accounts.

14. 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.

O. 62, r. 15. Court to furnish instructions.

15. The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

O. 62, r. 16. Report, etc., to be evidence and further inquiry may be directed.

16. The provisions of Rules 12 and 13 of this Order shall *mutatis mutandis* apply to a commission issued under Rule 14 of this Order.

General Provisions

O. 62, r. 17. Court may order payment into Court of expenses.

17. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission, to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

O. 62, r. 18. Powers of Commissioners.

18. Any Commissioner appointed under this Order 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.

O. 62, r. 19. Provisions of this Code as to witnesses to apply.

19. The provisions of this Code 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 Order, 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 the Island, and for the purpose of this rule the Commissioner shall be deemed to be a Civil Court.

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O. 62, r. 20.
Process to witness may be issued by Court.

20. A Commissioner or a party to the action may apply to the Court from which the commission was issued for the issue of any process which he may find necessary to issue to or against a witness, and such Court may in its discretion issue such process as it considers reasonable and proper.

O. 62, r. 21.
Parties should appear before Commissioner.

21. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the action shall appear before the Commissioner in person or by their recognized agents or Proctors.

Commissioner may proceed in absence of parties.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

ORDER LXIII

Actions by or against the Crown or Public Officers in their Official Capacity

O. 63, r. 1.
Name, description, etc., of the Attorney-General need not be set out.

1. In actions by or against the Crown instituted by or against the Attorney-General, it shall be sufficient to insert the words 'Attorney-General' without setting out in the plaint the name, description and place of abode of the Attorney-General.

2. In actions against the Crown—

O. 63, r. 2.
Attorney-General to have reasonable time to appear.

(i) where the summons is issued in Form 20 in Appendix I, the Court shall, in fixing the day for the Attorney-General to answer to the plaint, allow a reasonable time for necessary communication with the Government through the proper channels, and may extend the time at its discretion;

(ii) where the summons is issued in Form 22 in Appendix I, the Attorney-General shall file his answer within thirty days from the time limited for appearance unless such time is extended as provided by Rule 8 of Order XVII.

O. 63, r. 3.
Public Officer may apply for time to answer.

3. (1) Where an action is instituted against a public officer, and such public officer, on receiving the summons, considers it proper to make reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons or allowed by the rules, as may be necessary to enable him to make such reference and to receive orders thereon through the proper channels.

Court may extend time.

(2) Upon such application the Court may extend the time for so long as appears to it to be necessary.

O. 63, r. 4.
When Attorney-General may intervene.

4. (1) Where the Crown undertakes the defence of an action against a 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 the party defendant in the action.

In event of no such intervention, action to proceed as against private party.

(2) Where no application under paragraph (1) is made by the Attorney-General on or before the day fixed for appearance and answer, or within the time limited for appearance, under the preceding paragraph, as the case may be, 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 seizure otherwise than in execution of a decree.

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ORDER LXIV

Actions by and against persons in the Naval, Military or Air Service

O. 64, r. 1.
Actions by or against persons in naval, military or air force.

1. (1) Where 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 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.

Authority proved by counter-signature of Commanding Officer.

(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 Order the expression " commanding officer " means the officer in actual command for the time being of any ship, regiment, corps, detachment, or naval or military or air depot to which the party belongs.

O. 64, r. 2.
Agent may sue or defend in person.

2. 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.

O. 64, r. 3.
Service of process in such cases.

3. Processes served upon any person authorised by any party under Rule 1 of this Order or upon any Proctor appointed under the preceding Rule 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.

ORDER LXV

Action by or against Corporations and Companies

O. 65, r. 1.
Actions by or against corporation or company.

1. 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 the officer (if any) in whose name any such corporation, board, public body, or company is authorised 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,

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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.

ORDER LXVI

Actions by or against Firms and Persons carrying on Business in names Other than their own

1. A firm duly registered under the Business Names Ordinance may sue or be sued in the business name under which it has been registered. O. 66, r. 1. Actions by or against firms.

Explanation.—" Firm " shall have the same meaning as in the Business Names Ordinance.

2. Where a firm sues or is sued in its business name, it shall, in the case of any pleading or other document required by or under this Code to be signed by the plaintiff or the defendant, suffice if such pleading or other document is signed by any one of the partners whose name appears on the register as such. O. 66, r. 2. Any one partner may sign pleadings.

3. (1) Where an action is instituted by a firm, the plaintiffs or their Proctor shall on demand in writing by or on behalf of any defendant forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is instituted. O. 66, r. 3. Disclosure of partners' names.

(2) Where the plaintiffs or their Proctor fail to comply with any demand made under paragraph (1) all proceedings in the action may, upon application for that purpose, be stayed upon such terms as the Court may direct. Non-disclosure stays action.

(3) Where the names of the partners are declared in manner referred to in paragraph (1), the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as plaintiffs in the plaint. Disclosure of partners equivalent to their being named in the plaint.

Provided that all the proceedings shall nevertheless continue in the name of the firm.

4. (1) Where a firm sues or is sued in its business name and any partner thereof dies, whether before the institution or during the pendency of the action, it shall not be necessary to join the legal representative of the deceased as a party to the suit: O. 66, r. 4. Right of action on death of partners.

Provided, however, that where it is intended to execute the decree against assets other than those in the partnership business of the deceased partner, such legal representative shall be added as a party to the action.

(2) Nothing in paragraph (1) shall limit or otherwise affect any right which the legal representative of the deceased may have; Right of legal representative not affected.

(*a*) to apply to be made a party to the suit;

(*b*) to enforce any claim against the survivor or survivors.

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O. 66, r. 5. Appearance of partners.

5. Where a firm is sued in its business name, the partners shall appear individually in their own names but all subsequent proceedings shall nevertheless continue in the name of the firm.

O. 66, r. 6. No appearance except by partners.

6. Where summons is served in manner provided by Rule 10 of Order XIV upon a person having the control or management of the business, no appearance by him shall be necessary unless he is a partner of the firm sued.

O. 66, r. 7. Appearance under protest.

7. (1) Where any person served as a partner under Rule 10 of Order XIV denies that he was a partner or liable as such at any material time, he may appear or enter an appearance stating therein that he does so as a person served as a partner in the defendant firm but that he denies that he was a partner at any material time.

Treated as appearance for the firm.

(2) Such appearance as long as it stands shall be treated as an appearance for the firm.

Rights of plaintiff and person putting in appearance.

(3) Upon such appearance—

(*a*) the plaintiff may apply to set it aside on the ground that the person entering it was a partner or liable as such, or may leave that question to be determined at a later stage of the proceedings;

(*b*) the person entering the appearance—

(i) may apply to set aside the service on him on the ground that he was not a partner or liable as such, or

(ii) may at the proper time deliver a defence denying either or both

(*a*) his liability as a partner,

(*b*) the liability of the defendant firm in respect of the plaintiff's claim.

O. 66, r. 8. Actions between co-partners.

8. The above rules shall apply to actions between a firm and one or more of the partners thereof, and to actions between firms having one or more partners in common ; but no execution shall be issued in such actions except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

O. 66, r. 9. Rights of partners to sue or be sued in their individual names unaffected.

9. Nothing in the rules of this Order shall prevent partners from suing or being sued otherwise than in the firm name.

O. 66, r. 10. Application of rules to person trading as firm.

10. An individual duly registered under the Business Names Ordinance may be sued in the business name under which he has been registered as if it were a firm name; and so far as the nature of the case will permit, all rules under this Order shall apply.

Explanation.—" Individual " shall have the same meaning as in the Business Names Ordinance.

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ORDER LXVII

Actions by or against Trustees, Executors and Administrators

1. Trustees, executors and administrators may sue and be sued without joining any person beneficially interested in the trust property or estate, and shall be considered as representing such person, but the Court may, at any stage of the action order any such person to be made a party, either in addition to or in lieu of the previously existing parties.

O. 67, r. 1. Action by and against trustees, executors & administrators.

2. Where 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 the executors who have not proved their testator's will and trustees, executors and administrators beyond the Island need not be made parties.

O. 67, r. 2. All executors should be made parties.

3. 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, (*a*) be liable to pay costs to the defendant in case of judgment being entered for the defendant, and (*b*) in all other cases be liable for costs as if such executor or administrator were suing in his own right upon a cause of action accruing to himself personally.

O. 67, r. 3. Executors and administrators liable in costs.

4. Unless the Court directs otherwise, the husband of a married trustee, executrix, or administratrix shall not be a party to an action by or against her in her representative capacity.

O. 67, r. 4. Husband of married trustee, executrix or administratix not to be made a party

ORDER LXVIII

Actions by or against Minors and Persons Under other Disqualifications

1. Every action by a minor shall be instituted in his name by a person of full age who in such action shall be designated in the plaint the next friend of the minor, and may be ordered personally to pay the costs in the action as if he were a plaintiff.

O. 68, r. I. Action by minor.

Explanation.—1. A curator instituting an action in the name of the minor should have himself appointed next friend of the minor.

2. A person duly appointed next friend may sue without obtaining a certificate of curatorship.

3. A curator suing upon a contract entered into in his own name in respect of the estate of the minor need not have himself appointed next friend as the action may be maintained in his own name.

2. Where the defendant to an action is a minor, the Court on being satisfied of the fact of minority shall appoint a guardian ad litem over such minor to act on his behalf in the conduct of the case.

O. 68, r. 2. Appointment of guardian ad litem.

3. Every application to the Court on behalf of a minor shall be made in his name by his next friend or guardian-ad-litem, and shall be so expressed to be made on the face of the application.

O. 68, r. 3. Representation of minor by next friend or guardian ad litem.

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O. 68, r. 4.
Where action instituted without next friend, plaint to be taken off the file.

4. (1) Where an action is instituted 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.

Application by way of summary procedure.

(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.

O. 68, r. 5.
No order to affect minor not represented.

5. 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 other than an application under Rule 10 of this Order, without such minor being represented by a next friend or guardian ad litem, 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.

O. 68, r. 6.
Who may act as next friend

6. (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.

Minor to appear in person at the hearing of application.

(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 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, illness or absence beyond the Island.

O. 68, r. 7.
Removal of next friend.

7. 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 the Island, 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.

O. 68, r. 8.
Retirement of next friend.

8. (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.

Application by way of summary procedure.

(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 that of the minor, and to such application the defendant shall be made respondent.

O. 68, r. 9.
Stay of proceedings on death or removal of next friend.

9. 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.

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O. 68, r. 10. Appointment of new next friend.

10. 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 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.

O. 68, r. 11. Minor's right of election on attaining majority.

11. A minor plaintiff, or a minor not a party to an action on whose behalf an application is pending, shall on attaining majority elect whether he will proceed with the action or application.

O. 68, r. 12. Discharge of next friend on election to proceed.

12. (1) Where he elects to proceed with the action or application, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

Title of action to be altered.

(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 having attained majority."

O. 68, r. 13. Action may be abandoned on attaining majority.

13. Where 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 opposite party, or which may have been paid by his next friend.

O. 68, r. 14. Application to be ex-parte.

14. Any application under Rule 12 or Rule 13 of this Order 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 majority.

O. 68, r. 15. Repudiation of action by minor co-plaintiff on attaining majority.

15. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the action, he shall 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.

Next friend, co-plaintiff and defendant to have notice.

(2) The next friend, the co-plaintiff and 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 majority; 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.

Late minor may be made a defendant.

(3) If the late minor be a necessary party to the action, the Court may direct him to be made a defendant.

O. 68, r. 16. Unreasonable or improper suit.

16. (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.

Notice of application to all parties concerned.

(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 or make such other order as it thinks fit.

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O. 68, r. 17. Minor may in person sue for salary or wages.

17. Nothing in the foregoing rules 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 salary, wages or piece-work, or for work as a servant, artificer, or labourer, in the same manner as if he were of full age.

O. 68, r. 18. Application for appointment of guardian ad litem.

18. (1) An order for the appointment of a guardian ad litem may be obtained upon application on summary procedure in the name and on behalf of the minor or by the plaintiff. Such application shall be supported by an affidavit verifying the fact that the proposed guardian is of sound mind and full age and has no interest in the matters in question in the action adverse to that of the minor, and that he is a fit and proper person to be so appointed.

With consent of guardian ad litem.

(2) No person shall without his consent be appointed guardian ad litem.

Minor to appear in person.

(3) On the occasion of such an application being made, the minor should appear personally in Court unless prevented by good cause, such as extreme youth, illness or absence beyond the Island.

O. 68, r. 19. Officer of Court may be appointed guardian ad litem.

19. Where there is no other person fit and willing to act as guardian ad litem, the Court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian ad litem shall be borne either by the parties or by any one or more of the parties to the action or out of any fund in Court in which the minor is interested and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

O. 68, r. 20. Co-defendant may be appointed.

20. A co-defendant of sound mind and of full age may be appointed guardian ad litem if he has no interest adverse to that of the minor; but no plaintiff shall be so appointed.

O. 68, r. 21. Retirement or removal of guardian ad litem.

21. (1) Where the guardian ad litem desires to retire or does not do his duty, or if other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty, or may make such other order as to costs as it thinks fit.

New guardian ad litem to be appointed.

(2) Where the guardian ad litem retires, dies or is removed by the Court during the pendency of the action, the Court shall appoint a new guardian ad litem in his place, and further proceedings shall be stayed until such appointment.

O. 68, r. 22. Appointment of guardian ad litem over minor heir before execution of decree against him.

22. 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 ad litem over such minor shall be appointed by the Court, on an application by way of summary procedure duly made for this purpose, and the decree-holder shall then serve on such guardian ad litem notice of such application.

O. 68, r. 23. Next friend or guardian ad litem may not compromise action without leave of Court.

23. (1) No next friend or guardian ad litem shall, without the approval of the Court expressly recorded in the proceedings, 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 ad litem.

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Certificate of Counsel or Proctor regarding compromise to be filed.

(2) Where an application is made to the Court for its approval to enter into an agreement or compromise or for withdrawal of the action in pursuance of a compromise, or for taking any other step on behalf of a minor, and such minor is represented by Counsel or only by a Proctor, such Counsel or Proctor, as the case may be, shall file in Court with the application, a certificate to the effect that the agreement, compromise, withdrawal of the action or other step proposed is in his opinion for the benefit of the minor.

O. 68, r. 24.
Next friend or guardian ad litem may not receive property under decree without leave of Court unless appointed curator.

24. (1) A next friend or guardian ad litem shall not, without the leave of the Court, unless appointed curator, over the property of the minor, receive any money or other movable property on behalf of a minor either—

(*a*) by way of compromise before decree or order, or

(*b*) under a decree or order in favour of the minor.

Next friend or guardian ad litem to give security for property of minor.

(2) Where the next friend or guardian ad litem has not been appointed to be a curator over the property of the minor, or, having been so appointed is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

O. 68, r. 25.
Majority, what is.

25. For the purposes of this Order, 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*.

O. 68, r. 26.
Court to fix date for next step on death of next friend or guardian.

26. Where proceedings consequent on or after the death, removal or retirement of a next friend or guardian ad litem, or the attainment of majority of a minor are taken, the provisions of Rule 15 of Order LVII shall *mutatis mutandis* apply.

O. 68, r. 27.
Application of rules to lunatics, mentally defective persons and persons of unsound mind.

27. The provisions contained in this Order shall *mutatis mutandis* apply to lunatics and mentally defective persons adjudged to be such under the provisions of this Code and to persons of unsound mind adjudged to be so under any law for the time being in force.

ORDER LXIX

Interpleader Actions

O. 69, r. 1.
Interpleader Actions.

1. Where two or more persons claim adversely to one another payment of the same debt, sum of money, or delivery of the same property, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute an action of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself:

Provided that where any action is pending in which the rights of all parties can properly be decided, no such action of interpleader shall be instituted.

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O. 69, r. 2. Plaint in interpleader action.

2. (1) In every action of interpleader the plaint shall, in addition to the other statements necessary for plaints, state—

(*a*) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs;

(*b*) the claims made by the defendants severally; and

(*c*) that there is no collusion between the plaintiff and any of the defendants.

Plaint to be verified by affidavit.

(2) Such plaint shall also be supported by an affidavit of the plaintiff verifying the statements contained therein.

O. 69, r. 3. Property claimed to be deposited in Court.

3. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff shall so pay or place it before he can be entitled to any order in the action.

O. 69, r. 4. Procedure where defendant is suing plaintiff.

4. Where any of the defendants in an interpleader action is actually suing the plaintiff in respect of the subject-matter of such action, the Court in which the action against the plaintiff is pending shall, on motion made by the plaintiff with notice to such defendant, stay the proceedings as against him; and his costs in the action so stayed may be provided for in such action; but if, and in so far as, they are not provided for in that action, they may be added to his costs incurred in the interpleader action.

O. 69, r. 5. Procedure at hearing.

5. (1) 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 charges or costs, if any, and dismiss him from the action; or

(*b*) if it thinks that justice or convenience so require, retain all parties until the final disposal of the action.

Court may adjudicate on admissions.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate upon the title to the thing claimed.

Or proceed to try in the ordinary way.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(*a*) that an issue or issues between the parties be framed and tried, and

(*b*) that any claimant be made a plaintiff in substitution for or in addition to the original plaintiff,

and shall proceed to try the action in the ordinary manner.

O. 69, r. 6. Who may not be sued in interpleader.

6. Nothing in this Order shall be deemed 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.

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7. Where the action is properly instituted the Court may provide for the charges and costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

O. 69, r. 7. Charge for plaintiff's costs.

ORDER LXX

Matrimonial Actions

1. Every matrimonial action shall be instituted by the presentation of a plaint and shall be governed, so far as applicable, by the provisions of the Code relating to Regular Actions under the Old Procedure.

O. 70, r. 1. Procedure in Matrimonial Actions.

2. The plaint in a Matrimonial Action shall, in addition to the requirements contained in Orders VI and VII, state:

O. 70, r. 2. Requisites of plaint.

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

(*b*) whether there are any living children of the marriage and, if so, the names and dates of birth or ages of such children;

(*c*) the occupation of the husband;

(*d*) the matrimonial offences alleged or other grounds upon which relief is sought, setting out with sufficient particularity the individual facts relied on, but not the evidence by which they are to be proved.

3. (1) Where the husband presents a plaint in which the adultery of the wife is the cause or part of the cause of action he 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:

O. 70, r. 3. Husband to make alleged adulterer co-defendant.

(*a*) 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;

(*b*) that the name of the alleged adulterer is unknown to the plaintiff, although he has made due efforts to discover it;

(*c*) that the alleged adulterer is dead.

(2) The prayer to be excused from making the alleged adulterer a co-defendant and the allegations of fact upon which it is founded shall be embodied in the plaint, and such allegations shall be supported by affidavit or other sufficient evidence.

Affidavit where co-defendant is excused.

(3) Where the plaint does not comply with the provisions of the preceding paragraphs, the plaint shall be rejected, or if already admitted, the action shall, on such non-compliance being brought to its notice be dismissed by Court; such dismissal shall not operate as a bar to institution of a fresh action.

Plaint not complying, to be rejected.

4. Where the wife presents a plaint in which the adultery of the husband is the cause or part of the cause of action, she may make the person with whom the husband is alleged to have committed adultery a co-defendant.

O. 70, r. 4. Court may allow wife to add adulteress as co-defendant.

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O. 70, r. 5.
Defendant husband to make alleged adulterer co-defendant.

5. (1) Where in an action instituted by the wife against the husband the answer sets up by way of defence, or claims relief based upon, the adultery of the wife, the provisions of paragraphs (1) and (2) of Rule 3 of this Order relating to the making of the alleged adulterer a co-defendant, or to the application to be excused from so doing, shall *mutatis mutandis* apply.

Defence relative to adultery to be struck out.

(2) Where an answer does not comply with the provisions of the preceding paragraph, so much of the defence or claim based upon the adultery of the wife shall be struck out.

O. 70, r. 6.
Defendant wife may make person alleged to have committed adultery co-defendant.

6. Where in an action instituted by a husband against the wife the answer sets up by way of defence or claims relief based upon the adultery of the husband, the wife may make the person with whom the husband is alleged to have committed adultery a co-defendant.

O. 70, r. 7.
Co-defendant made party by defendant to reply to allegations in answer.

7. Where a person is made co-defendant in terms of the provisions of Rules 5 and 6 of this Order, without prejudice to the generality of the provisions contained in the Code, he or she may be called upon to reply to the allegations made against him or her in the answer filed by the defendant.

O. 70, r. 8.
Damages may be claimed against co-defendant.

8. It shall be lawful to include a claim for pecuniary damages against such co-defendant as is referred to in Rules 3, 4, 5 and 6 of this Order.

O. 70, r. 9.
Defendant may claim any relief he may be entitled to.

9. Where the defendant opposes the relief sought by the plaintiff and claims either the same or any other relief, on any ground which would have enabled him or her to sue as plaintiff for the relief so claimed by him or her, the Court may in such action give to the defendant the same relief to which he or she would have been entitled in case he or she had presented a plaint seeking such relief.

O. 70, r. 10.
Connivance, condonation, counter-charge.

10. At the trial of an action for divorce a vinculo matrimonii the Court shall satisfy itself as to the facts alleged and also whether or not the plaintiff has been in any manner accessory to or has connived 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.

O. 70, r. 11.
Action when to be dismissed.

11. The action shall be dismissed when on the evidence the Court 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.

O. 70, r. 12.
Otherwise decree to be passed.

12. Where 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 nisi for the dissolution of the marriage in accordance with the provisions hereinafter contained:

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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 instituting or prosecuting such action, or of cruelty towards the defendant or of having deserted or wilfully separated himself or herself from the defendant before the adultery complained of, and without reasonable excuse, or of such wilful neglect or misconduct towards the defendant as has conduced to adultery.

O. 70, r. 13. When adultery deemed condoned.

13. No adultery shall be deemed to have been condoned within the meaning of this Order unless where conjugal co-habitation has been resumed or continued.

O. 70, r. 14. Actions for nullity of marriage.

14. A husband or wife may institute an action for a declaration that his or her marriage is null and void on any ground which renders the marriage contract between the parties void by the laws applicable to the Island.

O. 70, r. 15. Procedure on suspicion of collusion during progress of action in District Court.

15. (1) During the progress of an action for the dissolution of marriage or for declaration of nullity of marriage any person suspecting that any parties to the action are or have been acting in collusion for the purpose of obtaining a divorce or for declaration of nullity of marriage shall be at liberty 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.

Court may order applicant to pay costs of groundless application.

(2) Where an application is made under the preceding paragraph, 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.

O. 70, r. 16. Decree to be decree nisi in first instance.

16. (1) Every decree for dissolution of marriage or for declaration of nullity of marriage shall, in the first instance, be a decree nisi, which shall not be made absolute till after the expiration of not less than three months from the pronouncing thereof, or such longer period as may be prescribed in such decree.

Any person may seek to set aside the decree on the ground of collusion, etc.

(2) During such period any person shall be at liberty, 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.

Decree nisi may thereupon be reversed.

(3) 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, and the Court may order the costs 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.

Where application fails costs may be ordered against applicant.

(4) Where cause, to the satisfaction of the Court, has not been shown, the Court may order the person showing cause to pay the whole or any part of the costs occasioned by his application.

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O. 70, r. 17. Decree when to be made absolute.

17. 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 rule provided within the time therein limited, such decree nisi shall on and after the expiration of such time be made absolute on the application of either party.

O. 70, r. 18. Action for judicial separation.

When Court may grant separation.

18. (1) A husband or a wife may institute an action praying for a separation a mensa et thoro on any ground on which by the law applicable to this Island such separation may be granted.

(2) The Court on being satisfied that the allegations made in the plaint are true and that there is no legal ground why the prayer in the plaint should not be granted may decree separation accordingly.

O. 70, r. 19. Separated wife considered as unmarried in regard to property.

19. (1) Where a separation has been decreed under the last preceding rule, the wife shall, from the date of the decree and so long as 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.

In case of death property devolves on her heirs.

(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 be her separate property, subject, however, to any agreement in writing made between herself and her husband whilst separate.

O. 70, r. 20. Separated wife's contracts and rights to sue.

20. (1) A wife shall, whilst so separated, be considered an unmarried woman for the purpose 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.

Husband liable for necessaries where alimony not paid.

(2) Where, however, 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.

Wife may join husband to exercise joint power.

(3) Nothing herein contained 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.

O. 70, r. 21. Application to reverse decree by the Court which made it to be by petition.

21. (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 to the Court by which the decree was pronounced a petition 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.

Procedure on petition as in a regular action.

(2) Such petition shall be deemed and shall be dealt with by the Court as a plaint in a regular action under the Old Procedure, and the party in whose favour the decree of separation sought to be reversed was passed shall be made a defendant therein.

Court may reverse decree.

(3) The Court may, after trial, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly.

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O. 70, r. 22.

Separation decree deemed valid until reversed.

22. (1) Every decree for separation obtained by a wife under this Order shall, until reversed or discharged, be deemed valid, so far as necessary for the protection of any person dealing with the wife.

Reversal not to prejudice rights already acquired.

(2) No reversal, discharge, or variation of such decree 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 and of the reversal, discharge, or variation thereof.

Third parties dealing with wife after decree and before reversal protected.

(3) All persons, who, in reliance on any such decree, 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, 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 have been discontinued) be protected and indemnified as if at the time of such payment, transfer or other act, such decree 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 of the cessation or discontinuance of the separation.

O. 70, r. 23.

Wife may apply for alimony pending action.

23. (1) In any matrimonial action whether it be instituted by a husband or a wife, the wife may present a petition for alimony pending the action.

Procedure.

(2) Such petition shall be prepared and dealt with as of summary procedure, the husband shall be made a respondent therein, and it shall contain a statement in general terms of the husband's income and property in so far as they are within her knowledge or belief.

When Court may order such alimony.

(3) 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, having regard to the income if any of the wife:

Quantum of such alimony.

Provided that where the wife has no income of her own, 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.

O. 70, r. 24.

Husband may apply for maintenance pending action.

24. (1) In any matrimonial action, whether it be instituted by a husband or wife, the husband may present a petition for maintenance pending the action.

Procedure.

(2) Such petition shall be preferred and dealt with as of summary procedure, the wife shall be made a respondent therein, and it shall contain a statement in general terms of the wife's income and property in so far as they are within his knowledge or belief.

When Court may order such maintenance.

(3) The Court, on being satisfied of the truth of the statements therein contained, may make such order on the wife for payment to the husband of maintenance pending the action as it may deem just, having regard to the income, if any, of the husband.

Quantum of such alimony.

Provided that where the husband has no income of his own, maintenance pending the action shall in no case be less than one-fifth of the wife's average net income for the three years next

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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.

O. 70, r. 25. Alimony pendente lite and maintenance not paid, action to be dismissed.

25. Where an order for alimony or maintenance entered under the two preceding rules is not complied with by the husband or wife, such husband or wife, if plaintiff, shall be liable to have his or her action dismissed, and if defendant, to have his or her defence struck out.

O. 70, r. 26. Permanent alimony.

26. (1) The Court may, if it thinks fit, on or after any decree absolute declaring a marriage to be dissolved, or on or after any decree of separation a mensa et thoro obtained by the wife or husband, direct, having regard to the fortune, if any, of the wife, to the ability of the husband, and to the conduct of the parties, that the husband do one or more of the following:

(*a*) convey to or settle on the wife any specific immovable property, or other immovable property of such value as the Court may think proper, either absolutely or subject to conditions;

(*b*) pay to the wife such gross sum of money either absolutely or subject to conditions;

(*c*) pay annually or monthly such sums of money for her maintenance and support as the Court may think reasonable;

(*d*) secure the payment of such sum or sums as may be ordered under sub-paragraphs (*b*) or (*c*) by the hypothecation of immovable property, or by the execution of a bond with or without sureties, or by the taking out or purchase of a policy or annuity in an insurance company or other institution approved by Court.

Court may discharge or vary order of alimony against husband.

(2) Where 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.

Wife may apply for enhancement of alimony.

(3) It shall also be lawful to the Court, where the circumstances of the parties have so altered after an order for permanent alimony or a modification thereof has been made as to justify an enhancement of the alimony, to enhance the amount of such alimony on the application of the wife.

O. 70, r. 27. Alimony may be paid to the wife or a trustee.

27. 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.

O. 70, r. 28. Court may order settlement of wife's property on husband and children.

28. (1) When the Court pronounces a decree of divorce a vinculo matrimonii or separation a mensa et thoro on the ground of adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property or possessed of adequate means or income of her own, the Court may, if it thinks fit, order for the benefit of the husband or of the children of the marriage or both that the wife shall do any one or more of the following:

(*a*) make such conveyance or settlement as the Court thinks reasonable of such property or any part thereof as he may be entitled to;

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(*b*) pay a gross sum of money;

(*c*) pay annually or monthly such sums of money as the Court thinks reasonable;

(*d*) secure the payment of such sums of money as may be ordered under sub-paragraphs (*b*) and (*c*) by the hypothecation of immovable property, or by execution of a bond with or without sureties, or by the purchase of a policy or annuity in an insurance company or other institution approved by Court.

Instrument executed by wife valid notwithstanding coverture.

(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 be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Court may discharge or vary order made against wife.

(3) The provisions of paragraphs (2) and (3) of Rule 24 of this Order shall *mutatis mutandis* apply where there has been a change in the fortune of the wife.

O. 70, r. 29.
Court may inquire into ante-nuptial and post-nuptial settlements.

29. 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.

O. 70, r. 30.
Court may make orders and also provide for custody, &c., of minor children in decree.

30. 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 make such interim orders, and may make such provision in the decree absolute, as the Court deems proper with 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.

O. 70, r. 31.
Court may after decree absolute make orders respecting custody, &c., of minor children.

31. The Court after a decree absolute for dissolution of marriage or 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.

O. 70, r. 32.
Court may before decree for separation order maintenance of minor children.

32. 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.

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O. 70, r. 33. Court may after decree of separation make order respecting custody, &c., of minor children.

33. 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.

O. 70, r. 34. Court may order either spouse to pay costs to the other where the other has no means.

34. Where the wife or husband is not possessed of sufficient income or means to defray the costs of litigation, the Court may at any stage of the action order the husband or wife, where such husband or wife is possessed of sufficient income or means to defray such costs, to pay to the wife or husband, as the case may be, such sum on account of costs as it considers reasonable, or it may require the husband or wife to give security for the due payment of such costs.

O. 70, r. 35. Costs not paid, action may be dismissed or defence struck out.

35. Where a party fails to pay the costs ordered or to give security for the due payment thereof, such party, if plaintiff, shall be liable to have his or her action dismissed, or if defendant, to have his or her defence struck out.

O. 70, r. 36. Co-defendant may be ordered to pay costs.

36. A co-defendant may be ordered to pay to the husband or wife the whole or any part of the costs of the proceedings, in addition to any damages which may be awarded:

Provided that where the co-defendant is a man, he shall not be ordered to pay the husband's costs, nor shall any damages be awarded against him if—

(*a*) the wife was at the time of the adultery living apart from her husband and leading the life of a prostitute; or

(*b*) if at the time of adultery he had no reason to believe the wife to be a married woman:

Provided also that where the co-defendant is a woman, she shall not be ordered to pay the wife's costs, nor shall any damages be awarded against her if at the time of the adultery she had no reason to believe the husband to be a married man.

O. 70, r. 37. When parties may marry again after decree absolute where no appeal filed.

37. (1) Upon a decree nisi for divorce or for nullity of marriage being made absolute under the provisions of this Order 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.

Otherwise after decision of appeal.

(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.

O. 70, r. 38. Appeal.

38. An appeal shall lie to the Supreme Court from any judgment, decree or order made by the Court in any action or proceeding under this Order.

O. 70, r. 39. Adjournment and further evidence.

39. The Court may from time to time adjourn the hearing of any petition or plaint under this Order, and may of its own motion require further evidence thereon if it sees fit so to do.

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40. Nothing in this Order 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 Ordinance.

O. 70, r. 40. Saving of the application of this Order as to Muslim and Kandyan Marriages.

ORDER LXXI

Actions by Persons of Limited Means

1. Application for permission to sue as a person of limited means shall be in writing, and shall contain the particulars required by Rule 1 of Order VII in regard to plaints in actions; a schedule setting out

(i) any movable or immovable property belonging to the applicant, with the estimated value thereof,
(ii) his monthly salary and allowance if any, and
(iii) his annual income from all sources, shall be annexed thereto, and it shall be subscribed in the manner hereinbefore prescribed for the subscription of plaints.

O. 71, r. 1. Form of application or leave to sue.

2. 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 person of limited means;
(*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 Order;
(*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.

O. 71, r. 2. Application to be verified, and particulars of verifications.

3. Notwithstanding anything contained in Rule 1 of Order IV, the application shall be presented to the Court by the applicant in person.

O. 71, r. 3. Application to be made in person.

4. If the application be not framed or presented in the manner prescribed by the three last preceding sections, the Court shall reject it.

O. 71, r. 4. Application not presented in prescribed manner to be rejected.

5. (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 who 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.

O. 71, r. 5. Court to direct a Proctor ot make inquiry of applicant, and to certify his opinion to the Court.

(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 the footing of the application and of the Proctor's certificate, make an interlocutory order under alternative (*b*) of Rule 5 of Order LVI, appointing a day for the determination of the claim of the applicant to sue as a person of limited means and intimating that the opposite party or

Court to reject application if certificate adverse, otherwise to order inquiry into claim of being a person of limited means.

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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 Order LVI.

O. 71, r. 6. When Court may refuse application.

6. (1) If on the day so appointed or on a subsequent day to which the hearing may have been adjourned, the Court is not satisfied (*a*) in regard to any of the averments contained in the affidavit referred to in Rule 2 of this Order, or (*b*) that the allegations set out in the application disclose a cause of action, the Court shall make order rejecting the application.

Leave to sue to be granted where applicant found to be a person of limited means.

(2) Where the Court sees no reason to reject the application on any of the grounds stated in the preceding paragraph, it shall grant the application to be allowed to sue as a person of limited means and an order to that effect shall be made by the Court, whereupon the person so allowed to sue shall be entitled to the privileges conferred by section 27 of the Code.

O. 71, r. 7. Proceedings thereon.

7. 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 Order XIII.

O. 71, r. 8. Recovery of value of stamps.

8. Where 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 person of limited means and such amount shall be a first charge on the subject-matter of the action.

O. 71, r. 9. When Court may order plaintiff to pay stamp duty.

9. Where the plaintiff is declared not to be a person of limited means under Rule 13 of this Order or where the action is dismissed for default under Rule 1 or 5 of Order XVI, Rule 10 of Order XVIII, Rule 15 of Order XIX or Rule 4 of Order XXVII, the Court shall order the plaintiff or any person added under Rule 12 of Order II 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 person of limited means and the stamp duty on the pleadings filed by him on his application to be permitted to sue as a person of limited means.

O. 71, r. 10. Refusal of application no bar to right of person to sue in the ordinary manner.

10. An order of refusal to allow the applicant to sue as a person of limited means made under paragraph (2) of Rule 5 of this Order 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 stamp duty and the costs of the opposite party, if any, in respect of his unsuccessful application.

O. 71, r. 11. Application to defend as a person of limited means.

11. (1) A defendant in any action may apply to the Court in which such action is pending for leave to defend the action as a person of limited means. The application shall be made in the same manner as, and shall contain the particulars by this Order required to be contained in applications to sue as a person of limited means, 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 Order prescribed with regard to applications for leave to sue as a person of limited means.

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(2) Pending determination of the application by the defendant to sue as a person of limited means the action shall be proceeded with up to, but excluding, the stage of setting down the action either for preliminary investigation or for trial and shall be stayed at that stage.

Application to defend as poor person or to stay action.

(3) All pleadings and documents filed by such defendant pending his application shall be endorsed at the top of such pleading or other document with the superscription 'Application pending to defend as a person of limited means' and such pleading or document shall be permitted to be filed without the stamp duty payable thereon being affixed thereto.

Pleading, etc., to be superscribed 'application pending to defend as a person of limited means'.

(4) Where the application is refused the defendant shall within a time to be fixed by Court pay the stamp duty due to the Crown on the pleadings filed by him in support of his application to be permitted to sue as a person of limited means as well as the costs of the opposite party, if any, and the stamp duty on all other pleadings filed by him in the action before the action is set down for preliminary investigation or trial.

Where application refused, defendant to pay stamp duty and costs.

(5) Where the defendant fails to pay the stamp duty and costs as ordered by Court, all pleadings filed by him in the action shall be ordered to be struck out, and the action shall proceed as if no pleadings had been filed by the defendant.

If not paid, action to proceed as if defendant filed no pleadings.

12. Where the defendant is declared not to be a person of limited means under Rule 13 of this Order, or where judgment is entered against him for default under Rules 3 or 5 of Order XVI or Rule 10 of Order XVIII, or Rule 4 of Order XXVII, the Court shall order the defendant to pay the stamp fees which should have been paid by him if he had not been permitted to defend as a person of limited means, and the stamp duty on the pleadings filed by him on his application to be permitted to sue as a person of limited means.

O. 71, r. 12. When Court may order defendant to pay stamp duty.

13. The Court may on motion made by the opposite party, of which seven clear days' notice in writing has been given to the party permitted to sue or defend as a person of limited means make order declaring that such party is not a person of limited means.

O. 71, r. 13. When a poor person may be declared not to be a poor person.

(*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 person of limited means; 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.

14. The costs of an application for permission to sue or defend as a person of limited means and of an inquiry into the claim to sue as a person of limited means shall be costs in the action.

O. 71, r. 14. Costs of application to be costs in cause.

15. No stamp duty shall be payable in the first instance on any application for permission to sue or defend as a person of limited means, or on any document filed in support of such application.

O. 71, r. 15. Exemption from stamp duty.

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ORDER LXXII

Legal Aid

O. 72, r. 1.
What Courts may grant legal aid.

1. This order shall apply only to those District Courts where panels of Proctors or of Proctors and Advocates willing to act for persons granted legal aid are prepared and maintained.

O. 72, r. 2.
Legal aid to persons of limited means.

2. Legal aid may be given—

(1) to persons to whom a certificate of limited means is issued under the provisions of this Order in respect of all actions save those excepted by the first proviso to section 27 of the Code.

Legal aid to persons declared to be so entitled under this Order.

(2) to persons to whom a certificate of legal aid is issued under the provisions of this Order in respect of—

(*a*) matrimonial actions, or

(*b*) actions arising out of or resulting from collisions between transport and transport or person and transport, whether on land, water or in air.

O. 72, r. 3.
Scope of legal aid.

3. Legal aid shall consist of the preparation and conduct of litigation, of the drafting or settling of all pleadings and documents necessary for the effective presentation of the case of the party, and of appearance on behalf of such party in Court by Proctor or Advocate without fee or reward.

O. 72, r. 4.
Limit of income for grant of legal aid.

4. (1) Legal aid shall not be available for any person whose income exceeds Rs. 2,400 a year or who has property of the value of over Rs. 5,000 exclusive of the subject-matter of the action.

In special circumstances limits may be exceeded.

(2) Notwithstanding the provisions of the preceding paragraph, where the Court is satisfied that it is reasonable in all the circumstances that a person who is in receipt of an income or possessed of property exceeding the limits prescribed therein should be permitted to bring or defend the action as a person of limited means, it may so direct.

O. 72, r. 5.
Save for fees to Advocate and Proctor other expenses to be borne by recipient of legal aid.

5. Where a person receives legal aid—

(*a*) he shall provide all expenses necessary for the conduct of the action save the fees payable to Proctor and Advocate;

Advocate or Proctor not to receive fee from such recipient.

(*b*) his Proctor or Advocate shall not take any payment in respect of legal aid from him; and any Proctor or Advocate who acts in contravention hereof shall be guilty of professional misconduct;

Costs recovered to be paid to legal aid fund.

(*c*) any sums recovered by virtue of an order or agreement for costs made in his favour with respect to the action, less any expenses incurred by him, shall be paid to the legal aid fund constituted under Rule 8 of this Order.

O. 72, r. 6.
List of panel Proctors and Advocates to be transmitted to Minister of Justice.

6. Where panels of Advocates or Proctors are maintained in a Court, the Judge of such Court shall transmit to the Minister of Justice annually, on or before the thirtieth of September, lists of the names of the Advocates and Proctors appearing on such panels, revised as up to the thirtieth of June of the year, together with a report on the working of the scheme for legal aid.

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O. 72, r. 7.
Panel Advocate or Proctor may resign.

7. (1) A Proctor or Advocate who is a member of a panel may at any time give to the Court notice in writing of his intention to resign therefrom.

Proctor's resignation effective when all panel cases disposed of.

(2) A Proctor so giving notice shall cease to be a member of the panel in question when he has disposed of all cases in which at the time of giving notice he is acting as a member of the panel or prior thereto with the leave of Court.

Advocate's resignation effective when all panel cases disposed of.

(3) An Advocate so giving notice shall cease to be a member of the panel in question when he has disposed of all cases in which as a member of the panel he has been retained or has accepted instructions or prior thereto with the leave of Court.

O. 72, r. 8.
Legal Aid Fund.

8. (1) All sums payable under Rule 5 (*c*) of this Order shall be paid to the credit of the Government into an account to be opened by the Minister of Justice with the concurrence of the Minister of Finance to be called "The Legal Aid Fund."

Panel Proctor's costs may be paid out of fund.

(2) Where costs have been recovered and paid into the Legal Aid Fund, in respect of any litigation, the Court may pay out to the Proctor on his application such sum not exceeding one half of the full amount taxable as Proctor's fees.

Advocate not entitled to fee.

(3) No payment shall, however, be made to the Advocate.

Legal Aid Fund may be used to provide monetary assistance.

(4) Where the state of the funds at any time so permits, the Court may utilise any part of the Legal Aid Fund in providing assistance to persons to whom a certificate of legal aid has been issued under this order, by defraying the cost of summoning witnesses, paying their expenses and fees of expert witnesses.

O. 72, r. 9.
Application to set out; Nature of claim or defence and worth of applicant.

9. (1) The application for a certificate of legal aid shall be in writing and shall set out briefly the nature of the action intended to be instituted or of the defence to be set up, and shall contain a statement of the annual income of the applicant and value of the property he is entitled to, and shall be signed by him and presented to Court.

Application to be referred to a Proctor on the panel.

(2) The application shall be referred by the Court for investigation to one of the Proctors whose names appear on the panel of the Court and who shall be selected in rotation for the purpose.

O. 72, r. 10.
Such Proctor to investigate claim made for legal aid.

10. The Proctor to whom the application has been referred shall make such inquiries as to him shall seem fit in order to ascertain whether the applicant has a good cause of action or good ground of defence and whether he is a person who satisfies the requirements of paragraph (1) of Rule 4 of this Order, and forward his report to Court, stating whether or not in his opinion the applicant is entitled to legal aid.

O. 72, r. 11.
Application to be refused where report is adverse.

11. Where the report shows that the applicant is not entitled to legal aid, the Court shall refuse the application.

O. 72, r. 12.
Where report favourable, certificate of legal aid to issue.

12. Where the report shows that the applicant is entitled to legal aid, the Court shall appoint a Proctor on the panel to render legal aid who shall be other than the Proctor who investigated the claim of the applicant for legal aid, and shall issue a certificate of legal aid.

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O. 72, r. 13. Where application is under special circumstances, such circumstances also to be set out.

13. (1) Where the applicant claims legal aid in terms of paragraph 2 of Rule 4 of this Order, he shall comply with the provisions of paragraph (1) of Rule 9 and in addition thereto set out the circumstances upon which his claim is based.

and to be supported by affidavit.

(2) Such applicant shall in addition support all the material averments contained in his application by an affidavit of facts or such other evidence as the Court may require.

Application to be inquired into by Court.

(3) The Court shall on a day to be fixed proceed to inquire summarily into the allegations contained therein, and shall make order either granting or refusing the appplication.

Inquiry may be adjourned from time to time for fresh evidence.

(4) The Court shall have power to adjourn such inquiry from time to time and to require the production of documents and the attendance of any person for examination in regard to such facts as to it shall seem meet.

O. 72, r. 14. Certificate of legal aid to issue to applicant and to Proctor assigned.

14. Where the Court grants the application, it shall appoint a Proctor on the panel to render the necessary legal aid to the applicant and shall issue a certificate of legal aid.

O. 72, r. 15. Certificate of legal aid.

15. A certificate of legal aid issued under either Rule 12 or 14 of this Order shall be in triplicate in Form No. 110 in Appendix I hereto, one copy of which shall be issued to the applicant, the second copy to the Proctor who has been appointed, and the third copy shall be filed of record. Such certificate shall be signed by the Secretary of the Court and shall be sealed with the seal of the Court.

O. 72, r. 16. Proctor assigned to act as on ordinary retainer.

16. On receipt of a certificate of legal aid, the Proctor shall proceed to act as if he had been retained in the normal way by the person to whom the certificate of legal aid has been granted, and such person shall be entitled to confer with and give instructions to such Proctor as if he had been duly retained by him.

O. 72, r. 17. Proctor may retain panel Advocate.

17. (1) A Proctor appointed to render legal aid shall, if in his opinion the services of Counsel are necessary in regard to advice, the settlement of pleadings, or the conduct of the litigation in Court, or in regard to all or any of these matters, be entitled to instruct such Counsel as he may select from among the Advocates whose names appear on the panel.

Advocate to act as on ordinary retainer.

(2) Such Counsel shall thereupon act in the same manner as if he had been retained in the normal way by the Proctor.

O. 72, r. 18. Application for legal aid by person of limited means to be by motion.

18. (1) The application for legal aid by a person who has been granted permission to sue as a person of limited means shall be by motion intituled as of the action in which he has been so permitted to sue.

Certificate of limited means to be issued.

(2) When the Court sees no reason to refuse the application, it shall appoint a Proctor on the panel who shall be other than the Proctor to whom the applicant's application to sue as a person of limited means had been referred under Rule 5 of Order LXXI to render the necessary legal aid to the applicant and shall issue a certificate of limited means in Form No. 111 in Appendix I. Such certificate shall be in triplicate and signed, sealed and issued in the same manner as if it were a certificate of legal aid.

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(3) The certificate of limited means issued under this Rule shall have the same effect as a certificate of legal aid, and the provisions of Rules 16 and 17 of this Order shall have effect as if the expression " Certificate of limited means " has been substituted for " Certificate of legal aid ".

Same effect as certificate of legal aid.

19. (1) The fact that the services of an Advocate or a Proctor are given by way of legal aid shall not affect the relationship between, or rights of Advocate, Proctor and client, or any privilege arising out of such relationship.

O. 72, r. 19.
Grant of legal aid not to affect relationship of Advocate, Proctor and client.

(2) The rights conferred on a person receiving legal aid shall not affect the rights or liabilities of other parties to the action or the principles on which the discretion of any Court is normally exercised.

Grant of legal aid not to affect rights of other parties to the action.

ORDER LXXIII

Actions which fail for want of Jurisdiction

1. Where 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 Rule 11 of Order XXXII.

O. 73, r. 1.
Power to make order for costs notwithstanding want of jurisdiction.

2. Where 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 Rule 1 of Order VII 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.

O. 73, r. 2.
Where want of jurisdiction caused by exclusive jurisdiction of any Rural Court, averment of jurisdiction in plaint is traversed.

3. 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.

O. 73, r. 3.
Order of dismissal not reversed on appeal; conclusive as to jurisdiction of other Court.

4. The decision of a Rural Court declining jurisdiction shall also be conclusive evidence against such jurisdiction in an action upon the same claim brought in any other Court.

O. 73, r. 4.
And conversely.

ORDER LXXIV

Declaratory Applications

1. Any person claiming—

O. 74, r. 1.
Scope of declaratory applications.

(*a*) to be interested under a deed, will or other written instrument, or

(*b*) any right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of any written law, Imperial Statute, Order in Council, Royal Charter. or Royal Letters Patent,

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may, where he does not claim any relief against any other person, without instituting a regular action, make application to the Court (hereinafter called a declaratory application) for the determination of

(i) in a case falling under head (a), any question of construction arising under such deed, will or instrument, and for a declaration of the rights of the persons interested, or

(ii) in a case falling under head (*b*), such question of construction arising under such written law, Imperial Statute, Order-in-Council, Royal Charter, or Royal Letters Patent, and for a declaration as to the right claimed.

O. 74, r. 2. Application by way of summary procedure.

2. (1) The application shall be by way of summary procedure and the provisions of Order LVI shall apply, so far as applicable, save that the provisions thereof relating to the adjudication of controverted questions of fact shall be excluded.

Where facts in dispute, Court to dismiss application.

(2) Where disputed questions of fact arise as between the parties, and such dispute cannot be resolved by agreement between the parties, the Court shall dismiss the application.

O. 74, r. 3. Order nisi, etc. to be served on such persons as Court may direct and on respondents.

3. Where the Court enters an order nisi or interlocutory order on the petition, it may direct such other persons as it may think fit in addition to the respondents, if any, named in the petition, to be served with the order nisi or interlocutory order, as the case may be.

O. 74, r. 4. Determination of question at discretion of Court.

4. The Court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on a declaratory application.

ORDER LXXV

Custody and Control of Minors and their Estates

O. 75, r. 1. Claim to be appointed curator as of right.

1. Every person who shall claim a right to have charge, control or management of property of a minor, under a will or deed, or by reason of nearness of kin, or otherwise, may apply to the District Court within whose jurisdiction such minor resides, for a certificate of curatorship.

O. 75, r. 2. Relative or friend of minor may make application for appointment of curator or guardian.

2. Any relative or friend of a minor, in respect of whose property such certificate has not been granted, may apply to the District Court within whose jurisdiction such minor resides, to appoint a fit person to take charge, control and management of the property and person or of either property or person of such minor.

O. 75, r. 3. Application by way of summary procedure.

3. The application for such certificate as is referred to in Rule 1 of this Order, or appointment referred to in the last preceding rule, shall be made by petition by way of summary procedure, and shall state expressly that the petitioner does not know of any person interested in the minor or in the subject of the petition who is likely to entertain any objection thereto other than those who are named as respondents in the petition.

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4. Notice of the application shall be given to the respondents named in the petition and to any other person though not named respondent whom the Court may consider entitled to have notice of such application.

O. 75, r. 4. Notice to be given to respondents and other persons interested.

5. (1) The minor shall attend the inquiry into the application unless excused from so doing by the Court by reason of tenderness of years, absence beyond the Island, or any other sufficient cause.

O. 75, r. 5. Minor to attend inquiry.

(2) The Court may also direct any person alleged to have the custody of the minor to produce such minor at the inquiry.

Court may direct minor to be produced at inquiry.

6. Where the person claiming a right to have charge, control and management of the property of a minor is entitled to such right by virtue of a will or deed, or by virtue of a natural right, the Court shall grant a certificate of curatorship to such person.

O. 75, r. 6. Appointee under deed or will or near relative to be issued certificate.

7. Where there is no person so entitled, or where the person so entitled is unwilling to undertake the office of a curator, the Court may grant a certificate of curatorship to any near relative of the minor who is willing and fit to be entrusted with the charge, control and management of his property.

O. 75, r. 7. Failing, any other relative.

8. Where a certificate of curatorship has been issued under either of the two last preceding rules, the Court may also, where the minor is not under the custody and control of a natural guardian, or where the father of such minor has not appointed a guardian over him, if it think fit, appoint the person to whom the certificate of curatorship has been issued, or any other relative or friend of the minor, to be guardian of the person of the minor.

O. 75, r. 8. Guardian over person to be appointed.

9. Where the claim to a certificate of curatorship is not established by a person claiming such certificate under a will or deed, and if there is no near relative willing and fit to be entrusted with the charge, control and management of the property of the minor, the Court may, if it think it necessary for the interest of the minor that provision should be made by the Court for the charge, control and management of the property of such minor, grant a certificate of curatorship to any fit person whom the Court may appoint for the purpose.

O. 75, r. 9. Where no relative, any fit person to be appointed curator.

10. (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 preceding rule, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor and issue to such guardian a certificate of guardianship.

O. 75, r. 10. Where other than relative appointed curator, guardian to be appointed at the same time.

(2) The person to whom a certificate of curatorship has been granted under the last preceding rule may be appointed guardian, provided he would not be the legal heir of the minor, if the minor then died.

Non-relative curator may be appointed guardian if no legal heir.

(3) If the guardian so appointed be unwilling to discharge the duties of the office 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.

Allowance to guardian.

11. (1) The Court may also fix such allowance as it may think proper for the maintenance and education of the minor.

O. 75, r. 11. Allowance for maintenance and education of minor.

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Curator to make payment to guardian.

(2) Such allowance and the allowance of the guardian, if any, shall be paid to the guardian by the curator of the estate of the minor.

O. 75, r. 12.
Allowance may be raised out of corpus of estate.

12. Where 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 lease, mortgage or sale or such other mode of realization as it thinks fit.

O. 75, r. 13.
Costs of inquiries.

13. In all inquiries held by the Court under this Order, it 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.

O. 75, r. 14.
Security.

14. (1) The person appointed to be curator of the estate of a minor shall, where the Court so requires, enter into a bond, with or without sureties, for the due custody, control and management of the estate of the minor.

Provisions of Administration Bonds to apply.

(2) The provisions of paragraphs (2) and (3) of Rule 2 and of Rules 3 and 4 of Order LXXX shall *mutatis mutandis* apply to such bond and to the obligations of the curator and surety.

Security may be dispensed with.

(3) Where, however, the certificate of curatorship has been issued to a person claiming the right under a will or deed, or by reason of a natural right, no security shall be required unless for some special reason the Court deems that security is absolutely necessary for the protection of the estate.

O. 75, r. 15.
Inventory.

15. (1) Every curator of the estate of a minor to whom a certificate shall have been granted under this Order, shall, within a time to be fixed by the Court, file in Court an inventory of the property belonging to the minor.

Accounts.

(2) Such curator shall also twice every year, namely, within one month from the first 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.

Balance to be deposited in Court.

(3) Such curator shall, at the time of filing his accounts, deposit in Court all such balance as may not be necessary for current expenses.

Account to be verified by affidavit.

(4) To every account filed under this Order shall be appended an affidavit of the accounting party as is required by paragraph (2) of Rule 7 of Order LXXXVI of an accounting party in respect of the estate of a deceased person.

O. 75, r. 16.
Impeachment of the inventory and accounts.

16. Any relative of the minor or the minor himself by a next friend or the Attorney-General may, by petition 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.

O. 75, r. 17.
Any relative of minor may sue curator for accounts.

17. 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 whom a certificate shall have been granted under the provisions of this Order, or from any such person after his removal from office, 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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O. 75, r. 18.
Recall of certificate of curatorship.

18. (1) The Court, for any sufficient cause shown by petition in the 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 Order and may grant a certificate to any other person.

Outgoing Curator to account to successor.

(2) The Court 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.

O. 75, r. 19.
Removal of Guardian.

19. (1) The Court may also for sufficient cause in like manner remove any guardian appointed under this Order, recall any certificate of guardianship, and may appoint any other person and grant to such person a certificate of guardianship.

Outgoing guardian to deliver over custody to successor.

(2) The guardian whose certificate has been recalled shall deliver over the custody of the minor to such successor.

O. 75, r. 20.
Resignation and discharge of curator of property or guardian of person of minor.

20. (1) The Court may permit any curator and any guardian appointed by it to resign his office, 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.

Relative of minor or Attorney-General to be named respondent to application.

(2) The application to be discharged from the office 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.

O. 75, r. 21.
Allowance to curator.

21. Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this Order, if he is not willing to discharge the duties of his office gratuitously, shall be entitled to receive such allowance, to be paid out of the minor's estate, as the Court shall by order, made when 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.

O. 75, r. 22.
Minor's education.

22. Every guardian over the person of a minor appointed by the Court under this Order, who shall have charge of any minor, shall be bound to provide for his education in a suitable manner.

O. 75, r. 23.
Court vested with superintendence and control of education of minor.

23. The general superintendence and control of the education of all such minors shall be vested in the District Court.

O. 75, r. 24.
Curator incapable of suing or defending action in name of minor.

24. (1) A person to whom a certificate of curatorship is granted shall not by virtue thereof be entitled to institute or defend an action for or in the name of the minor.

Curator may institute action in his own name qua curator.

(2) A curator, however, may institute or defend an action in his own name, where he is empowered by law to institute or defend an action qua curator.

O. 75, r. 25.
Powers of curator.

25. (1) A curator of the estate of a minor may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor, and may collect and pay all just claims, duties or liabilities due to or by the estate of the minor.

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Limitation of curator's powers.

(2) No such curator, however, shall have power to sell or mortgage the estate or any part thereof, or grant a lease of any immovable property for any period exceeding three years, without an order of the Court previously obtained, nor to grant a lease during the currency of the term of a lease already granted.

Curator may convert securities of a company.

(3) Where any securities of a company form part of the estate of a minor, the curator may with leave of Court concur in any scheme or arrangement—

(*a*) for the reconstruction of the company;

(*b*) for the sale of all or any part of the property and undertaking of the company to another company;

(*c*) for the amalgamation of the company with another company;

(*d*) for the release, modification, or variation of any rights, privileges, or liabilities attached to the securities or any of them;

in like manner as if he were entitled to such security beneficially with power to accept any securities of any denomination or description of the reconstructed, or purchasing or new company in lieu of or in exchange for all or any of the first mentioned securities; and the curator shall not be responsible for any loss occasioned by any act or thing so done in good faith and may retain any securities so accepted as aforesaid for any period for which he could have properly retained the original securities.

Curator may invest monies in purchase of further holdings in a company.

(4) If any conditional or preferential right to subscribe for any securities in any company is offered to the curator in respect of any holding, in such company, he may, with the leave of Court, as to all or any of such securities, either exercise such right and apply capital money belonging to the estate in payment of the consideration, or renounce that right or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any minor jointly entitled to the said estate without being responsible for any loss occasioned by any act or thing so done by him in good faith.

Meaning of term "securities".

(5) Securities include stocks, bonds and shares.

O. 75, r. 26.
Judicial settlement of curator's accounts.

26. (1) The minor after he has attained majority, or the executor or administrator of a deceased minor, or the guardian of the person of a minor, or a relative of the minor, or the successor of the curator, may by petition in the way of summary procedure, to which the curator shall be made respondent, apply to Court for the judicial settlement of the accounts of the curator.

By Court.

(2) The Court may, of its own motion, compel the judicial settlement of such account of the curator, and in such event the Court may issue citation on the curator and on such other persons as it may deem necessary.

O. 75, r. 27.
By curator himself.

27. (1) A curator may himself apply to Court by petition in the way of summary procedure for a judicial settlement of his account, and for a discharge from his duties and liabilities.

Who respondents to such petition.

(2) To such petition any one or more of the persons referred to in paragraph (1) of the last preceding rule shall be made respondent or respondents.

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O. 75, r. 28.
Guardian next-friend, or guardian-ad-litem may be ordered to file accounts.

28. (1) Where the Court is satisfied that—

(*a*) the guardian of the person of a minor,

(*b*) the next friend of a minor plaintiff,

(*c*) the guardian-ad-litem of a minor defendant has received money or property of the minor for which he is liable to account and has not accounted it may direct such guardian, next-friend or guardian-ad-litem, as the case may be, to file accounts of the receipts and disbursements made by him.

Account to be verified by affidavit.

(2) Such account shall be verified by affidavit as a curator is required to do.

Such account may be judicially settled.

(3) Such account when filed may be judicially settled on the application by way of summary procedure of—

(*a*) the curator of the estate of a minor;

(*b*) the minor after he has attained majority;

(*c*) the executor or administrator of a deceased minor;

(*d*) a relative of the minor;

and to such application such guardian, next friend, or guardian-ad-litem as the case may be, shall be made respondent.

O. 75, r. 29.
Court may suo motu compel judicial settlement of such accounts.

29. The Court may of its own motion compel a judicial settlement of the accounts filed by such guardian, next friend or guardian-ad-litem, as the case may be; in which event the Court shall issue citation on the accounting party and on such other persons as it shall deem proper.

O. 75, r. 30.
Guardian, next friend, or guardian-ad-litem may himself apply for judicial settlement.

30. Such guardian, next friend, or guardian-ad-litem may himself apply by petition in the way of summary procedure to have his account judicially settled, and for a discharge from his duties and liabilities and to such application one or more of the persons specified in paragraph (1) of Rule 26 may be made respondent or respondents.

O. 75, r. 31.
Procedure for settlement of deceased person's estates applicable.

31. The provisions of Rules 22 to 41 of Order LXXXVI shall *mutatis mutandis* be taken to apply, as far as practicable, to all petitions citations and proceedings presented, issued or had in respect of judicial settlements commenced under the provisions of this Order.

ORDER LXXVI

Estates of Lunatics and Mentally Defective Persons

O. 76, r. 1.
Definition of " lunatic ".

1. The word " lunatic " as used in this Code shall, unless the contrary appears from the context, mean every person found by due course of law to be so deranged in mind as to be incapable of managing his affairs.

O. 76, r. 2.
District Court to institute inquiry.

2. (1) Whenever any person who is possessed of property is alleged to be a lunatic, 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 so deranged in mind as to be incapable of managing hiis affairs.

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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 alleged lunatic, or by the Provincial Superintendent of Police, or at the instance of the Attorney-General, or, if the property of the alleged lunatic consists in whole or in part of land, or of any interest in land, by the Government Agent or Assistant Government Agent of the District in which it is situate.

Requisites of petition.

(3) The petition 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.

O. 76, r. 3.
When may petition be dismissed.

3. Where 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.

O. 76, r. 4.
Procedure on Court being satisfied that inquiry ought to be instituted.

4. Where 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 interlocutory order to that effect in terms of Clause (*b*) of Rule 5 of Order LVI and then appoint a time and place for holding the inquiry.

O. 76, r. 5.
Petition and order to be served on lunatic.

5. (1) 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 alleged lunatic.

Service may be substituted in a proper case.

(2) If it shall appear that the alleged lunatic 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.

Respondents to be served.

(3) The Court may also direct copies of such petition and order to be served upon the respondents named in the petition.

Relative, etc., though not named respondents may be served.

(4) The Court shall also have power to direct copies of the petition and interlocutory order to be served on any relative of the alleged lunatic and on any other person, though not named respondent, whom it may consider entitled to have notice of the application.

O. 76, r. 6.
Alleged lunatic may be required to attend.

6. (1) The District Court may also at any time before or pending the inquiry require the alleged lunatic to attend and direct any person alleged to have the custody of the lunatic to produce the alleged lunatic 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 alleged lunatic.

Court may authorise person to examine lunatic.

(2) The Court may likewise make an order authorising any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination.

O. 76, r. 7.
Assessors.

7. The District Court, if it think fit, may appoint two or more persons to act as assessors to the Court in the said inquiry.

O. 76, r. 8.
Issue.

8. The issue to be tried on such inquiry shall be whether the alleged lunatic is or is not so deranged in mind as to be incapable of managing his affairs.

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O. 76, r. 9. Trial of issue.

9. (1) The trial of this issue shall be effected by viva voce examination and cross-examination of witnesses, as nearly as may be as is hereinbefore directed for the trial of an issue in an action of summary procedure in a case where the respondent appears and shows cause.

Trial to be public.

(2) The trial whether held in Court or in a private house, shall be public.

O. 76, r. 10. Lunatic to be present.

10. (1) The alleged lunatic shall be present at the trial 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 may take part in trial on behalf of lunatic.

(2) Any relative of the alleged lunatic may also, if the Court thinks fit, appear and take part in the trial on behalf of the alleged lunatic.

O. 76, r. 11. Adjudication on the issue.

11. (1) Upon the conclusion of the trial, the Court shall adjudicate whether the alleged lunatic is or is not so deranged in mind as to be incapable of managing his affairs.

Costs.

(2) The Court may make such order as to the payment of the costs of trial by the person upon whose application it was made or by the alleged lunatic, if he be adjudged to be of sound mind, or out of his estate, if he be adjudged to be so deranged in mind as to be incapable of managing his affairs, or otherwise, as it may think proper.

O. 76, r. 12. When petition to be dismissed.

12. Where a person has been adjudged not to be so deranged in mind as to be incapable of managing his affairs, the Court shall dismiss the petition.

O. 76, r. 13. Manager to be appointed.

13. (1) Where a person has been adjudged to be so deranged in mind as to be incapable of managing his affairs, the District Court shall appoint a manager of the estate of the lunatic, and a certificate shall be issued to such manager.

Near relative may be appointed manager.

(2) Any near relative of the lunatic or any other suitable person may be appointed manager.

O. 76, r 14. Guardian of person.

14. Whenever a manager of the estate of a lunatic is appointed by the District Court, the Court shall appoint a fit person to be guardian of the person of the lunatic and a certificate of guardianship shall be issued to him, which shall be in Form 112 in Appendix I. The manager may be appointed guardian.

O. 76, r. 15. Court may supersede claim of natural guardian or manager.

15. The Court may, however, if the circmstances so warrant, refuse to appoint as manager or guardian any near relative of the lunatic having a natural right to the management of the property or the guardianship of the lunatic or both.

O. 76, r. 16 Security to be furnished by manager.

16. (1) The person appointed to be manager of the estate of a lunatic shall, where the Court so requires, enter into a bond, with or without good and sufficient sureties, for the due administration of the estate of the lunatic.

Provisions relating to bonds by administrator to apply.

(2) The provisions of paragraphs (2) and (3) of Rule 2 and of Rules 3 and 4 of Order LXXX shall *mutatis mutandis* apply to such bond and to the obligations of the manager and surety.

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O. 76, r. 17. Allowance to manager or guardian.

17. Where the person appointed to be a manager of the estate of a lunatic, or the person appointed to be guardian of a lunatic's person, 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 lunatic as, under the circumstances of the case, may be thought suitable.

O. 76, r. 18. Duties of guardian.

18. (1) The person appointed to be guardian of a lunatic's person shall have the care of his person and maintenance.

Guardian to be paid allowance for maintenance of his lunatic and of his family.

(2) Where 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 lunatic and of his family.

O. 76, r. 19. Powers of manager.

19. (1) Every manager of the estate of a lunatic 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 lunatic; and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic.

Restrictions on manager's powers.

(2) No such manager, however, shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immovable property for any period exceeding three years, without an order of the District Court previously obtained, nor to grant a lease during the currency of the term of a lease already granted.

Manager may convert securities of company.

(3) Where any securities of a company form part of the estate of a lunatic, the manager may with the leave of Court concur in any scheme or arrangement—

(*a*) for the reconstruction of the company;

(*b*) for the sale of all or any part of the property and undertaking of the company to another company;

(*c*) for the amalgamation of the company with another company;

(*d*) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them;

in like manner as if he were entitled to such securities beneficially with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company, in lieu of or in exchange for all or any of the first mentioned securities; and the manager shall not be responsible for any loss occasioned by any act or thing so done in good faith and may retain any securities so accepted as aforesaid for any period for which he could have properly retained the original securities.

Manager may invest moneys in purchase of further holdings in a company.

(4) If any conditional or preferential right to subscribe for any securities in any company is offered to the manager in respect of any holding in such company, he may, with the leave of Court, as to all or any of such securities, either exercise such right and apply capital money belonging to the estate in payment of the consideration, or renounce such right, or assign for

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the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person including any lunatic jointly entitled to the said estate, without being responsible for any loss occasioned by any act or thing so done by him in good faith.

(5) Securities include stocks, funds and shares. Meaning of term 'securities'.

O. 76, r. 20.

20. (1) Every person appointed by the District Court to be manager of the estate of a lunatic shall, on a date to be fixed by the Court, deliver in Court an inventory of the immovable property belonging to the lunatic, 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. Inventory.

(2) Every such manager, shall also twice every year namely, within one month from the 1st of April and the 1st of October, 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. Account.

(3) If any relative of the lunatic, 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. Any relative or Attorney-General may impugn inventory and statement or annual account.

O. 76, r. 21.

21. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate shall be paid into Court on account of the estate, and shall be dealt with in such manner as is prescribed by law in the case of suitor's deposits. Excess over expenditure to be paid into Court.

O. 76, r. 22.

22. It shall be lawful for any relative of a lunatic to sue for an account from any manager, appointed under this Order, 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. Relative may sue for account.

O. 76, r. 23.

23. (1) The lunatic after he has been found by adjudication to have ceased to be of unsound mind, or the executor or administrator of a deceased lunatic, or the guardian of the person of a lunatic, or a relative of the lunatic, or the successor of the manager, or the Attorney-General, may by petition in the way of summary procedure, to which the manager shall be made respondent, apply to Court for the judicial settlement of the accounts of the manager of the estate of the lunatic. Judicial settlement of manager's accounts.

(2) The Court may, of its own motion, compel the judicial settlement of such account of the manager, and in such event the Court may issue citation on the manager and on such other persons as it may deem necessary. By Court.

O. 76, r. 24.

24. (1) A manager may himself apply to Court by petition in the way of summary procedure for a judicial settlement of his account, and for a discharge from his duties and liabilities. By manager himself.

(2) To such petition any one or more of the persons referred to in paragraph (1) of the last preceding rule shall be made respondent or respondents. Who respondents to such petition.

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O. 76, r. 25.
Guardian next-friend, or guardian-ad-litem may be ordered to file accounts.

25. (1) Where the Court is satisfied that—

(*a*) the guardian of the person of a lunatic;

(*b*) the next friend of a lunatic plaintiff;

(*c*) the guardian-ad-litem of a lunatic defendant;

has received money or property of the lunatic for which he is liable to account and has not accounted, it may direct such guardian, next-friend, or guardian-ad-litem, as the case may be, to file accounts of the receipts and disbursements made by him.

Account to be verified by affidavit.

(2) Such account shall be verified by affidavit as a manager is required to do.

Such account may be judicially settled.

(3) Such account when filed may be judicially settled on the application by way of summary procedure of—

(*a*) the manager of the estate of a lunatic;

(*b*) the lunatic after he has been found by adjudication to have ceased to be of unsound mind;

(*c*) the executor or administrator of a deceased lunatic;

(*d*) a relative of the lunatic;

to such application such guardian, next friend, or guardian-ad-litem, as the case may be, shall be made respondent.

O. 76, r. 26.
Court may suo motu compel judicial settlement of such accounts.

26. The Court may of its own motion compel a judicial settlement of the accounts filed by such guardian, next-friend or guardian-ad-litem, as the case may be; in which event the Court shall issue citation on the accounting party and on such other persons as it shall deem proper.

O. 76, r. 27.
Guardian, next-friend, or guardian-ad-litem may himself apply for judicial settlement.

27. Such guardian, next friend, or guardian-ad-litem may himself apply by petition in the way of summary procedure to have his account judicially settled and for a discharge from his duties and liabilities, and to such application any one or more of the persons specified in paragraph (1) of Rule 23 may be made respondent or respondents.

O. 76, r. 28.
Procedure for settlement of deceased persons' estates applicable.

28. The provisions of Rules 22 to 41 of Order LXXXVI shall mutatis mutandis be taken to apply, as far as practicable, to all petitions, citations and proceedings presented, issued or had in respect of judicial settlements commenced under the provisions of this Order.

O. 76, r. 29.
Manager, how to be removed.

29. (1) The District Court, for any sufficient cause, may on the application of the guardian or of a relative of the lunatic, or of the Attorney-General, Provincial Superintendent of Police, or (where the property of the lunatic consists in whole or in part of land, or any interest in land) of the Government Agent or Assistant 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.

Guardian, how to be removed.

(2) The Court may also, for any sufficient cause, in like manner remove any guardian appointed by the Court.

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O. 76, r. 30. Punishment for neglect or refusal to account.

30. The District Court may on any application made to it by a relative of the lunatic or the Attorney-General, punish as for contempt of Court any manager of the estate of a lunatic 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 also commit him to gaol until he shall deliver such accounts or property.

O. 76, r. 31. Where not necessary, Court need not appoint manager.

31. If it appears to the District Court, having regard to the situation and condition in life of the lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore 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 lunatic and his family.

O. 76, r. 32. Further inquiry when lunatic so found is alleged to have recovered.

32. (1) Where any person has been adjudged to be a lunatic, 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 derangement 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 so deranged in mind as to be incapable of managing his affairs.

Estate to be delivered over when lunatic has recovered.

(2) The inquiry shall be conducted in the manner provided in Rules 6 to 10 of this Order; and if it be adjudged that such person has ceased to be so deranged in mind as to be 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.

O. 76, r. 33. Provisions of this order to apply to persons of unsound mind.

33. The Court shall have the same power over the person and estate of a person adjudged to be a person of unsound mind under any law for the time being in force as it has over the person and estate of a lunatic adjudged to be so under the provisions of this Order.

O. 76, r. 34. Saving of Lunacy Ordinance.

34. In all cases to which this Order is applicable, the procedure herein provided shall be followed, anything in the Lunacy Ordinance to the contrary notwithstanding.

O. 76, r. 35. Proceedings exempt from stamp duty.

35. No stamp duty shall attach or be payable for any application, process, or other docment filed in Court under the provisions of this Order.

O. 76, r. 36. Definition of mentally defective persons.

36. (1) Unless the contrary appears from the context, the expression ' mentally defective person ' as used in this Code shall mean every person found by due course of law to be so feeble-minded as to be incapable of managing his affairs.

Provisions of order to apply *mutatis mutandis* to mentally defective persons.

(2) The Court shall have the same power over the person and property of a mentally defective person and in regard to the adjudication of a person alleged to be a mentally defective person as it has over the person and property of a lunatic and in regard to the adjudication of a person alleged to be a lunatic; and the provisions of the preceding Rules of this Order shall *mutatis mutandis* apply thereto.

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O. 76, r. 37. Appeal to Supreme Court.

37. (1) An appeal against any order made under the provisions of this Order may be prosecuted by, or at the instance of, the person suspected or adjudged to be deranged in 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.

Appeal to be dealt with as an interlocutory one.

(2) 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.

District Court to conform to order of Supreme Court.

(3) It shall be the duty of the District Court to conform to and execute such order.

ORDER LXXVII

Testamentary Applications

O. 77, r. 1. Test of jurisdiction in relation to estates of deceased persons.

1. Every application for proof of the will of a deceased person or for grant of letters of administration to the estate of a deceased person shall be made to the District Court of the district within which the testator or intestate died or, where the testator or intestate died out of Ceylon, to the District Court which the Supreme Court has by order appointed to have sole testamentary jurisdiction.

O. 77, r. 2. Deposit of the will of the deceased.

2. (1) 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 depositary 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.

Accompanied by affidavit.

(2) Such person shall also produce an affidavit in Form No. 113 in Appendix I, verifying the date 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.

To be kept in Court.

(3) The will so produced shall be numbered and initialled by the Secretary, and deposited and kept in the record-room of the District Court.

O. 77, r. 3. Who may apply for probate.

3. (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 have the will proved, and to have probate thereof issued to him.

Or administration.

(2) Any person interested either by virtue of the will or otherwise, in having the property of the testator administered, may also apply 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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(3) If the executor or any other person who would be entitled to administration is absent from the Island, 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.

Attorney or person entitled to administer may apply.

ILLUSTRATIONS

1. Devisee under a will in which no executor is named is a person interested in having the property of the intestate administered. So would a devisee under a will the executor whereof has renounced probate.

2. The executor named in the will is a minor. The curator of the minor's estate would be a person similarly interested, and so would the manager of a lunatic executor.

3. A will is lost after the death of the testator. Secondary evidence of the contents of the will is placed before Court, which shows that X had been appointed executor thereof. X is out of the Island and grants a power of attorney to Y to administer the estate. Grant of administration without the will annexed may be made to Y to administer the estate in accordance with the contents of the will, so far as established.

O. 77, r. 4.
On executor's application, probate to issue.

4. Where application for Probate is made by the executor or executors and on proof that the will was duly executed, it shall be obligatory on the Court to, and the Court shall, issue probate of the will to the executor or executors named therein.

O. 77, r. 5.
Where no executor applies, letters to issue.

5. If there is no executor resident in the Island 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 Rule 3 of this Order 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.

O. 77, r. 6.
When Secretary of the Court may be appointed.

6. (1) Where there is no person fit and proper in the opinion of the Court to be appointed, and not in any other case, the Court shall appoint the Secretary of the Court administrator with or without the will annexed.

Secretary may be permitted to proceed on blank.

(2) Where the Secretary is so appointed, or where the Secretary is applicant for letters, it shall be competent for the Court in its discretion to allow such Secretary to proceed without supplying stamps until such time as assets of the estate sufficient to defray the cost of the same shall have come to his hands.

Stamp duty payable in such case to be first charge on estate.

(3) Where the Secretary has been allowed to proceed on blank, the amount of stamp duty payable by him shall be a first charge on all the assets of the estate.

O. 77, r. 7.
Preferential right to letters.

7. In the case of a conflict of claims to have the will proved and grant of administration issued, the claim of an attorney of an executor shall be preferred to that of all others, and the claim of a creditor shall be postponed to the claim of an intestate heir where the residuary estate is not wholly disposed of, or of a residuary legatee or devisee under the will.

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O. 77, r. 8.
Proof of will by way of summary procedure.
Requisites of petition.

8. (1) Every application to have the will of a deceased person proved shall be made on petition by way of summary procedure.

(2) Such petition shall set out in numbered paragraphs—

(*a*) the relevant fact of the making of the will;

(*b*) the date and place of the death of the testator;

(*c*) the intestate heirs of the deceased to the best of the petitioner's knowledge;

(*d*) a summary of the assets and liabilities in Ceylon of the deceased so far as can be ascertained showing the net value of his estate, and where the deceased left immovable property the details and situation thereof;

(*e*) where the testator at the date of his death was not domiciled in Ceylon, the country or place in which according to the petitioner's information and belief he died domiciled;

(*f*) the capacity in which the petitioner seeks to prove the will;

(*g*) the relevant facts entitling the Court to hold the will declared proved.

Evidence of facts to be furnished by affidavit.

(3) The application shall also be supported by sufficient evidence by means of affidavits of facts to which the will duly identified shall be annexed as an exhibit, proving the material allegations in the petition.

Court may call for oral evidence.

(4) The Court shall be entitled, if it think fit, to hear oral testimony in regard to any matter relevant to the application.

Absence of original will to be explained.

(5) Where the original will is not produced, sufficient reasons therefor shall be set out in the petition.

O. 77, r. 9.
Declaration under Estate Duty Ordinance to be filed with petition unless previously forwarded to Commissioner.

9. (1) Unless the applicant shall have prior to the filing of his petition in Court delivered to the Commissioner of Estate Duty a declaration as required by the Estate Duty Ordinance (in which case he shall aver the delivery thereof in his petition) he shall at the time he makes the application deliver such declaration for transmission by Court to the Commissioner of Estate Duty.

Provisional Certificate.

(2) On the delivery or transmission of such declaration the applicant may pay to the Commissioner of Estate Duty such sum as would be payable by him on account of Estate Duty on the basis of his declaration, and it shall be competent to the Commissioner of Estate Duty to issue a certificate of provisional assessment unless he is of opinion that the declaration is grossly undervalued, in which case he shall call upon the applicant to pay such additional sum as may appear to him prima facie to be leviable, and thereupon issue such certificate.

O. 77, r. 10.
Will to be made available to petitioner if deposited in Court.

10. (1) Where prior to the application for proof of a will such will is in deposit in the Court to which the application is intended to be made, it shall be made available to the petitioner to enable him to have it duly identified and annexed as an exhibit to his affidavit.

Court having custody of will to forward it to Court administering estate.

(2) Where such will is in deposit in another Court, such other Court shall, on the application of the petitioner transmit it to the Court wherein the application is intended to be made.

O. 77, r. 11.
No opposition to probate anticipated, no respondent need be named.

11. Where the executor is the petitioner and he has no reason to suppose that his application for probate will be opposed by any person, he may file with his petition an affidavit to that effect, without naming any person in his petition as respondent.

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O. 77, r. 12. Otherwise to be named.

12. (1) Where an executor petitioner has reason to suppose that his application will be opposed by any person, he shall make such person as well as the intestate heirs of the deceased respondents to the application.

Attorney of executor anticipates no opposition to grant of letters and no heirs within the Island, no respondent need be named.

(2) Where the application to have the will proved is by an attorney of the executor, and if there are no heirs of the testator within the Island and the attorney has no reason to suppose that his application for letters will be opposed by any person, he may file with his petition an affidavit to that effect without naming any person in his petition as respondent.

Otherwise where there are heirs.

(3) Where, however, there are heirs of the testator within the Island, such heirs shall be made respondents to the petition as well as any other person who the attorney may have reason to suppose will oppose his application.

O. 77, r. 13. Order absolute in the first instance.

13. In the case of an application for probate, where no respondent is named in the petition if the Court is satisfied that the material allegations of the petition are prima facie proved, it may in its discretion make an order absolute in the first instance declaring that the applicant is executor and directing that probate do issue to him.

O. 77, r. 14. Order nisi in the first instance.

14. In all other cases, if the Court is satisfied that the material allegations in the petition are prima facie proved, the Court shall enter an order nisi declaring the will proved and directing that probate or letters of administration with a copy of the will annexed or otherwise as the case may be do issue to the petitioner, and such order shall be served upon such respondents, if any, who have not consented to the petitioner's application, and upon such other persons as the Court shall think fit to direct, and shall come on for final disposal on a date to be named therein.

O. 77, r. 15. Person dying intestate, death to be reported by next of kin.

15. 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 Ceylon amounting to or exceeding in value five thousand rupees, within three months of the date of death to report such death to the Court of the district in which he shall have so died, and at the same time to 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.

ILLUSTRATIONS

1. A dies, leaving in Ceylon house property worth Rs. 20,000 and movable property to the value of Rs. 10,000. His debts as at the date of his death amount to Rs. 26,000. The death must be reported to Court as, though the net value of the estate is only Rs. 4,000 the value of the property left by him amounts to Rs. 30,000.

2. A dies leaving in Ceylon a coconut garden of the value of Rs. 5,000. At the date of his death his debts are—

(*a*) Rs. 3,500 being principal and interest on a mortgage bond;
(*b*) Rs. 1,250 being principal and interest on a promissory note; and
(*c*) Rs. 1,000 being the amount of shop debts due;

aggregating Rs. 5,750. Though the liabilities of the estate are in excess of the assets, the death must be reported to Court, inasmuch as the value of the property left by the deceased is a sum of Rs. 5,000 and the estate administered as an insolvent estate.

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O. 77, r. 16.
Who may apply for administration in case of intestacy.

16. Where a person is so reported to have died intestate, any person interested in having the estate of such intestate administered may apply 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 the next succeeding rule and Rule 5 of this Order, to appoint such person administrator.

O. 77, r. 17.
Order of priority for letters.

17. In the case of a conflict of claims for grant of administration upon 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:

Provided, however, that the Court may for good cause supersede the claim of the widow or widower.

O. 77, r. 18.
In event of no application, Court may appoint some person to administer the estate.

Compulsory where the value of the estate is five thousand rupees or over.

18. (1) Where no such person shall apply for letters of administration, and it appears to the Court necessary or desirable 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 case where the estate amounts to or exceeds in value five thousand 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.

Issue of letters to be governed by same considerations as in the case of a will.

(2) In such event, all the provisions of Rules 5 and 6 of this Order shall apply, so far as the same can be made applicable, to any such appointment.

O. 77, r. 19.
Application for letters of administration in absence of will to be by summary procedure.

19. (1) Every application for grant of administration to the estate of a deceased person where such person has died without making a will, or where the will cannot be found shall be made on petition by way of summary procedure, to which the heirs of the deceased person to the best of the petitioner's knowledge shall be made respondents.

(2) Such petition shall set out in numbered paragraphs—

Requisites of petition.

(*a*) the absence of any will and such facts, if any, as are relevant thereto;

(*b*) the date and place of the death of the deceased;

(*c*) the heirs of the deceased, to the best of the petitioner's knowledge;

(*d*) a summary of the assets and liabilities of the deceased showing the net value of his estate, and where the deceased left immovable property, the details and situation thereof;

(*e*) where the deceased at the date of his death was not domiciled in Ceylon, the country or place in which according to the petitioner's information and belief he died domiciled;

(*f*) the capacity in which the petitioner claims letters of administration and the facts which justify his doing so.

Evidence of facts to be furnished by affidavit.

(3) The application shall also be supported by sufficient evidence by means of affidavits of facts affording prima facie proof of the material allegations in the petition.

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(4) The Court shall be entitled, if it think fit, to hear oral testimony in regard to any matter relevant to the application. Court may call for oral evidence.

(5) The applicant shall also comply with the provisions of Rule 9 of this Order.

O. 77, r. 20.

20. Where the Court is satisfied that the material allegations of the petition are prima facie 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 such of the respondents as have not consented to the petitioner's application and upon such other persons as the Court shall think fit to direct, and shall come on for final disposal on a day to be named therein. Court declaring petitioner's status to make order nisi for issue of grant.

O. 77, r. 21.

21. (1) Every order absolute in the first instance and every order nisi shall be advertised once in the *Government Gazette* and once in each of two local newspapers, and in the case of an order nisi, before the date fixed for the final disposal thereof. Order absolute in the first instance and order nisi to be advertised.

(2) Such papers shall 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. Paper to be selected by Court.

(3) Where the deceased shall have died in a rural area, the Court may in lieu of or in addition to making an order for advertisement in the newspapers direct that the contents of such order absolute or order nisi shall be proclaimed by the Fiscal by beat of tom tom, in such rural area, and shall cause a copy of such order absolute or order nisi to be affixed on one or more prominent buildings in such area. The expenses of such proclamation shall be prepaid by the petitioner. Order absolute or order nisi may be proclaimed by beat of tom tom.

O. 77, r. 22.

22. (1) At any time after the filing of a petition applying 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, 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 caveator or objector as if he had originally been named a respondent in the petition. Who may file a caveat or objection. Effect thereof.

(2) A caveator or objector shall at the time he files his caveat or notice of opposition send a copy thereof to the petitioner or his Proctor. Caveat to be served on petitioner.

O. 77, r. 23.

23. (1) If on any day fixed for the disposal of the order nisi entered under Rule 14 or 20, 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 be ordered to issue on a certificate of the Commissioner of Estate Duty being received. When order nisi shall be made absolute.

(2) 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. When discharge.

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Respondent may be issued letters where claims established.

(3) In the event of the respondent or objector establishing his right to have grant of probate or letters 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.

Dismissal not to bar fresh application.

(4) The dismissal of the petition under this rule shall, however, not be a bar to a renewal of the application by the petitioner as long as grant of administration to the estate of the deceased person shall not have been made, either on the occasion of such dismissal or subsequently thereto, to some person other than the petitioner.

O. 77, r. 24. Notice of order nisi being made absolute to be given to Commissioner of Estate Duty and to be advertised.

24. On any order absolute in the first instance being entered or on an order nisi being made absolute, it shall be the duty of the person in whose favour such order has been made absolute to notify the Commissioner of Estate Duty of such order within ten days of the date on which the order absolute shall have been made, and unless the Court shall for sufficient cause such as the smallness of the estate or other reason direct to the contrary, shall advertise the making of the order absolute, once in the *Ceylon Government Gazette* and once in each of two newspapers selected by Court in manner prescribed by paragraph (2) of Rule 21 of this Order.

O. 77, r. 25. Estate not completely administered, fresh grant may be made.

25. 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 hereinbefore prescribed for a first grant.

O. 77, r. 26. Power to grant Probate to a corporation.

26. (1) Where a corporation is appointed executor in a will, either alone or jointly with another person, the Court may grant probate to such corporation either solely or jointly with another person as the case may require and the corporation may act as executor accordingly.

or letters.

(2) Letters of administration may be granted to any trust corporation either solely or jointly with another person, and the corporation may act as administrator accordingly.

Officer may swear affidavit on behalf of trust corporation.

(3) Any officer authorised for the purpose by such corporation, or the directors or governing body thereof, may swear affidavits, give security, and do any other act or thing which the Court may require on behalf of the corporation with a view to the grant of representation, and the acts of such officer shall be binding on the corporation.

ORDER LXXVIII

Limited and Special Grants

O. 78, r. 1. Letters ad colligenda.

1. Where any person shall die leaving property in the Island, the Court of any district in which such property shall be situated shall on the facts being verified to its satisfaction, and it being made to appear—

(*a*) that there is not resident within the local limits of its jurisdiction some next of kin or other person entitled to administration of the estate of the person so dying; or

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(*b*) that pending administration or otherwise the assets of the estate of the person so dying are in jeopardy of being lost to the heirs or other persons lawfully entitled to the same;

issue letters ad colligenda in Form No. 124 in Appendix I to one or more responsible persons—

(i) to take charge of such property until the same shall be claimed by some executor or administrator lawfully entitled to administer the same or, where the estate requires no administration, by the persons entitled to the same; or

(ii) to take an inventory of such property and to permit any person in possession of such property, subject to his giving security or otherwise, to continue in such possession.

O. 78, r. 2. Manner in which Probate, etc., may be limited.

2. Any grant of probate or letters of administration may be made by Court limited—

(*a*) in respect of its duration, or

(*b*) in respect to any particular property, or

(*c*) in respect of the power of dealing with any property of the estate, or

(*d*) in respect to any particular purpose, or

(*e*) in respect of more than one of such limitations,

where it considers that at the stage at which it makes the grant that a larger grant is unnecessary.

O. 78, r. 3. Limited grant generally.

3. In particular and without prejudice to the generality of the provisions contained in the preceding rule, the Court may make a grant of probate or letters of administration limited as set out in the ten next succeeding rules.

O. 78, r. 4. Administration pendente lite.

4. Where any legal proceeding touching the validity of the will of a deceased person or for obtaining, recalling, or revoking grant of probate or letters of administration is pending, the Court may, either on the ground of undue delay or otherwise, grant letters of administration to the estate of the deceased to an administrator limited for the duration of such proceeding; such administrator shall be subject to the immediate control of the Court and act under its direction, and shall not have the right of distributing the estate.

O. 78, r. 5. Probate may issue for limited purpose as set out in will.

5. Where 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.

O. 78, r. 6. Limited letters for sale of property of estate.

6. (1) Where for the purpose of paying estate duty or for any other sufficient cause it becomes necessary to sell any property of the estate of a deceased person prior to the issue of probate or letters of administration, the Court may grant letters limited for the purpose of selling such property.

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Property to be specified and conditions annexed.

(2) Such property shall be specified in the grant and such grant shall expressly state that the letters are issued subject to the following conditions:

(*a*) that the sale shall be, if by private treaty, at the price fixed by Court or, if by public auction, either at an upset price or otherwise;

(*b*) that the net proceeds of sale shall be deposited in Court within such time as the Court may prescribe;

(*c*) that the administrator to whom the letters are issued is not empowered to execute any deed of conveyance of immovable property prior to the confirmation of sale by the Court;

(*d*) any other stipulation the Court may in the circumstances deem fit to impose.

Commissioner of Estate Duty and respondents to be noticed before issue.

(3) Before making an order for grant of letters under this rule, the Commissioner of Estate Duty and the respondents to the original petition for probate or administration shall be given notice of the application and heard in opposition unless they or any of them shall have signified their assent to such sale.

No Stamp Duty.

(4) No stamp duty shall be recoverable on any application or grant or any proceedings made or had under this rule.

O. 78, r. 7. Lost Will.

7. When the original will of the deceased person has been lost since the testator's death, but a copy has been preserved, probate of that copy may be granted, limited until the original be brought into Court.

O. 78, r. 8. Original will in possession of persons out of the Island.

8. When the original will is in the hands of some person residing out of the Island, 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.

O. 78, r, 9. Draft will or substance of will.

9. In either of the cases set out in the last two preceding rules, if no copy has been preserved or is available, probate of a draft will may be granted, or if no draft be 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.

O. 78, r. 10. When grant to be limited until original is brought to Court.

10. If the document admitted to proof under the preceding rule be a copy of or substitute for the original, on account of the original itself not being forthcoming by reason of one of the causes mentioned in Rule 7 or 8 of this Order, the grant shall further be limited until the original is brought into Court.

O. 78, r. 11. Grant to attorney of executor.

11. (1) If the sole executor of a will resides, or if there are more executors than one and all the executors reside, out of the Island, or such of the executors as reside in the Island decline to act, then the Court may grant administration with copy of the will annexed to any person within the Island, 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.

Attorney to be appointed by all executors save by those declining to act.

(2) If the person applying for the grant is not the attorney of all the executors, where there are more than one, the grant of administration shall not be made to him until the remaining executors have declined to act.

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O. 78, r. 12. Grant to attorney of absent person interested in proving will.

12. In the case of a will, if there be within the Island no executor willing to act, and if all other persons interested in having the property of the testator administered are out of the Island, grant of administration may be made to the attorney of a person so interested limited until the principal shall come in and obtain administration for himself.

O. 78, r. 13. Grant of letters to curator or manager.

13. Where the executor appointed under a will or the person interested in having the property of the testator administered, or where in the case of intestacy the heir entitled to letters of administration is a minor or a lunatic or a mentally defective person resident within the Island, the grant of administration with copy of the will annexed, or grant of administration only, as the case may be, may be made to the curator or manager of such minor, lunatic, or mentally defective person limited for the duration of such minority, lunacy, or mental defectiveness, as the case may be.

O. 78, r. 14. Requisites of application for limited grant.

14. Where an application is made for a limited grant, the material and relevant facts necessary to justify the Court in making the limited grant shall be set out in the petition in addition to the requisites required by Rule 8 or 19 of Order LXXVII, as the case may be, and shall be established by prima facie evidence as set out therein before the order is made.

ORDER LXXIX

Resealing of Probates or Letters of Administration

O. 79, r. 1. Notice of application to reseal to be published.

1. (1) Where any person proposes in accordance with the provisions of these Rules to make application to a competent Court for the sealing of a probate or letters of administration under section 3 of the British Courts Probates (Re-sealing) Ordinance (hereinafter referred to in this Order as the Ordinance), the Court shall, on a motion made to it in that behalf, by order direct that notice of the intended application shall be published in such manner and during such period as may be specified in the order.

Form of notice.

(2) Every such notice shall be substantially in Form No. 125 Appendix I.

O. 79, r. 2. Application by way of summary procedure.

2. (1) Every application to a competent Court for the sealing of a probate or letters of administration shall be made on petition by way of summary procedure, by the executor of the will or the administrator of the estate, or by the attorney duly authorized in that behalf by such executor or administrator, either in person or by a Proctor duly appointed for the purpose by such executor, administrator or attorney.

Documents to be annexed to such application.

(2) Every such application must be accompanied—

(*a*) by an affidavit of the applicant substantially in Form No. 126 in Appendix I;

(*b*) by a copy of the notice published in accordance with the order made by the Court under the preceding rule.

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O. 79, r. 3. Security of administration.

3. (1) Where application for the sealing of letters of administration is made to a competent Court, the administrator or his attorney, as the case may be, shall, together with a surety or sureties if the Court so require, enter into a bond in such a sum as may in the opinion of the Court be sufficient to cover the property of the deceased in the Island.

Form of security bond.

(2) Every such bond shall be substantially in such one of Forms Nos. 127 or 128 in Appendix I as may be appropriate to the case.

O. 79, r. 4. Creditor's application.

4. Every application by a creditor under section 5 of the Ordinance shall be supported by an affidavit setting out the particulars of the claim and the reasons for making the application. Notice of such application shall be given to the person applying for the sealing of the probate or letters of administration or to his Proctor.

O. 79, r. 5. Grant to include all testamentary papers.

5. The grant (or copy of grant) to be sealed and the copy to be deposited in the Court must include copies of all testamentary papers admitted to probate.

O. 79, r. 6. Where application made after three years, delay to be explained.

6. When application to seal a probate or letters of administration is made after the lapse of three years from the death of the deceased, the Court may require such proof of the reason for the delay as it may think fit.

O. 79, r. 7. Special or limited grants may be re-sealed.

7. Special or limited or temporary grants may be sealed by order of the Court.

O. 79, r. 8. Notice of re-sealing to be sent to Court issuing grant.

8. Notice of the sealing of a grant shall be sent by the competent Court to the Court from which the grant is issued.

O. 79, r. 9. Notice of revocation or alteration of grant issued by Ceylon Courts to be sent to re-sealing Court abroad.

9. When information has been received of the re-sealing of a grant made in Ceylon, notice of the revocation of or any alteration in such grant shall be sent to the Court by whose authority such grant was re-sealed.

ORDER LXXX

Oath of Office and Security Bond of Executors and Administrators

O. 80, r. 1. Oath of office.

1. In every case where an order absolute has been entered under Order LXXVII or LXXVIII 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 executor or administrator in whose favour such order is made to take the oath of an executor or administrator, except where such executor or administrator is a corporation, according to Form No. 129 in Appendix I.

O. 80, r. 2. Security bond.

2. (1) Such executor or administrator shall, where the Court requires it, enter into a bond with two good and sufficient sureties, in Form No. 130 in Appendix I, for the due administration of the deceased person's property.

Guarantee institution sufficient surety.

(2) Where a banking, insurance or other corporation approved by Court stands surety, no other surety shall be necessary, nor shall a mortgage or hypothec of property be required.

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(3) The amount secured by the bond shall be limited to the value of the movable property which appears to the Court likely to come into the hands of the executor or administrator and to two years' income from the immovable property to be administered, and where the grant of administration is limited the amount may be reduced.

Amount of bond.

O. 80, r. 3.

3. The bond so entered into shall render the executor or administrator and the surety responsible for all deficiencies, depreciation, or loss of the property of the estate attributable to the default of the principal, and the surety, if any, liable to make good the same to the same extent and in like manner as if the said default were his own, subject, however, to the conditions of the bond in that behalf.

Bond to be conditioned for due administration of the estate.

O. 80, r. 4.

4. All security bonds 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 a bond 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 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 bonds.

O. 80, r. 5.

5. In all cases of the issue of probate or grant of letters to a sole beneficiary under a will or to the sole heir in the case of intestacy, or in the case of a limited grant under Rule 5 of Order LXXVIII, security shall not be required, unless for some special reason the Court deems that security is absolutely necessary for the protection of the estate.

No security in case of probate.

O. 80, r. 6.

6. 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 bond.

Bond may be dispensed with on issue of limited letters.

O. 80, r. 7.

7. (1) In all cases of grant of letters of administration save as is provided in the last two preceding rules, security shall be ordered, unless for some special reason the Court deems that security is not necessary.

Security in case of issue of letters.

(2) Every order dispensing with the bond or limiting the amount to be secured thereby shall adjudicate upon the facts upon which the Court intends it to rest.

Reasons to be recorded for dispensing with bond.

(3) Where the Secretary of the Court is appointed administrator, it shall not be competent to the Court to dispense with security.

Secretary to furnish security.

ORDER LXXXI

Inventory

O. 81, r. 1.

1. (1) It shall be the duty of every executor or administrator to file in Court within one month of the date on which the assessment of estate duty becomes final or such further period as the Court may allow, an inventory and valuation of the property belonging to the deceased valued as at the date of death, and a statement of liabilities, if any, of the deceased person as at the same date.

Inventory to be filed within one month of final assessment.

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Valuation as assessed for estate duty.

(2) The valuation of the property shall be the same as that which is finally accepted or ordered by Court for the purpose of the assessment of estate duty.

O. 81, r. 2. Inventory, etc., to be verified on oath.

2. The inventory and valuation and statement of liabilities shall be substantially in Form No. 131 in Appendix I, and shall be verified on oath or affirmation by the executor or administrator.

O. 81, r. 3. Inventory, etc., may be challenged at any time prior to or at distribution of estate.

3. Upon such inventory and valuation and statement being filed, a creditor or any person interested in the estate shall be entitled by petition in the way of summary procedure to challenge the correctness of such inventory, valuation or statement of liabilities or any of them, on the occasion on which an intermediate or final account is challenged or at any time prior to or at the distribution of the estate.

O. 81, r. 4. Assessment not deemed final till objections and appeals are final.

4. An assessment of estate duty shall not be deemed final for the purposes of this Order until such time as all objections to and appeals against any such assessment and of legal proceedings consequent thereon shall have been concluded, or in the case of any final assessment against which no appeal has been taken, until after the lapse of one month from the date thereof.

O. 81, r. 5. Executor or administrator to administer estate though inventory not filed.

5. Nothing in this Order shall be deemed to prevent any executor or administrator from paying the debts of the deceased or selling the assets or vesting property in any heir or beneficiary in due course of administration, notwithstanding the fact that the inventory may not have been or cannot be filed.

O. 81, r. 6. Creditor or person interested may petition Court to compel executor, etc., to file inventory, etc.

6. A creditor or any person interested in the estate may present to the Court from 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 of the property and the statement of liabilities of the deceased person (or a sufficient inventory and valuation or a sufficient statement) within the time prescribed by Rule 1 of this Order.

O. 81, r. 7. Court may order executor, etc., to file a sufficient inventory.

7. The Court shall thereupon or of its own motion, if satisfied that the executor or administrator is in default, make an order, which shall be served on the delinquent, requiring him to file the inventory and valuation or statement, or a further inventory and valuation or a further statement, as the case may be on a date to be specified thereon and in default thereof, to show cause why he should not be attached.

O. 81, r. 8. Where executor, etc., continues in default, he may be attached.

8. Upon the day fixed in such order, if the delinquent has not filed a sufficient inventory and valuation or a sufficient statement of liabilities, the Court shall issue a warrant of attachment against him and shall deal with him as for a contempt of Court.

O. 81, r. 9. When executor, etc., may be discharged from commitment.

9. A person committed to jail under the provisions of the last preceding rule may be discharged by the Court—

(*a*) upon his filing a sufficient inventory and valuation and a sufficient statement of liabilities, or

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(*b*) upon his paying and delivering under oath to the Court or person authorised by the Court to receive the same all the money and other property of the testator or intestate in his possession, all papers relating to the estate under his control, an account of all moneys received and disbursed by him and a statement of other property received or taken charge of and sold or disposed of by him.

ORDER LXXXII

Powers, Duties and Obligations of Executors and Administrators

O. 82, r. 1.

Party supposed to be interested in estate may be called upon to disclose such interest.

1. (1) An executor whether before or after grant of probate or an administrator or an applicant for letters of administration, whether before or after the grant of letters, may give notice in writing to any legatee, devisee, heir, creditor or other person supposed to have an interest in the estate of the deceased to declare his interest therein.

Such party shall disclose such interest.

(2) Any person receiving such notice shall declare his interest therein, giving such particulars thereof as shall be reasonably sufficient to enable the executor, administrator or applicant, to proceed with the administration of the estate.

Claim to be supported by documents.

(3) Where particulars are furnished, a list of the documents, if any, in the possession of such person material to establish his interest shall be annexed thereto.

Party may notify his intention to oppose.

(4) Where notice is given to such person before grant of probate or letters, such person may state whether he intends to oppose the grant, in which event he shall be made a party respondent to the application.

On failure administration to proceed as though party not interested.

(5) Where any such person to whom notice has been given fails or refuses within a reasonable time of the receipt of notice by him to declare his interest, the administration shall proceed as if such person had no interest in the estate.

O. 82, r. 2.

Person vested with property of deceased within five years of death to disclose such property.

2. (1) An applicant for probate or letters may give notice in writing to any person to or on whom property belonging to the deceased had been gifted or vested at any time within a period of five years prior to the date of the death of such deceased, to disclose particulars of the property gifted or vested.

Party to disclose on receipt of notice.

(2) Any person receiving such notice shall disclose particulars of the property so gifted or vested as shall be reasonably sufficient to enable such applicant to make a proper assessment of the value of the estate of the deceased.

On failure to give notice, party may be cited to attend Court to be examined.

(3) Where the party so noticed fails, refuses or neglects to give, or gives insufficient, particulars, such applicant may, after filing his application in Court for probate or letters, as the case may be, apply by way of motion supported by affidavit for a citation to issue on such person to be examined in regard to property that may have been gifted or vested in him or in respect of which estate duty may be payable.

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Citee liable for expenses and costs where his conduct is unreasonable.

(4) Where the Court after examination of such person is of opinion that the citee had unreasonably refused or neglected to disclose the information required or that the disclosure was inadequate, it may order the citee to pay the costs of the examination as well as of any additional costs that may be incurred by the executor or administrator in regard to proceedings in administration consequent upon such failure, refusal, neglect or insufficient disclosure.

O. 82, r. 3.
Applicant for probate or letters may call upon any person for information relating to estate.

3. (1) An applicant for probate or letters may call upon any person who is believed to be in possession of money or other movable property belonging to the estate to furnish information in regard to such property, or to disclose any other information concerning such property which will in any way aid the applicant in making discovery of such property in order that such property may be included in the assets of the deceased.

Such person to furnish information called for.

(2) Any person receiving such notice shall furnish the information required with sufficient particularity to enable the applicant to have such property included in the assets of the deceased.

On failure such person may be cited to be examined in Court.

(3) Where any such person to whom notice has been given fails, refuses, or neglects, within a reasonable time of the receipt of notice by him, to furnish such information, or furnish insufficient information, the applicant may, after filing his application in Court for probate or letters, as the case may be, apply by way of motion supported by affidavit for a citation to be issued on such person to be examined in regard to such property.

Citee to be examined.

(4) Upon the attendance of the citee, he shall be examined respecting such property, and where the Court is of opinion that the citee has unreasonably failed, refused or neglected to disclose the information required, or the disclosure was inadequate, it may order the citee to pay the costs of such examination.

O. 82, r. 4.
Person withholding property of a deceased may be cited to attend inquiry respecting such property.

4. (1) An executor or administrator may apply by way of motion supported by affidavit setting forth upon knowledge or information and belief any facts tending to show that money or other movable property, or any deed or other document belonging to the estate of the deceased, which ought to be delivered to the petitioner is in the possession or under the control of a person who withholds the same from him or that information which will aid him in obtaining possession of the said property or document is withheld by such person, for a citation on such person to attend an inquiry in regard to such property or document.

Citation to issue if averments satisfactory.

(2) If the Court is satisfied upon the averments in the affidavit that there is reasonable ground for an inquiry, it shall issue a citation accordingly, which may be made returnable forthwith or at such future time as the Court shall direct.

O. 82, r. 5.
Citee to be examined.

5. (1) Upon the attendance of the person so cited, he shall be examined fully and at large, on oath or affirmation, respecting any such money or other movable property or deed or other document 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.

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(2) If the person cited files an affidavit that he is the owner of any such property or document, 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.

Citee puts in affidavit claiming property, petition to be dismissed.

6. Where it appears to the Court at the conclusion of such inquiry 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, to the petitioner.

O. 82, r. 6. Decree awarding possession of property to be made unless security given.

7. (1) Where the decree requires the person cited to deliver money, disobedience thereto may be punished as contempt of Court.

O. 82, r. 7. Disobedience to decree contempt.

(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 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.

Warrant to seize property.

(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.

Issue of warrant does not avoid punishment.

8. The citation issued under the preceding rules shall require the person cited to attend personally at the time and place specified therein, and shall be served personally on him, 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 subpoenaed to attend a trial in a civil case.

O. 82, r. 8. Citation to require personal attendance.

9. A failure to attend as required by the citation may be punished as a contempt of Court.

O. 82, r. 9. Failure to attend contempt of Court.

10. A refusal to be sworn or affirmed or to answer any question allowed by the Court shall be punishable in the same manner as a like refusal by a witness in a civil case.

O. 82. r. 10. Refusal to answer to be punished.

11. The Court shall have the power of making such order for costs against the petitioner or the citee as the justice of the case may require.

O. 82, r. 11. Costs.

12. Save as is provided in Rule 6 of Order LXXVIII an administrator to whom letters of administration with copy of the will annexed or letters of administration only have been granted shall have no power or authority to sell any immovable property belonging to the estate without the prior sanction of the Court, and every grant of such letters of administration shall expressly state that it confers no such power or authority.

O. 82, r. 12. Administrator cannot sell property without sanction of Court.

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O. 82, r. 13. Administration extends to all property of deceased, wherever situate.

13. Subject to any limitation expressed in the grant, the power of administration authenticated by the grant of probate or letters of administration extends to all the property of the deceased person, movable and immovable, situate within the Island, or was so situate, at the time of his death, or so much thereof as has not already been administered, and endures for the life of the executor or administrator, or until such time as the grant shall have been revoked or until the administration shall be completed, and the executor or administrator discharged.

O. 82, r. 14. Error in name, description, etc., to be notified to Court.

14. (1) It shall be the duty of every applicant for probate or letters of administration and of every executor or administrator to whom a grant has been made to notify the Court of any error which may be discovered in the names, descriptions, time and place of the death of the deceased, his domicil, or the nature of the limitation in a grant, or in any other material particulars and of any change in any such particulars which may become necessary in due course of administration.

Court may rectify such error.

(2) Any such error or change may be rectified by the Court and the grant may be altered and amended accordingly.

O. 82, r. 15. Right of proving executors to exercise powers.

15. Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on a sole executor may be exercised by the proving executor or executors for the time being, and shall be as effectual as if all the persons named as executors had concurred therein.

O. 82, r. 16. Administration to be completed on provision being made in regard to property of trustees, minors, etc.

16. Where a trustee, minor, lunatic or mentally defective person becomes entitled to any property of an estate under administration, it shall be the duty of the executor or administrator to complete the administration by delivering such property to such trustee, or to the curator or manager, of the estate of such minor, lunatic, or mentally defective person, and for that purpose he shall commence such proceedings, if any, as may be necessary to have a trustee over the trust estate or a curator or manager over the estate of such minor, lunatic or mentally defective person appointed.

O. 82, r. 17. Though administration completed, executor or administrator may join in deed for better manifestation of title.

17. An executor or administrator may, notwithstanding that he may have completed the administration or been discharged, nevertheless join in any deed for the better manifestation of the title to any property administered or for the purpose of discharging any person or any property administered from any claim which he might have had as such executor or administrator in due course of administration.

O. 82, r. 18. Devastavit.

18. Where a person as executor or administrator of a deceased person, mismanages property of the deceased by squandering and misapplying the assets thereof contrary to the duty imposed on him, or wastes or converts to his own use any part of the assets, he shall be liable and chargeable in respect of such mismanagement, waste or conversion at the instance of any person interested in the estate of the deceased.

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ORDER LXXXIII

Revocation of Probate or Letters of Administration

O. 83, r. 1. Recall of probate or letters.

1. Where a grant of probate or letters of administration has been made, the Court may, at any time at the instance of any person interested, revoke and recall such grant upon being satisfied that the will ought not to have been held proved or that the grant of probate or administration ought not to have been made, or that events have occurred which render the administration thereunder impracticable or useless.

O. 83, r. 2. Summary procedure to be followed.

2. (1) All applications for the recall or revocation of probate or grant of administration shall be made by petition by way of summary procedure in the proceedings in which probate or grant of administration shall have issued.

Petitioner's interest must be disclosed.

(2) No such application shall be entertained unless the petitioner shows 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.

ORDER LXXXIV

Compensation to Executor and Administrator

O. 84, r. 1. Compensation of executors and administrators.

1. 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.

Explanation.—In this rule the expression executors or administrators shall include an executor or administrator who reseals a probate or letters of administration as well as an attorney who reseals a probate or letters of administration.

O. 84, r. 2. Not to exceed five thousand rupees to sole executor or administrator.

2. In no case shall a larger sum than five thousand rupees be allowed to a sole executor or a sole 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.

O. 84, r. 3. Compensation where there are more executors or administrators than one.

3. (1) Where there shall be more than one executor or administrator, the compensation payable to them shall be calculated on the basis that each executor or administrator is entitled to the full compensation allowed by law to a sole executor or administrator, and shall be apportioned among them according to the services rendered by them respectively.

Where there are more than three executors or administrators, compensation as if there were only three.

(2) Where, however, there are more than three executors or administrators, the total compensation payable shall not exceed the amount payable if there were only three executors or administrators.

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O. 84, r. 4. Entitled to specific compensation where so provided.

4. Notwithstanding anything contained in the last two preceding rules, 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.

ORDER LXXXV

Insolvent Testamentary Estates

O. 85, r. 1. When estates deemed insolvent.

1. The estate of a deceased person shall be deemed to be insolvent—

(i) if upon the basis of a valuation of his assets and liabilities as at the date of his death or at any time subsequent thereto it appears that the assets are or will be insufficient to pay in full the funeral, testamentary and administration expenses relating to the estate, and the claims of creditors ; or

(ii) if owing to execution proceedings being taken against the deceased or his estate or the difficulty of realising any of the assets of the estate, or because of disputed claims, or for any other sufficient reason, the estate should be administered as an insolvent estate, for the benefit of all parties interested in the estate.

O. 85, r. 2. Where estate insolvent, applicant for probate, etc., to take steps to have it so declared.

2. (1) Where an estate is deemed to be insolvent at the date an application for probate or letters of administration is made, the petitioner shall, in addition to the other averments required to be stated in the petition for probate or letters, set out the material facts upon which adjudication that the estate should be deemed to be insolvent is claimed, and shall contain detailed lists showing—

(*a*) the names of all persons who to the best of the petitioner's knowledge and belief have claims against the estate ;

(*b*) the last known place of abode or business of such persons;

(*c*) the sums claimed by each of such persons and whether or not the sums claimed are liquidated or unliquidated amounts ; and

(*d*) whether or not the sums claimed or any part thereof are admitted by the petitioner.

All creditors to be made respondents.

(2) To the petition so filed, the persons who are required to be named as respondents to the application for probate or letters, shall be made respondents.

O. 85, r. 3. Where estate insolvent, executor or administrator to take steps to have it so declared.

3. (1) Where after grant of probate or letters an estate is deemed to be insolvent, the executor or administrator shall file a petition by way of summary procedure for an adjudication that the estate should be deemed to be insolvent, and such petition shall set out the material facts and the lists as are required to be filed under the last preceding rule.

All interested to be named respondents.

(2) To such petition all persons named in the original petition for grant of probate or letters shall be made respondents.

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O. 85, r. 4. Creditor, etc., may also apply for adjudication of estate as insolvent.

4. (1) It shall be competent for a creditor, heir, beneficiary, or other person interested in the estate, similarly to make application for adjudication that the estate should be deemed to be insolvent, and the provisions of Rule 2 of this Order shall *mutatis mutandis* apply to such application.

Applicant for probate or letters, etc., to be made respondent.

(2) The applicant for probate or letters, or the executor or administrator of the estate, shall in adition be made respondent to such application.

O. 85, r. 5. Order nisi declaring estate insolvent.

5. Upon the Court being satisfied that the facts stated in the petition are prima facie established, it shall enter a testamentary insolvency order nisi declaring the estate to be insolvent in Form No. 138 in Appendix I.

O. 85, r. 6. When order nisi to be served.

6. A copy of the testamentary insolvency order nisi shall be served on each of the respondents named therein and a copy of such order nisi shall be advertised at the expense of the petitioner not later than one month prior to the date fixed in such order nisi for the determination of the matters contained therein, in accordance with the provisions of Rule 21 of Order LXXVII.

O. 85, r. 7. Person interested may intervene.

7. Any party interested in the estate shall be entitled to appear on the day fixed therein and may show cause or support the application, and the Court may, after due inquiry in accordance with the provisions of Order LVI, either dismiss the petition or make the testamentary insolvency order nisi absolute.

O. 85, r. 8. Order absolute to be advertised.

8. The testamentary insolvency order absolute shall be advertised in the same manner as the order nisi and in such other manner, if any, as the Court shall consider necessary in the circumstances of the case.

O. 85, r. 9. Actions and execution proceedings to be stayed after such order nisi.

9. As from the date on which the testamentary insolvency order nisi declaring the estate insolvent is made, all actions in respect of admitted claims and all execution proceedings against the estate of the deceased shall be stayed, subject, however, to the right of any secured creditor who has taken out execution proceedings, to proceed to realise his security upon such conditions as the Court, having regard to the provisions of the Insolvency Ordinance, shall order.

O. 85, r. 10. Where executor or spouse unwilling or where executor or administrator guilty of delay in administering estate, Court may appoint fit person.

10. Where the executor named in the will or the widow or widower is unwilling to proceed with the due administration of an insolvent estate, or where the executor or administrator to whom probate or letters have been issued fails to administer the estate with reasonable despatch, the Court may, having regard to the proper conservation of the estate and the interest of all parties before it, appoint any fit person to administer the estate.

O. 85, r. 11. Insolvent estate to be distributed in accordance with Insolvency Ordinance.

11. Where a testamentary insolvency order shall have been made, the estate shall be administered in accordance with the provisions following:—

(*a*) The funeral, testamentary and administration expenses shall first be paid out of the assets available.

(*b*) Subject as aforesaid, the provisions for the time being in force under the Law of Insolvency with respect to the estate of a person adjudged insolvent shall apply and be observed in regard to the respective rights of secured and unsecured creditors as to the debts and liabilities provable, the valuation of annuities and future and contingent liabilities, and the priorities of debts and liabilities.

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O. 85, r. 12. Executor or administrator of insolvent estate in the same position as assignee of estate of insolvent.

12. An executor or administrator of an insolvent estate shall have the some powers and be subject to the same obligations as the assignee of an insolvent appointed under the Insolvency Ordinance.

O. 85, r. 13. Appeal from order declaring estate insolvent does not stay administration proceedings.

13. An appeal from a testamentary insolvency order nisi or absolute declaring an estate insolvent shall not have the effect of staying the further proceedings in administration, unless the Supreme Court shall make order to the contrary.

ORDER LXXXVI

Accounting and Settlement of the Estate of Deceased Persons

O. 86 r. 1. Executor or administrator who fails to administer within the year liable for interest.

1. 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 is 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 retention.

O. 86, r. 2. Accounting and settlement of the estate.

2. Every executor and administrator shall file in Court within three months after the filing of the inventory or within such extended period as the Court shall from time to time fix if the circumstances so require a true and final account of his executorship or administration as the case may be.

O. 86, r. 3. Person interested may petition to compel executor, etc., to file final account.

3. Any person interested in the estate may present to the Court from which grant of probate or administration issued proof by affidavit that an executor has failed to file in Court a final account or a sufficient final account as prescribed by the last preceding rule.

O. 86, r. 4. Court may order executor to file a sufficient final account.

4. The Court shall thereupon, or of its own motion, if satisfied that the executor or administrator is in default, make order, which shall be served on the delinquent, requiring him to file the final account, or a sufficient final account, as the case may be, on a date to be specified therein; and in default thereof, to show cause why he should not be attached.

O. 86, r. 5. Where executor continues in default, he may be attached.

5. Upon the day fixed in such order, if the delinquent has not filed a sufficient final account, the Court shall issue a warrant of attachment against him and shall deal with him as for contempt of Court.

O. 86, r. 6. When executor may be discharged from commitment.

6. A delinquent committed to jail under the provisions of the last preceding rule may be discharged by the Court upon his filing a sufficient final account.

O. 86, r. 7. Form of account.

7. (1) Every account so filed by the accounting party shall be in accordance with Form No. 140 in Appendix I, with such variations as circumstances may require and shall set out distinctly:

(*a*) the assets and liabilities of the deceased valued as in the inventory;

(*b*) receipts and disbursements and transactions of property made by the accounting party up to the date to which his account is made up;

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(c) the assets and liabilities as at the date to which the account is made up;

and all schedules thereto which would facilitate the taking of accounts.

(2) To each account filed under this Order 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 assets and liabilities and 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.

Account to be verified by affidavit.

8. The Court may reject an account which does not comply with the provisions of this Order and require the executor or administrator to file a final account within a specified period.

O. 86, r. 8. When account may be rejected.

9. Where an executor or administrator files with his final account a receipt and discharge in Form No. 149 in Appendix I (subject to such variations as circumstances may require) signed by the devisees, legatees, trustees, heirs, creditors or other persons entitled to the estate of the deceased, establishing that the entire estate has been duly administered and distributed, the Court may grant him a discharge and enter an order that the estate has been fully administered.

O. 86, r. 9. When order estate fully administered may be entered.

10. In any case where a receipt and discharge, or a sufficient receipt and discharge, is not filed with the final account, the Court may, on sufficient cause shown grant further time to the executor or administrator to enable a sufficient receipt and discharge to be filed.

O. 86, r. 10. Further time may be granted to file discharge.

11. Where any such receipt and discharge has not been filed within the time allowed, or where any receipt and discharge has been refused, the Court may direct that a copy of the final account be served upon the party failing or refusing to grant such receipt and discharge and requiring such person to appear in Court on a day to be specified therein, to show cause, if any, why the final account should not be accepted as correct.

O. 86, r. 11. Notice to be served on person not granting discharge.

12. Where such person does not appear or upon appearance on the day so fixed he shows no cause against the acceptance of the final account, the Court shall grant a discharge to the executor or administrator and enter an order that the estate has been fully administered.

O. 86, r. 12. Where such person shows no cause order estate fully administered to be entered.

13. Where such person contests the correctness or sufficiency of the account filed, the Court shall fix a date for a statement of objections to be filed by such contestant, and the executor or administrator shall, either on the date so fixed or prior thereto, file in Court all receipts and vouchers in support and verification of the final account.

O. 86, r. 13. Where person shows cause, date for objections to be fixed.

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O. 86, r. 14.
Objection to be adjudicated upon as between parties thereto where no prejudice caused to any other party.

14. (1) Where the objections filed are of such a nature that in the opinion of the Court the dispute raised therein can be adjudicated upon as between the parties before it without prejudice to the rights of any party who may have accepted the correctness of the final account, the Court shall inquire into such objections in accordance with the provisions of Order LVI, so far as applicable.

Executor, etc., may be discharged on complying with order made upon adjudication.

(2) At the conclusion of such inquiry, the Court shall make such order as the justice of the case may require, and on the executor or administrator complying with such order, discharge the executor or administrator, and enter order declaring that the estate has been fully administered.

Order in favour of party interested though not appearing may be made.

(3) It shall be competent to the Court, when it has disposed of the dispute between the contestant and the executor or administrator, to make order in favour of any other persons interested in the estate for such sum as it may find them to be entitled to, notwithstanding that they may not have been party to the proceedings, and give notice to them of the order so made in their favour.

But no adverse order to be made against such party.

(4) It shall, however, not be competent to the Court to make any order adverse to any party interested in the estate, where such party has not been a party to the proceedings held under this rule.

O. 86, r. 15.
Court may order judicial settlement where dispute affects other parties as well.

15. Where, however, the objections are of such a nature or kind that, in the opinion of the Court, for the adjudication of the disputes raised therein all other parties interested in the estate should have notice thereof, the Court shall direct judicial settlement of the estate.

O. 86, r. 16.
Effect of order declaring estate fully administered.

16. Where an order that the estate has been fully administered has been entered under Rule 9, 12 or 14 of this Order, it shall have the same effect as a decree entered upon a judicial settlement of an account of an executor or administrator as regards all parties who were duly cited or appeared or have consented.

O. 86, r. 17.
Executor may file intermediate account at any time.

17. 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.

O. 86, r. 18.
Court may compel executor to file intermediate account at any time.

18. The Court may at any time, and from time to time till the estate is fully and completely administered, upon the application of a party interested in the estate, or of its own motion, make an order requiring an executor or administrator to render on a day to be fixed by Court, an intermediate account.

O. 86, r. 19.
Account may be ordered to be filed in certain circumstances.

19. In any of the following cases, and either upon the application of a party interested in the estate or of its own motion, the Court may make order requiring the executor or administrator to file an account—

(*a*) where the grant of probate or administration has been revoked, or for any other reason his powers have ceased;

(*b*) where one year has elapsed since the grant of probate or administration to him.

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O. 86, r. 20. Default punishable as contempt of Court.

20. Where the executor or administrator makes default in complying with an order of Court made under the two last preceding rules, the Court may deal with the delinquent as provided in Rules 5 and 6 of this Order.

O. 86, r. 21. Creditor, beneficiary or heir may apply for order in his favour.

21. (1) At any time after the expiration of twelve months since the grant of probate or administration, where an account has been filed by the executor or administrator under the provisions of this Order.

(*a*) a creditor whose debt has been admitted,

(*b*) a legatee, or devisee, or person entitled to a distributive share or to the residue of the estate,

may by petition, to which the executor or administrator shall be made party respondent, apply for an order directing such executor or administrator—

(i) to pay the debt of the creditor, or

(ii) to pay or convey the legacy, devise, or distributive share of the estate to the legatee, devisee, or person entitled to the distributive share.

Petitioner entitled to challenge accounts.

(2) The petitioner on such application shall be entitled to raise all such objections to the account filed as a petitioner for judicial settlement of an account could, as set out in paragraph (3) of rule 22 of this Order.

Executor or administrator only respondent.

(3) To such application no other party interested in the estate need be made respondent.

Citation to issue on executor or administrator.

(4) The executor or administrator shall be cited to attend and show cause, if any, why the prayer in the petition (a copy of which shall be served along with the citation) should not be made.

When order should be made.

(5) Where the Court after inquiry is not satisfied—

(*a*) that there is sufficient money or other movable property applicable to the payment or satisfaction of the petitioner's claim, or which may be so applied without injuriously affecting the rights of others entitled to priority or equality of payment or satisfaction;

(*b*) that an order of conveyance of immovable property belonging to the estate should be made at that stage,

it shall dismiss the petition, but otherwise shall make such order in the premises as justice may require.

Dismissal not to bar application for subsequent accounting.

(6) The dismissal of the petition under the preceding paragraph shall not prejudice the right of the petitioner to a subsequent accounting.

Order may be entered in favour of other creditors, etc., though not parties to proceedings.

(7) Where the Court enters order in favour of the petitioner, granting either wholly or in part the relief claimed, the Court may at the same time make an order in favour of other persons as provided in paragraph (3) of Rule 14 of this Order, subject to the limitation imposed by paragraph (4) thereof.

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O. 86, r. 22. Judicial settlement of account by creditor or person interested.

22. (1) Where an executor or administrator shall have filed at any time an intermediate account or where the Court under Rule 15 of this Order has directed a judicial settlement of a final account, application for a judicial settlement of such account may be made by—

(a) any person interested in the estate;

(b) a surety in the security bond of the person required to account; or

(c) the legal representative of such surety.

Procedure, summary.

(2) Such application shall be by petition in the way of summary procedure, to which the accounting party and, so far as the knowledge of the petitioner extends, all other persons interested in the estate shall be made respondents.

Account may be surcharged, falsified, etc.

(3) The petitioner shall be entitled—

(a) to challenge and contest such account with respect to any matter affecting his interest in the settlement and distribution of the estate;

(b) to surcharge and falsify such account;

(c) to move to amend the inventory and account or either—

(i) by expunging any debt, whether claimed by the accounting party as due to him by the testator or intestate or otherwise;

(ii) by adding to or including in such account any property or debt alleged to belong to the estate whether the accounting party lays claim thereto or otherwise;

and in such event he shall set out all such matters of objection or claims in his petition or in a statement appended thereto.

O. 86, r. 23. Citation to issue on accounting party.

23. (1) Citation shall thereupon issue on the executor or administrator requiring him to attend Court under pain of attachment on a day to be fixed therein for the judicial settlement of his account. A copy of the petition shall be served on the executor or administrator along with such citation.

On other respondents.

(2) Citation shall also issue on other respondents, if any, requiring them to attend the judicial settlement of such account on the date so fixed, and calling upon them to file their statement of objections, if any, to the account filed by the accounting party, and intimating further that on their failure so to appear or file, the account would be judicially settled in their absence.

O. 86, r. 24. Accounting party entitled to add all other persons interested in the estate and to set out debt due to him.

24. (1) On the returnable date, the accounting party—

(a) may move to add any other person interested in the judicial settlement as a respondent and issue to such party a citation which shall be in the terms set out in paragraph (2) of the last preceding rule, with such variation as circumstances shall require; and

(b) shall, where he claims any debt owing to him by his testator or intestate,

(i) file a concise statement of such debt with an intimation of his intention so to prove the same;

(ii) at the same time serve a copy of such statement on the petitioner ;

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(*c*) shall file all receipts and vouchers in support and verification of the account, unless he has filed the same previously.

Respondents entitled to contest account.

(2) (*a*) The respondent, if any, may file a statement of objections in like manner as the petitioner.

(*b*) A copy of the statement of objections shall at the same time be served on the accounting party.

O. 86, r. 25. Petitioner and respondents entitled to file objections to claim of accounting party.

25. Where the accounting party has in terms of clause (*b*) (i) of paragraph (1) of the preceding rule filed a statement of the debt claimed by him, the petitioner shall be entitled on a date to be fixed by Court for that purpose to file his statement of objections to the claim alleged, and any other respondent shall himself be entitled to file objection thereto.

O. 86, r. 26. Accounting party may file a further and better account.

26. On the filing of such objections (including objections by a party cited at the instance of the accounting party), or on the last day allowed for the filing of such objections, whether filed or not, the Court shall, if the accounting party so desires, grant him a date to enable him to file a further and better account having regard to the objections filed, if any.

O. 86, r. 27. Date of hearing to be fixed.

27. Where no such date is allowed to the accounting party, or on the filing of the further and better account, or where no such account is filed on the date so allowed, the Court shall fix the matter of the petition and of the objections, if any, for hearing.

O. 86, r. 28. Necessary party to be cited.

28. Where 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 paragraph (2) of Rule 23 of this Order.

O. 86, r. 29. Creditor not cited may intervene.

29. 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 proceeding.

O. 86, r. 30. Account to be taken and accounting party to be examined.

30. (1) Upon the hearing,

(*a*) the Court shall take the account and hear the allegations and proofs of the parties respecting the same, and the procedure in regard thereto shall be governed by the provisions of Rules 15 to 24 of Order LVI, save that the accounting party shall begin and prove his account;

(*b*) the accounting party may 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;

Accounting Party may prove debt due to him.

(*b*) any debt claimed by the accounting party as owing to him by his testator or intestate shall be investigated and decided;

Liability of accounting party to estate to be determined.

(*d*) any contest arising between the acounting 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, shall be tried and determined at such hearing in the same manner as any issue arising on a trial.

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Accounting party may be ordered to file further account, and hearing adjourned.

(2) The Court shall have power from time to time to adjourn the hearing and to direct the accounting party to file further and better accounts as to it shall seem proper, default in filing thereof being punishable as provided in Rule 5 of this Order.

O. 86, r. 31.
Vouchers and receipts to be produced.

31. (1) Upon every accounting by an executor or administrator, the accounting party must produce and file a receipt or voucher for every payment, except in one of the following cases:—

(*a*) He may be allowed, without a receipt or voucher any proper item of expenditure not exceeding twenty rupees, if it is supported by his own uncontradicted oath or affirmation, provided that all the items so allowed against an estate upon all the accountings of all the executors or administrators shall not exceed one thousand rupees.

(*b*) He may be allowed any item if he proved to the satisfaction of the Court that he did not take a receipt or voucher when he made the payment, or that the receipt or voucher then taken by him has been lost or destroyed.

Provided, however, that no such item shall be allowed unless the Court is satisfied that the charge is correct and just.

Receipts and vouchers regular to be admitted without proof.

(2) All receipts and vouchers regular on the face of them shall be admitted in evidence without further proof, unless—

(*a*) the executor or administrator has been noticed by the opposite party within a reasonable time prior to the date of the hearing that the genuineness of any particular receipt or voucher is challenged; or

(*b*) the Court requires corroborative proof of any such receipt or voucher on the ground that it appears on the face of it to be irregular, mutilated, defaced, or tampered with, or on any other ground as to it shall seem proper.

Costs.

The Court shall specifically make such order in regard to the costs incurred in proving the genuineness or adducing corroborative proof in respect of any such receipt or voucher as to it shall seem just.

O. 86. r. 32.
Powers Court may exercise at judicial settlement proceedings.

32. At any time during the proceedings for judicial settlement the Court may—

(*a*) make directions as to the manner in which the assets of the deceased are to be marshalled, sold, divided or otherwise dealt with in a due course of administration;

(*b*) declare in what respect and to what extent the rights of creditors secured and unsecured are to be enforced or deferred.

(*c*) declare the rights and obligations of the heirs, legatees, devisees, or other beneficiaries inter se;

(*d*) make directions as to the carrying out or deferment of any trust created by the will of the deceased;

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(*e*) consider settle and approve any scheme for the sale, division, distribution or other disposal of the estate of the deceased;

(*f*) direct in what manner and to what extent the costs of the Judicial Settlement or the costs of carrying out any order made in the course thereof are to be borne, divided and paid.

O. 86, r. 33.
When prescription does not run against accounting party.

33. (1) From the death of the testator or intestate until the estate is declared fully administered or until the first judicial settlement of an account by his executor or administrator prescription shall not run against such executor or administrator in respect of a debt due to him from the deceased or in respect of any other cause of action he may be entitled to against the deceased, unless such executor or administrator was appointed upon the revocation of a former grant to another person; in which case prescription shall not run from the date of grant to him until the first judicial settlement of his account.

When prescription begins to run thereafter.

(2) After the estate is declared fully administered or after the first judicial settlement of the account of an executor or administrator prescription shall begin again to run against such executor or administrator in respect of debt due to him from the deceased or in respect of any other cause of action to which he may be entitled against the deceased.

O. 86, r. 34.
Court may allow for property lost, etc.

34. 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.

O. 86, r. 35.
Judgment and decree.

35. (1) At the conclusion of the judicial settlement proceedings the Court shall pronounce judgment and a decree shall be drawn up in accordance therewith.

Decree to direct payment and distribution of available estate.

(2) Where any part of the estate remains and is ready to be distributed among the persons interested in the estate, the decree shall direct the payment and distribution thereof to the persons so entitled, according to their respective rights.

Decree conclusive.

(3) Such decree shall be conclusive with respect to the matters enumerated in this Order upon each party to the proceeding who was duly cited or appeared, and upon every person deriving title from such party.

O. 86, r. 36.
Unsold property may be delivered.

36. (1) The decree may direct the delivery of unsold property, movable or immovable, or the assignment of an uncollected demand to a party or parties, entitled to such property, or make a distribution of such property by allocating separate items of property among the parties entitled thereto in proportion to their shares, after a valuation thereof by an appraisement made either by Court upon evidence placed before it or by consent of parties.

When unsold property may be sold for purposes of distribution.

(2) The decree may, however, direct that in lieu of delivery or distribution of the unsold property or of any particular item comprised in such property, such property or any such item thereof shall be sold and the proceeds distributed among the parties entitled thereto—

(*a*) where all the parties interested, who have appeared, manifest their consent thereto by a writing filed in Court; or

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(*b*) where it appears that a sale thereof, for the purpose of payment or distribution would be to the benefit of the parties entitled thereto; or

(*c*) where for any other reason it appears to the Court that it is just and proper so to do.

O. 86, r. 37. When money may be retained.

37. 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.

O. 86, r. 38. Share of minor or lunatic.

38. Where a legacy or distributive share is payable to a minor, lunatic, or mentally defective person, the decree may, in the discretion of the Court, direct it to be paid to the curator or manager, as the case may be, of the estate of such minor, lunatic, or mentally defective person, and such curator or manager shall apply and account for any sum received by him under this Order in manner in Orders LXXV and LXXVI respectively provided with regard to sums coming to his hands as such curator or manager.

O. 86, r. 39. Effect of judicial settlement.

39. A judicial settlement under this Order, 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 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 of 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.

O. 86, r. 40. An executor, etc., may apply for judicial settlement of his account.

40. (1) An executor or administrator may himself apply for the judicial settlement of any account filed by him.

Procedure similar to application by a person interested in the estate.

(2) The provisions hereinbefore set out in regard to an application for judicial settlement of an estate by a person interested therein shall *mutatis mutandis* apply to all proceedings and to the consequences resulting therefrom in respect of such application.

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41. Court may, of its own motion, order the accounting party or any person interested in the estate to make the necessary application to Court to have the account filed by the accounting party judicially settled and a default thereof may be punished as a contempt of Court.

O. 86, r. 41. Court may compel judicial settlement.

42. The Court may of its own motion without directing a judicial settlement order the accounting party 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.

O. 86, r. 42. Accounting party may be examined by Court without judicial settlement.

ORDER LXXXVII

Appointment and Removal of Trustees

1. Applications to the District Court for the exercise of its jurisdiction for the appointment of 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 as prescribed in Order LVI.

O. 87, r. 1. Trustees.

ORDER LXXXVIII

Arrest and Sequestration before Judgment

1. Where the plaintiff or one of several plaintiffs in any action has a sufficient cause of action against the defendant either in respect of a money claim of or exceeding Rs. 300 or because he has sustained damage to that amount and has no adequate security to meet the same, and if the plaintiff verily believes that the defendant with intent to avoid payment of the debt or damage—

O. 88, r. 1. When arrest and sequestration before judgment may be granted.

(*a*) is about to quit the Island,
(*b*) is fraudulently alienating his property, or
(*c*) has quitted the Island leaving property therein belonging to him,

the plaintiff may, either at the commencement of the action or at any subsequent period before judgment, make an application to Court by way of motion supported by affidavit,—

in case (*a*) for a warrant of arrest of the defendant, and
in cases (*b*) and (*c*) for a mandate of sequestration of the defendant's property.

2. The affidavit in support of such motion shall set out the relevant facts in regard to the cause of action and the absence of security, and shall further set out the statements of facts and grounds of belief from which the Court can infer that the defendant with intent to avoid payment of the debt or damage—

O. 88, r. 2. Requisites of affidavit.

(*a*) is about to quit the Island and will do so unless he be forthwith apprehended; or
(*b*) is fraudulently alienating his property; or
(*c*) has quitted the Island leaving property therein belonging to him, as the case may be.

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O. 88, r. 3. Security to be disclosed.

3. Such affidavit shall also, where the plaintiff shall be in possession of any security in part, set forth such security particularly and the value thereof, and such value shall be deducted from the amount of security or deposit to be required from the defendant under paragraph (*a*) of Rule 6 of this Order or from the value of the property to be sequestered under paragraph (*b*) of Rule 6 of this Order.

O. 88, r. 4. Deponent must have personal knowledge.

4. The person who makes the affidavit, whether he be the plaintiff or any other, must be a person having personal knowledge of the averments set out in the affidavit, and must in his affidavit swear or affirm that he deposes from his own personal knowledge of the matters therein contained.

O. 88, r. 5. Court to examine deponent.

5. Upon the presentation of such motion and affidavit, the Court shall examine the plaintiff or other deponent in regard to the averments contained in the affidavit and shall satisfy itself that sufficient grounds exist for the issue of a warrant or a mandate of sequestration, as the case may be.

O. 88, r. 6. Where averments established, warrant or sequestration to issue.

6. Where the Court is so satisfied, the Court may, as the case may be, order—

(*a*) a warrant in Form 159 in Appendix I to arrest the defendant and to bring him before the Court unless he shall give bail in or make deposit of such amount, which shall be specified in the warrant, as the Court shall consider reasonable and dequate, or

(*b*) a mandate of sequestration in Form 160 in Appendix I to issue to the Fiscal directing him to seize and sequester the lands, buildings, goods, money, securities in money and debts, wheresoever and in whose custody soever the same may be, to such value (to be specified in the mandate) as the Court shall think reasonable and adequate, and to detain or secure the same to abide the further orders of the Court.

Explanation—Sequestration of immovable property has the effect of sequestration of rents and profits which proceed thereout, pending the sequestration.

O. 88, r. 7. Plaintiff to give security before issue of warrant or mandate.

7. (1) Before issuing the warrant of arrest or the mandate of sequestration, the Court shall require the plaintiff to enter into a bond in Form 161 in Appendix I, with or without sureties in the discretion of the Court, 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 any other person in whose possession such property shall have been so sequestered.

Damages may be awarded.

(2) It shall be competent to the Court to award such damages and costs of action either to the defendant or to any other person in whose possession such property shall have been so sequestered as to it shall seem fit and proper.

O. 88, r. 8. Warrant of arrest to be executed within one month.

8. A warrant of arrest issued under this Order may be executed within one calendar month from the date thereof, including the date of its issue and not afterwards, in any part of the Island.

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O. 88, r. 9. Person arrested to be discharged on giving security to Fiscal.

9. The defendant being arrested on such warrant shall at once be brought up before the Court by which it was issued in custody of the Fiscal, unless he shall give security in the sum specified in the warrant 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 authorised to discharge him.

O. 88, r. 10. Or give security to Court.

10. If the defendant be brought before the Court under a warrant, or if he appears in discharge of the bail taken by the Fiscal, he must give security (Form 163 in Appendix I.) 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.

O. 88, r. 11. Otherwise to be committed to prison.

11. If the defendant is unable or unwilling to give such security he shall be committed to prison (Form 164 in Appendix I) 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 Order XLVI in regard to imprisonment in execution of a decree for money.

O. 88, r. 12. Not to be imprisoned for longer than three months before decree.

12. No defendant shall in any case be imprisoned under the last preceding rule for a longer period than three months before decree.

O. 88, r. 13. Defendant instead of furnishing security may make payment to Fiscal.

13. (1) The defendant may, instead of giving security as is hereinbefore 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 in the warrant.

Amount deposited to be applied in satisfaction of any decree entered.

(2) 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.

O. 88, r. 14. Punishment for wilful false statement.

14. Any person wilfully making any false statement in any affidavit sworn or affirmed to by him or in the giving of oral testimony by him in the course of any of the proceedings under this Order may be punished as for contempt of Court, besides being liable to be tried and punished under the Penal Code for the offence of giving false evidence where such statement is on oath or affirmation.

O. 88, r. 15. Manner of sequestration.

15. The sequestration ordered in pursuance of Rule 6 of this Order shall be made in the manner provided for sequestration or seizure of property preliminary to sale thereof in execution of a decree for money.

O. 88, r. 16. Manner of investigating claim to property sequestered.

16. Where any claim be preferred to the property sequestered before judgment, such claim shall be investigated in the manner provided for the investigation of claims to property seized in execution of a decree for the payment of money, and the provisions of Order XXXIX shall *mutatis mutandis* apply thereto.

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O. 88, r. 17. Costs and damages where sequestration wrongful.

17. Where upon any such investigation or upon the trial of an action instituted under Rule 25 of Order XXXIX, 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.

O. 88, r. 18. Effect of sequestration on prior rights.

18. 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.

O. 88, r. 19. Subsequent seizure of property under decree unnecessary.

19. Where property is under sequestration by virtue of the provisions of this Order, and a decree is given in favour of the plaintiff, it shall not be necessary again to seize the property as preliminary to sale or delivery in execution of such decree.

O. 88, r. 20. Compensation for obtaining arrest or sequestration on insufficient grounds.

20. (1) Where an arrest or sequestration has been effected under the provisions of this Order, and—

(*a*) it appears to the Court that such arrest or sequestration was applied for on insufficient grounds, or

(*b*) the action of the plaintiff is dismissed and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court and the Court may upon such application award against the plaintiff by its order such amount as it deems a reasonable compensation to the defendant for the expense or injury caused to him.

Order for award bars subsequent action.

(2) The award under this Rule shall bar any action for compensation in respect of such arrest or sequestration.

ORDER LXXXIX

Temporary Injunctions

O. 89, r. 1. When injunction may be granted.

1. Every application in any action for a temporay injunction for any of the purposes mentioned in section 86 of the Courts Ordinance, except in cases where an injunction is prayed for in the plaint in the action, shall be by petition, and whether prayed for in the plaint or in the petition, 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.

O. 89, r. 2. Disobedience to injunction how punished.

2. 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.

O. 89, r. 3. Court may order notice on opposite party.

3. (1) 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 direct notice of the application for the same to be served on the opposite party, and such notice shall be accompanied by a copy of the affidavit.

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(2) Where, however, 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.

Defendant to be noticed where he has answered.

4. Before issuing the injunction, the Court in every case where it grants the injunction without notice to the opposite party shall, and in all other cases may, require the party applying for the injunction to enter into a bond with or without sureties in the discretion of the Court, to secure the payment, if any, of all compensation, damages and costs payable to, sustained by or awarded to the opposite party by reason of such issue.

O. 89, r. 4. Security to be given before issue of injunction.

5. 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.

O. 89, r. 5. Effect on corporation, etc.

6. An order for an injunction made under this Order 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.

O. 89, r. 6. How set aside or varied.

7. (1) 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 sum as it deems a reasonable compensation for the expense or injury caused to such party by the issue of the injunction.

O. 89, r. 7. When Court may award compensation to respondent.

(2) An award under this rule shall bar any action for compensation in respect of the issue of the injunction.

Award bars action.

ORDER XC

Interim Orders

1. 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 matter of such action or sequestered before judgment in such action, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold.

O. 90, r. 1. Order for sale of perishable property.

2. The person 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.

O. 90, r. 2. Proceeds of sale to be deposited in Court.

3. (1) 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 which is the subject matter of such action or as to which any question may arise therein;

O. 90, r. 3. Order for detention, preservation, or inspection of property.

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(*b*) for all or any of the purposes aforesaid authorise 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 authorise 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.

Entry to be governed by provisions as to execution of process.

(2) The provisions as to execution of process shall apply *mutatis mutandis* to persons authorised to enter under this Rule.

O. 90, r. 4.
Application herein to be made by way of summary procedure.

4. (1) Every application under either Rule 1 or Rule 3 of this Order 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.

When application may be made.

(2) Any such application may be made by a plaintiff after service of summons, or by a defendant after he has appeared in the action.

O. 90, r. 5.
Deposit of money, etc., in Court.

5. Where the subject matter of an action is money, or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party with or without security, subject to the further direction of the Court.

ORDER XCI

Receivers

O. 91, r. 1.
When Court may appoint a receiver.

1. (1) Where 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 matter 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, whether before or after decree; and if need be,

(*b*) remove any person from the possession or custody thereof;

(*c*) commit such property to the possession, custody or management of such receiver; and

And give him powers over subject of or action or sequestration.

(*d*) confer upon such receiver 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 documents in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Powers of Court not to exceed those of parties themselves.

(2) Nothing in this Rule shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the party to the action has not a present right so to remove.

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O. 91, r. 2. Remuneration.

2. The Court may grant to such receiver such fee or commission as remuneration for his services as the Court thinks fit.

O. 91, r. 3. Notice of application.

3. Notice of an application (which shall be by way of summary procedure) for the appointment of a receiver under this Order shall be served on the opposite party, unless he has left the Island 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.

O. 91, r. 4. Receivers to give security and pass accounts.

4. Every receiver so appointed shall—

(*a*) furnish such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property;

(*b*) file 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.

O. 91, r. 5. Power of Court to remove or require fresh security.

5. The Court may at any time, on sufficient cause shown therefor, remove a receiver or require him to give fresh security.

O. 91, r. 6. When writ may issue against receiver.

6. Where a receiver—

(*a*) fails to file his accounts at such periods and in such form as the Court directs, or

(*b*) fails to pay the amount due from him as the Court directs, or occasions loss to the property by his wilful default or gross negligence,

the Court may issue writ to realise by seizure and sale of the property of such receiver, the amount found to be due from him, or any loss occasioned by him, and apply the proceeds thereof, to make good the amount due from him or loss occasioned by him.

ORDER XCII

Arbitration in Actions

O. 92, r. 1. Matter in difference in an action may by consent of parties be referred to arbitration.

1. Where in any action all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may at any time before judgment is pronounced apply, in person or by their respective Proctors, specially authorised in writing in this behalf, to the Court for an order of reference.

O. 92, r. 2. Mode of submission. Special authority to be given to Proctor.

2. (1) Every such application shall be in writing, and shall state the particular matters sought to be referred.

(2) The written authority of the Proctor to make such application 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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O. 92, r. 3. Appointment of arbitrator.

3. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

O. 92, r. 4. When Court may appoint arbitrator.

4. Where the parties cannot agree with respect to such appointment, or if the person appointed refuses to accept the office of arbitrator, and the parties agree that the appointment shall be made by the Court—the Court shall appoint an arbitrator.

O. 92, r. 5. The matter in difference to be referred to arbitrator by order of Court.

5. (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 shall specify such time in the order.

Time may be fixed at any stage.

(2) Where no time has been fixed in the reference to the arbitrator, the Court shall at any time subsequent thereto fix the time for the delivery of the award.

Court shall deal with subject-matter of arbitration.

(3) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this Order, deal with such matter in the same action.

O. 92, r. 6. Appointment of an umpire.

6. (1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

(*a*) by the appointment of an umpire; or

(*b*) by declaring that if the majority of the arbitrators agree, the decision of the majority shall prevail; 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 may determine.

Court to fix time for delivery of award.

(2) Where an umpire is appointed, the Court shall either at the time of such appointment or subsequently, fix such time as it thinks reasonable for making of his award in case he is required to act.

O. 92, r. 7. Power of Court to appoint arbitrator.

7. (*a*) Where an arbitrator or an umpire—

(i) dies; or

(ii) refuses or neglects to act or becomes incapable of acting; or

(iii) leaves the Island in circumstances showing that he will probably not return at an early date; or

(*b*) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire, and if within ten clear days after such notice has been served, or such further time as the Court may in each case allow, no arbitrator or umpire is appointed, as the case may be, the Court may on application by the party who gave the notice and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make order superseding the arbitration, and in such case shall proceed with the action.

O. 92, r. 8. Powers of umpire appointed after reference.

8. Every arbitrator or umpire appointed under Rule 6 or 7 of this Order shall have the like powers as if his name had been inserted in the order of reference.

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O. 92, r. 9. Power of Court to remove arbitrators or umpire for tardiness.

9. (1) The Court may of its own motion or on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable despatch in entering on and proceeding with the reference and making an award.

For misconduct.

(2) The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings.

No remuneration to arbitrator so removed.

(3) Where an arbitrator or umpire is removed under this section, he shall not be entitled to receive any remuneration in respect of his services.

Meaning of "proceeding with the reference".

(4) For the purposes of this section the expression "proceeding with the reference" includes, in a case where reference to the umpire becomes necessary, giving notice of that fact to the parties and to the umpire.

O. 92, r. 10. Where one of several arbitrators is removed vacancy may be filled.

10. (1) Where the Court removes an umpire who has not entered on the reference or an arbitrator (not being a sole arbitrator) or two or more arbitrators (not being all the arbitrators) the Court may, on the application of any party to the arbitration, appoint a person or persons to fill the vacancy or vacancies.

Where sole or all arbitrators are removed sole arbitrator may be appointed or arbitration superseded.

(2) Where the authority of an arbitrator or arbitrators or an umpire is revoked by Court, or where the Court removes an umpire who has entered on the reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration, either—

(*a*) appoint a person to act as sole arbitrator in the place of the person or persons removed, or

(*b*) order that the reference to arbitration shall cease to have effect with respect to the dispute referred.

New arbitrator to have same power as arbitrator removed.

(3) A person appointed under this section as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if his name had been inserted in the order of reference.

O. 92, r. 11. Court to issue process.

11. (1) The Court shall issue the same processes to the parties and witnesses whom the arbitrator or arbitrators or umpire desire to examine as the Court may issue in actions tried before it.

Court to punish contempt to arbitrators.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or 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.

O. 92, r. 12. Powers of arbitrator.

12. Without prejudice to the generality of powers vested in them, the arbitrator or arbitrators or umpire shall, have power to——

(*a*) administer oath to the parties and witnesses and examine them in relation to the matters in dispute;

(*b*) require or call for the production of all documents in their possession or power;

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(*c*) make an interim award;

(*d*) make the award conditional or in the alternative;

(*e*) correct in an award any clerical mistake or error arising from any accidental slip or omission;

(*f*) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrator or arbitrators or umpire, be necessary.

Explanation:

Any reference in this Order to an award includes a reference to an interim award.

O. 92, r. 13. Award may be in form of special case.

13. The arbitrators or umpire may state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special case of such question 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, which shall be taken and acted upon by the arbitrators as conclusive.

O. 92, r. 14. Costs may be awarded by arbitrator.

14. The costs of the reference and award shall be in the discretion of the arbitrator or arbitrators or umpire, who may direct to and by whom such costs or any part thereof shall be paid.

O. 92, r. 15. Extension of time for award.

15. Where from the want of the necessary evidence or information or from any other cause the arbitrator or arbitrators or umpire cannot complete the award within the period specified in the order, the Court may, if it think fit,

(*a*) whether the time for delivery of the award has expired or not, and whether the award has been delivered or not, enlarge from time to time the time for delivering the award; or

(*b*) make an order superseding the arbitration, and in such case shall proceed with the action.

O. 92, r. 16. When umpire may enter on the reference in lieu of arbitrators.

16. 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 delivering an award; or

(*b*) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

O. 92, r. 17. Award to be filed in Court.

17. 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 or their Proctors by the Court either in writing or orally.

O. 92, r. 18. Application to set aside or correct the award.

18. 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 arbitrator or arbitrators for reconsideration, on grounds mentioned in the next succeeding rules.

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19. The Court, may, by order, modify or correct an award——

O. 92, r. 19. When Court may correct award.

(*a*) where it appears that a part of the award is upon a matter not referred to arbitration, and 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; or

(*c*) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

20. (1) The Court may from time to time remit the award on any matter referred to arbitration to the reconsideration of the same arbitrator or arbitrators or umpire, upon such terms as it thinks fit——

O. 92, r. 20. When Court may remit award for reconsideration.

(*a*) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;

(*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.

(2) Where an award is remitted under paragraph (1) the Court shall fix the time within which the arbitrator or umpire shall at the time of remitting the award or subsequently submit his decision to the Court.

Time to be fixed for reconsidered award.

Provided that any time so fixed may be extended by subsequent order of the Court, whether such time has expired or not.

21. An award remitted under the last preceding rule becomes void on failure of the arbitrator or arbitrators or umpire to reconsider it.

O. 92, r. 21. When an award is void.

22. No award shall be set aside except on one of the following grounds, namely;

O. 92, r. 22. When may an award be set aside.

(*a*) that an arbitrator or arbitrators or umpire has misconducted himself or the proceedings;

(*b*) that either party has been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or arbitrators or umpire;

(*c*) that the award has been delivered—

(i) after the issue of an order by the Court superseding the arbitration and restoring the action; or

(ii) after the expiration of the period allowed or enlarged by Court for delivery of the award;

or

(*d*) that the award has been improperly procured or is otherwise invalid.

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O. 92, r. 23. When arbitration may be superseded.

23. Where an award becomes void under Rule 21 or is set aside, the Court shall make an order superseding the arbitration, and in such case shall proceed with the action.

O. 92, r. 24. Judgment to be according to the award.

24. (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and no application has been made to set aside the award, or an application has been made to set aside the award 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 pronounce judgment according to the award; or where the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Decree to follow.

(2) Upon the judgment so pronounced a decree shall be entered, and shall be enforced in manner provided in this Code for the execution of decrees.

Conditions of appeal.

(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.

O. 92, r. 25. Interest on award.

25. A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

O. 92, r. 26. Court may make order as to costs.

26. The Court may make such orders as it thinks fit respecting the costs of the arbitration, where any question arises respecting such costs and the award contains no sufficient provision concerning them.

O. 92, r. 27. Arbitration Agreement may be filed in Court.

27. (1) Where any persons have entered into an arbitration agreement, before the institution of any action with respect to the subject matter of the agreement, or any part of it, and where a difference has arisen to which the agreement applies, they or any of them may apply to a Court having jurisdiction in the matter to which the agreement relates that the agreement be filed in Court.

Meaning of arbitration agreement.

(2) The expression ' arbitration agreement ' means a written agreement to submit present and future differences to arbitration, whether the arbitrator is named therein, or not.

Summary procedure to apply to application.

(3) The application shall be by petition in the way of summary procedure.

Parties other than petitioner to be made respondents.

(4) The parties to the agreement other than the petitioner or petitioners shall be made respondents to such petition.

O. 92, r. 28. Court to order reference thereon.

28. 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 to the arbitrator appointed by the parties, whether in the agreement or otherwise, or where the parties cannot agree upon an arbitrator, the arbitrator appointed by the Court.

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O. 92, r. 29. Compulsory arbitration in respect of matters of account.

29. (1) Where an action wholly or in part relates 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 appointed by the parties, or if they cannot agree, or refuse to appoint them, by the Court itself upon such terms as to the costs and otherwise as such Court thinks reasonable.

Award to be treated as finding of Court.

(2) The award of the arbitrators or of the umpire shall be treated as if it were a finding of the Court on the particular matter referred to arbitration.

O. 92, r. 30. Arbitration proceedngs thereon to be governed by provisions of this Order.

30. The arbitration under the last two preceding rules shall proceed in accordance with, and shall be governed by, the other provisions of this Order, so far as they can be made applicable.

O. 92, r. 31. Power to stay legal proceedings where there is an arbitration agreement.

31. Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings in any Court against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceeding may, at any time after appearance and before filing or delivering answer or taking any other steps in the proceedings, apply to that Court to stay the proceedings; and that Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

O. 92, r. 32. Filing award in matter referred to arbitration without intervention of Court.

32. Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may within six months apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

O. 92, r. 33. Application therefor.

33. The application shall be by petition in the way of summary procedure to which the parties to the arbitration other than the petitioner or petitioners shall be named respondents.

O. 92, r. 34. Filing and enforcement.

34. Where the Court is satisfied that the matter has been referred to arbitration, and that an award has been made thereon, and where no ground such as is mentioned or referred to in Rule 20 or 22 of this Order is proved, the Court shall order the award to be filed, and such award shall take effect as an award made under, and be governed by, the provisions of this Order.

ORDER XCIII

Proceedings on Agreement of Parties

O. 93, r. 1. Agreed statement of case for decision of Court.

1. (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

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(*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.

Requisites of statements.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

O. 93, r. 2. When value of property is to be stated therein.

2. Where 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.

O. 93, r. 3. What Court has jurisdiction.

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained may be filed in 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.

Agreement to be filed.

(2) And for this purpose the agreement 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.

Contents of petition.

(3) The petition shall expressly state, if such be the case, in addition to any other relevant facts, 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.

To be verified by affidavit.

(4) Such petition shall be verified by affidavit and the prayer of the petition shall conform to the stipulations of the agreement.

O. 93, r. 4. Judgment and decree thereon.

4. 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 entered, and shall be enforced in the manner provided in this Code for the execution of decrees.

ORDER XCIV

Summary Procedure on Negotiable Instruments

O. 94, r. 1. Action by summary procedure on negotiable instruments.

1. (1) All actions upon bills of exchange, promissory notes or cheques may, in case the plaintiff desires to proceed under this Order, be instituted by presenting a plaint in the form prescribed by this Code, but the summons shall be in Form No. 170 in Appendix I or in such other form as may from time to time be prescribed.

Shorter period for appearance in special circumstances.

(2) The period of seven days fixed in the summons may in special circumstances be reduced to a shorter period by order of Court upon application made in that behalf.

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O. 94, r. 2.
Defendant not to defend except with leave.

2. (1) Where summons issues under this Order, the defendant shall not be entitled to defend the action, unless he shall enter appearance within the time fixed in the summons and obtains leave from the Court as hereinafter provided so to defend.

Where no leave obtained, judgment may be entered.

(2) In default of the defendant entering appearance and obtaining leave as aforesaid, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, in the instrument, to the date of decree, and further interest on the aggregate sum at the rate allowed by law up to the date of payment, and for such sum by way of costs as the Court may allow at the time of making the decree.

Recovery of expenses incurred in noting.

(3) The holder of every dishonoured bill of exchange or promissory note shall be entitled to include in his claim the expenses incurred in noting such bill of exchange or promissory note for non-acceptance, or non-payment, or otherwise, by reason of such dishonour.

O. 94, r. 3.
Where sufficient defence disclosed, leave to defend to be granted.

3. (1) The Court shall, upon application by the defendant and after hearing the plaintiff, give leave to defend the action upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits which disclose—

(*a*) a prima facie defence (including a defence of counter-claim or set off) in regard to the good faith of which there are no reasonable doubts, or

(*b*) such facts as would make it incumbent on the holder to prove consideration, or

(*c*) such other facts as the Court may deem sufficient to support the application, or

(*d*) such other grounds as would establish that the action should not have been instituted under the provisions of this Order.

Leave may be subject to terms and conditions.

(2) Leave to defend may be given conditionally or subject to such terms as to payment into Court of, or giving security in such sum as the Court may fix, or as to framing and recording issues, or otherwise as the Court thinks fit.

Application for leave to be served on plaintiff's Proctor.

(3) The defendant shall serve a copy of his application on the plaintiff or his Proctor at the same time as he files his application in Court.

O. 94, r. 4.
Where no leave obtained or conditions of leave not complied with judgment to be entered.

4. (1) Where no leave is obtained by or granted to the defendant, or where leave is granted subject to conditions and terms and such conditions and terms are not complied with by the defendant, judgment and decree may be entered in favour of the plaintiff forthwith on such failure, refusal or non-compliance as the case may be.

Without leave to defend, application for instalments may be made.

(2) Notwithstanding anything contained in the preceding paragraph, it shall be competent to the Court before entering judgment to consider any application by the defendant to pay the plaintiff's claim by instalments and, if satisfied that the application should be granted, to direct by its judgment the payment of the claim by instalments, subject to such terms and conditions as to giving security or otherwise as to it shall seem meet.

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O. 94, r. 5. When defendant deemed to appear for purposes of Order 17.

5. Where leave is granted unconditionally or is granted subject to conditions or terms, the date on which such unconditional leave is granted or the date on which the conditions or terms are complied with in accordance with the order of Court shall be deemed to be the date of appearance of the defendant for the purposes of Order XVII but no notice of appearance as required by Rule 5 of that Order need be given to the plaintiff or his Proctor.

O. 94, r. 6. Trials to be put on short list.

6. The trial of an action instituted under this Order shall be fixed for an early date, as may best be calculated to promote the ends of justice, on the Short Trial List prescribed by Rule 16 of Order XXVII.

O. 94, r. 7. Saving clause.

7. Save as provided by this Order, the procedure in actions under this Order shall be governed by the provisions of this Code in regard to new procedure actions.

O. 94. r. 8. When Court may set aside decree, etc.

8. 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 the defendant to appear and defend the action, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

ORDER XCV

Appeals and Revisions

O. 95, r. 1. Form of appeal.

1. (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.

To be presented to Court of first instance and within what time.

(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 judgment or order appealed against was pronounced, or made, 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.

O. 95 r. 2. Petitions of appeal to be drawn by Advocate or Proctor.

2. (1) All petitions of appeal shall be drawn and signed by some Advocate or Proctor, or else the same shall not be received:

Or may be stated orally to Secretary or Chief Clerk.

Provided always that any party desirous to appeal may within the time limited for presenting a petition 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, and be received as the petition of appeal of such party without the signature of any Advocate or Proctor.

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(2) Where the Secretary or Chief Clerk has reason to believe that the statement the party makes is based on a document prepared by some person other than the party himself, the Secretary or Chief Clerk shall take the party before the Judge, and if the Judge is satisfied, after questioning the party and perusing any documents he may have, that such document had been prepared by a person other than the party himself, the Judge shall make order that no statement of the grounds of appeal shall be taken down by the Secretary or Chief Clerk.

Where party makes statement from document prepared by another, Judge may direct Secretary not to take it down.

(3) Where the Judge does not make an order under the preceding paragraph, the Secretary or the Chief Clerk shall proceed to comply with the provisions of paragraph (1) of this rule.

Otherwise Secretary to proceed to take down statement.

(4) The order made by the Judge under paragraph (2) shall be final and shall not be subject to an appeal.

Order of Judge final.

O. 95, r. 3.

3. (1) Except in cases where security is dispensed with or unless security is waived by the respondent, the appellant shall within a period of ten days, or where such Court is a Court of Requests, seven days, from the date when the petition of appeal was presented to the Court of first instance, 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 petition of appeal was so presented apply to the Court to fix the security as hereinafter directed for the respondent's costs of appeal.

Application to Court to fix security.

(2) (*a*) Security shall be dispensed with where the appellant is—

When security may be dispensed with.

(i) the Crown;
(ii) the wife in a matrimonial action;
(iii) an insolvent in respect of insolvency proceedings.

(*b*) Waiver of security for costs shall be filed or notified to Court within a period of ten days, or where such Court is the Court of Requests, seven days, from the date when the petition of appeal was presented to the Court of first instance.

(3) Security shall not be deemed to be waived where the appellant pays money or deposits any other property with his Proctor, or where such money or other property is deposited with the respondent's Proctor, to be held by any such Proctor by way of security for costs of appeal.

When security not deemed waived.

(4) Any Proctor who receives money or property to be held by way of security as aforesaid shall forthwith pay or deposit the same to the credit of the action in which the appeal is preferred.

Proctor to deposit money, etc., received as security.

(5) Any Proctor who contravenes the provisions of the preceding paragraph shall be deemed to be guilty of the offence of contempt of Court and to be liable to be punished accordingly.

Proctor not paying money into Court guilty of contempt.

ILLUSTRATIONS

1. Appellant pays a sum of Rs. 100 to his Proctor as security for costs of appeal. Respondent's Proctor consents to appellant's Proctor retaining the money in his hands; security is not waived notwithstanding any statement to that effect by the Proctors. Appellant's Proctor also renders himself liable to be punished as to contempt of Court, unless he deposits the money forthwith in Court.

2. Appellant's Proctor pays the amount received by him from his client as security for costs of appeal to the respondent's Proctor who the appellant's Proctor agrees should retain the money in his hands. The consequences would be similar to those set out in the previous illustration.

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O. 95, r. 4. Amount and nature of security to be fixed.

4. On the day specified in the notice, or on such other day to which the Court may postpone or adjourn the matter, or on any other day as the Court may fix, the Court shall after hearing the appellant and the respondent fix the amount and nature of the security.

O. 95, r. 5. Appellant to furnish security as ordered.

5. Within a period of ten days, or where the Court is a Court of Requests, seven days, from the date on which the amount and nature of the security shall be fixed, the appellant shall furnish such security, and in the event of such security being accepted by the Court, it shall make an order to that effect.

O. 95, r. 6. Notice of appeal to be served.

6. The appellant shall within a period of ten days, or where such Court is a Court of Requests, seven days—

(*a*) from the date of such acceptance of security under the last preceding Rule, or

(*b*) where security is waived, from the date of waiver, or

(c) where security is dispensed with, from the date of presentation of petition of appeal.

serve on the respondent a notice of the appeal in Form No. 172 in Appendix I, together with a copy of the petition of appeal, and shall file in Court a written acknowledgment of the receipt of such notice or the registered receipt in proof of such service.

O. 95, r. 7. Computation of time.

7. (1) The periods specified in Rules 3, 5 and 6 shall be computed as is directed for the computation of the periods of ten days and seven days in paragraph (2) of Rule 1 of this Order.

Notice, how to be served.

(2) The notices required by Rules 3 and 6 shall be given by the Proctor for the appellant, or where the appellant is not represented by a Proctor, by the appellant himself to the respondent's Proctor, or where the respondent is not represented by a Proctor, to the respondent, in accordance with the provisions of Order XXIV.

When Court may extend time for service of notice.

(3) Where the service of any notice required by any of the preceding Rules is disputed and the Court on summary inquiry is satisfied that in all the circumstances the appellant should be granted relief, or where through no neglect or default on the part of the appellant service of any such notice could not have been effected on the respondent or the acknowledgment of registered receipt as required by Rule 6 could not have been obtained or filed, the Court may extend the time for service of such notice or the obtaining and filing of the acknowledgment or registered receipt, and by its order fix, if necessary, the date for the taking of the next succeeding step.

Order final.

(4) An order made under the preceding paragraph shall be final and shall not be subject to an appeal.

Objection in regard to service of objection of notice not taken in lower Court deemed waived.

(5) Any objection based on the ground that any notice required by the preceding Rules had not been served, given or received, which could have been taken in the Court of first instance and has not in fact been so taken, shall be deemed to have been waived by the respondent.

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ILLUSTRATIONS

1. The Proctor for the appellant may hand over the notice personally to the Proctor for the respondent in terms of Rule 2 of Order XXIV or may leave it at the registered address or post it in a registered envelope addressed to the registered address of the respondent as required by paragraphs (*a*) and (*b*) of Rule 1 of the same Order.

2. The respondent has failed to furnish an address as required by Order XII; the notice may be left with the Secretary of the Court in terms of Rule 3 (2) of Order XII, and an acknowledgment from the Secretary filed; such acknowledgment will be treated as that of the respondent.

3. Proctor for appellant states he left the notice required under paragraph (1) of Rule 3 at the office of the Proctor for respondent, which is the registered address of the respondent, but respondent's Proctor states he did not receive it. Court may after summary investigation and if satisfied that relief should be granted, extend the time for giving notice and fix the date for determining the amount and nature of security.

O. 95, r. 8.
Petition of appeal and proceedings to be forwarded to Supreme Court.

8. (1) On the acknowledgment or the registered receipt being filed, the Court shall as speedily as possible forward to the Supreme Court, the petition of appeal, together with all the papers and proceedings in the case relevant to the judgment decree or order appealed against, retaining, however, an office copy of the decree or order appealed against for the purposes of execution if necessary.

Certificate of Secretary.

(2) Such petition of appeal, papers and proceedings shall be accompanied by a certificate (Form No. 173 in Appendix I) from the Secretary or Clerk of the Court, stating the dates of the institution and decision of the case, in whose favour it was decided, the respective days on which the petition of appeal was filed and security given or waived and whether either the plaintiff sued or the defendant defended as a person of limited means.

O. 95, r. 9.
Appeal to abate where no security furnished.

9. Except in cases where security has been dispensed with or waived when a petition of appeal has been presented, and the appellant has failed to give security, the appeal shall be held to have abated and the further proceedings prescribed in the preceding rules shall not be necessary.

O. 95, r. 10.
Supreme Court to grant relief in case of mistake, etc.

10. In the case of a failure to comply with, or in the case of any mistake, omission or defect in complying with the provisions of the preceding rules save Rule 1 by or on the part of any appellant, if objection based on the ground of such failure, mistake, omission or defect is taken to the hearing of the appeal, 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.

O. 95, r. 11.
Security to be by bond and with surety.

11. (1) The security to be required from a party appellant shall be by bond (Form No. 174 in Appendix I) 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.

Bond may be executed by Proctor for the appellant.

(2) The bond shall be executed before the Judge by either the appellant or his Proctor, where the proxy empowers such Proctor to execute a mortgage of immovable property or hypothecate the sum of money that may be tendered or deposited as security for costs of appeal.

Bond to be in favour of Secretary.

(3) The provisions of paragraph (2) of Rule 2 and of Rule 4 of Order LXXX shall apply to such bond.

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O. 95, r. 12.
Language and form of appeal.

12. The petition of appeal shall be distinctly written in the English language upon good and suitable paper, shall be duly stamped, 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 from—such statement to be set forth in duly numbered paragraphs;

(*f*) a demand of the form of relief claimed.

O. 95, r. 13.
Where petition to be rejected.

13. (1) Where the petition of appeal is not drawn up in the manner in the last preceding rule 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.

Reasons for rejection to be recorded.

(2) Where the Court rejects under this rule any petition of appeal, it shall record the reasons of such rejection.

Amendment to be attested by Judge.

(3) Where 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.

Relief in respect of insufficiently stamped petition of appeal.

(4) Where the petition of appeal is not duly stamped the Court whether original or appellate shall have power to extend the time for supplying any deficiency if the appellant satisfies the Court that the deficiency was due to an error or mistake or that he had reasonable grounds for the failure to duly stamp the petition of appeal.

O. 95, r. 14.
When one of several plaintiffs or defendants may appeal against whole decree.

14. Where there are more plaintiffs or more defendants than one in an action, and the decree appealed from 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 from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

O. 95, r. 15.
One petition of appeal in cases consolidated or tried at the same time.

15. Where two or more actions have been consolidated in terms of Rule 1 of Order XXVII, or several actions are tried at the same time in terms of Rule 2 of the same Order, and one judgment is pronounced in respect of the consolidated or the several actions tried at the same time, one petition of appeal may be filed.

O. 95, r. 16.
To be stamped as several petitions of appeal.

16. (1) For purposes of stamp duty payable to the Crown in respect of all documents filed in connection with an appeal, such petition of appeal shall be deemed to be a separate petition of appeal in each of the actions so consolidated or tried at the same time which may be the subject of appeal.

Numbers of actions appealed in to be set out.

(2) (*a*) The numbers of the separate actions as may be the subject of appeals and the class of each of such actions shall be inserted in the petition of appeal so filed.

(*b*) Such petition of appeal shall contain separately the names of the respective appellants and respondents in respect of each action which may be the subject of appeal.

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O. 95, r. 17. Consideration affecting fixing of security.

17. In fixing the amount of security for costs, the Court shall take into consideration the identity of the interests of the parties to the several appeals and determine the separate amounts in which such security is to be given or furnished by the several appellants and allocate such security among the several respondents, where there are more than one.

ORDER XCVI

Typewritten Copies

O. 96, r. 1. Appellant to provide typewritten copies of record.

1. In every civil appeal preferred after the date of the passing of these rules, the appellant shall provide, in manner hereinafter prescribed, for the use of each of the Judges who shall sit on the hearing of the appeal, a typewritten copy of so much of the appeal.

O. 96, r. 2. Record of the case as may be necessary for the decision of the application for typewritten copies.

2. (1) The appellant shall apply in writing to the Court of first instance within a period of twenty days, or where such Court is a Court of Requests, ten days, from the date of presentation of the petition of appeal, for typewritten copies of the record, stating in such application whether copies of the whole or portions only, if so, of what portions of the record, are necessary for the decision of the appeal.

Value and nature of action to be stated.

(2) Every such application shall state the value of the subject-matter and the nature of the action or proceedings in which the appeal is preferred, and shall be accompanied by the charges hereinafter prescribed.

Deeds and printed commercial documents not in their entirety.

(3) Unless expressly applied for, a brief summary only shall be typed, setting out, in respect of—

(*a*) any deed produced:

(i) the distinguishing mark, number or letter assigned by the Judge at the trial;

(ii) the number assigned to the deed by the notary and the name of the notary;

(iii) the date of the deed;

(iv) the names of grantor and grantee;

(v) the nature of grant, whether sale, gift, lease, mortgage, etc.

(vi) (A) the purchase price in the case of a sale,

(B) the value in the case of a gift,

(C) the capital sum lent and rate of interest in the case of a mortgage, or

(D) the rent reserved, the date of the commencement and term of duration in the case of a lease;

(vii) the description of the parcel or parcels relevant to the action; (where the description of the parcel in a deed bearing a subsequent distinguishing mark is the same as that in a deed bearing an earlier distinguishing mark, it shall be sufficient to make a note that the description of the parcel in the deed bearing the subsequent distinguishing mark is the same as that in the deed bearing the earlier distinguishing mark);

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(viii) whether the consideration, if any, and if so how much, passed before the notary according to his attestation;

(*b*) any printed documents (other than negotiable instruments) relating to commercial cases, such as bills of lading, charter parties, policies of insurance, and other documents—

(i) the distinguishing mark, number or letter assigned by the Judge at the trial;

(ii) the number, if any, the date, the nature and the names of the parties to the document.

Specific application to be made for special parts of deeds and commercial documents.

(4) Where the appellant or respondent desires to have typed any other part of the deed or the commercial document aforesaid, he shall expressly and specifically indicate in his application such other portions of the deed or document as may be required by him for the purpose of his case.

Time limit for making such application.

(5) The application for typing such other part of the deed or of the commercial document shall be made in all cases before the expiry of one month after the last date allowed for making the application for typewritten copies:

Provided, however, that the Court may extend the time for such application if it is satisfied that in all the circumstances the interests of justice demand such an extension.

O. 96, r. 3. Standard rate of charges.

3. (*a*) The scale of charges embodied in Appendix V shall be in respect of typewritten copies not exceeding 30 pages or 75 folios, a folio to consist of 120 words.

(*b*) Whenever a typewritten copy exceeds the standard of 30 pages or 75 folios, the Secretary or Chief Clerk, as the case may be, shall require payment for every additional 15 pages or 37½ folios or fraction thereof, at a rate equal to 50 per cent. of the amount charged for the first 30 pages or 75 folios by notice addressed to the appellant or his Proctor.

O. 96, r. 4. Payment of fees in cash.

4. Payments for copies shall be made in cash to the Secretary of the District Court or to the Chief Clerk of the Court of Requests, as the case may be, and a receipt obtained for the payment on the prescribed form.

O. 96, r. 5. Allocation of charges.

5. The Minister of Justice shall be entitled to prescribe the manner of appropriation and allocation of the charges so made.

O. 96, r. 6. Copies for appellant.

6. (1) On receipt of such application and payment in terms of Rules 3 and 4 of this Order, the Court shall furnish the appellant, as soon as possible, with the typewritten copies applied for.

Copies for Judges.

(2) The Court shall also cause copies to be made for the use of the Supreme Court and shall forward the same to the Registrar of the Supreme Court.

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O. 96, r. 7.
Number of copies to be issued.

7. Exclusive of the typewritten copies for the use of the Judges—

(*a*) one typewritten copy only shall be furnished to the appellant, unless he shall have stated in his application that additional copies will be required; and

(*b*) not more than two copies in all shall be furnished, unless the Court shall think fit, in exceptional cases, to direct that an additional copy or copies shall be prepared;

(*c*) no subsequent application for additional copies shall be entertained by Court.

No later application for copies.

O. 96, r. 8.
In case of standard copy, record to be forwarded in two months.

8. Where the copy does not exceed the standard of 30 pages, the Court shall forward the record along with the copies for the use of the Supreme Court, at latest, as soon as a period of two months has elapsed from the date of application for the typewritten copy or explain the delay.

O. 96, r. 9.
Registrar may call for record in case of delay.

9. (1) Whenever the Registrar of the Supreme Court is satisfied that the preparation of typewritten copies is being unnecessarily delayed in any Court of first instance, he is empowered to call for the record of such case and to cause the preparation or completion of typewritten copies to be made in the Registry of the Supreme Court, on the same terms and rates as those referred to in this order.

In such event charges to be paid to Registry, S.C.

(2) The Court of first instance shall thereupon remit to the Registrar the charges paid to it for copies.

Registrar to have same powers as Secretary himself.

(3) Where the typewritten copies are made in the Registry of the Supreme Court, the Registrar shall have the same powers as those vested in the Secretary or Chief Clerk of the Court of first instance under the provisions of Rule 3 of this Order.

O. 96, r. 10.
Where copy exceeds standard, record to be forwarded within three months.

10. Where the copy exceeds the prescribed standard, the record shall be forwarded within a period of three months from the application, and the Registrar shall deal with any case of delay in the same manner as has been laid down for standard copies.

O. 96, r. 11.
Weekly list of appeals in which security is furnished or waived to be forwarded to Registrar, S.C.

11. (1) Every Court of first instance shall forward weekly to the Registrar of the Supreme Court a list containing the following particulars in respect of all cases in which petitions of appeal have been filed and in respect of which during the previous week security has either been furnished or been waived:—

(*a*) Name of the Court;

(*b*) Number of the case;

(*c*) Class of case;

(*d*) Nature of case;

(*e*) Whether appeal is interlocutory or final, except in appeals from Courts of Requests;

(*f*) Names of appellant and respondent;

(*g*) Date of judgment, decree or order appealed from;

(*h*) Date of furnishing or of waiver of security.

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List to include appeals where security dispensed with.

(2) Such list shall also include the particulars aforesaid in respect of cases filed during the previous week in which security is dispensed with in terms of paragraph (2) of Rule 3 of Order XCV, and in lieu of the date in item (*h*) of the particulars aforesaid, a statement that security is dispensed with shall be entered.

O. 96, r. 12. Numbering and listing of appeals.

12. On the Registrar receiving the weekly lists referred to in the last preceding rule, he shall allot to each such appeal a number and shall 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.

O. 96, r. 13. Costs of typewritten copies.

13. The fees paid in respect of all typewritten copies furnished under these rules shall be costs in the appeal.

O. 96, r. 14. Abatement of appeal on default of application for copies.

14. Where the appellant fails—

(*a*) to make application for typewritten copies in accordance with the requirements of these rules; or

(*b*) to pay the additional charges due under Rule 3 or 9 of this Order, within one month from the date of the notice requiring him to do so.

the appeal shall be deemed to have abated.

O. 96, r. 15. Relief may be granted in certain circumstances for failure.

15. (1) Where within a reasonable time of the date when the appeal shall have been deemed to have abated under the last preceding rule, the appellant satisfies the Court of first instance that any deficiency in respect of the payment of charges was due to an error or mistake, or that he had reasonable grounds for the failure to comply with the requirements of these rules in respect of the application for typewritten copies, or of payment of additional charges, the Court may, if satisfied that no material prejudice has been caused to the respondent, and that in all the circumstances relief should be afforded to the appellant, make order that the appeal shall not be deemed to have abated, notwithstanding the provisions of the last preceding rule and if it think fit, extend the time for complying with the rules.

No appeal from order granting relief.

(2) No appeal shall lie from an order granting relief under this Rule.

O. 96, r. 16. Supreme Court may grant relief upon hearing.

16. Where objection is taken to the hearing of an appeal on the ground that the appeal must be deemed to have abated by reason of the failure on the part of the appellant to comply with the provisions of these rules in regard to making payment of the proper charges or to the application for typewritten copies or for the payment of additional fees, the Supreme Court may exercise the same powers as may have been exercised by the Court of first instance on an application made to the latter Court by the appellant under the last preceding Rule.

O. 96, r. 17. Respondent.

17. The provisions of these rules shall, as far as is practicable, apply to any respondent to any appeal. But no delay or default on the part of a respondent in applying for typewritten copies shall prevent the appeal from coming on for hearing in accordance with the provisions of this Civil Procedure Code.

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ORDER XCVII

Listing of Appeals

O. 97, r. 1. Interpretation.

1. In these rules—

"Daily List" means a list of the cases for argument on a particular day.

"Peremptory List of Major Appeals" means a list of District Court appeals, whether final, interlocutory, or criminal, which have been awaiting disposal for six months or longer.

"Peremptory List of Minor Appeals" means a list of appeals from Courts of Requests or Magistrates Courts which have been awaiting disposal for four months or longer.

O. 97, r. 2. Preparation of daily list.

2. (1) The "daily lists" shall be prepared for a period of four to five weeks at a time (hereinafter referred to as "current daily list") at a listing meeting.

Registrar to fix date of listing meeting.

(2) The date of such listing meeting shall be fixed by the Registrar or such other officer as may be deputed in that behalf.

Peremptory list weeks.

(3) Subject to such directions as the Chief Justice may from time to time give at each listing meeting there shall be set apart two separate weeks, one for the hearing of major appeals, and the other for the hearing of minor appeals, in respect of cases on the peremptory lists.

O. 97, r. 3. Daily list to be exhibited on notice board.

3. (1) The daily list for each day will be exhibited in the afternoon of the preceding day, except in the case of the list for Monday, which will be exhibited on the preceding Friday.

Similarly, peremptory list.

(2) The peremptory lists will also be exhibited on the Notice Board on the Friday preceding the date of the Listing Meeting, specifying the weeks set apart for the hearing of the cases therein.

O. 97, r. 4. Application in advance for cases to stand out to be made to Chief Justice in writing.

4. (1) Applications made in advance for a case to stand out of the daily list on the ground of illness of Counsel shall be made in writing to the Chief Justice, or in his absence to the next senior Judge, with the consent of Counsel for the opposite party.

In other cases to the presiding Judge.

(2) Application made on the day fixed for hearing for cases to stand out of the daily list shall be made in open Court to the Judge or Judges before whom the case is listed to be heard.

O. 97, r. 5. Cases on peremptory list not to be permitted to stand out excepting for grave reasons.

5. No cases on the peremptory lists will be permitted to stand out during the week set apart for the hearing of such cases, save for reasons sufficient in the opinion of the Court or a Judge thereof, as the case may be, such as unexpected illness or some grave domestic reason, but shall not include engagement in another Court, civil or criminal.

O. 97, r. 6. Case allowed to stand out of daily list to be fixed for date on the current daily lists.

6. Any case allowed to stand out of the daily list shall, unless in the opinion of the Court or Judge there are special circumstances which justify the allowance of the case standing out of the current daily lists altogether, be fixed for argument on a date within the period covered by such current daily lists on which the case then stands.

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O. 97, r. 7.
Part heard cases to be paced at top of list for next day.

7. Any case the argument of which has not been concluded when the Court adjourns for the day will, unless the Court otherwise directs, be placed at the top of the list for the day on which a Court consisting of the same Judge or Judges next sits.

O. 97, r. 8.
Case on day's list may be placed on list for following day.

8. On the application of Counsel, to be made before the Court adjourns for the day, the Court may direct that a case on the list for the day shall be placed on the list for the next day.

O. 97, r. 9.
Case on peremptory list to be taken up in the order on the list.

9. During the weeks appointed for the purpose, the cases in the peremptory list will be taken up in the order in which they appear in that list and the hearing of the cases will continue from day to day until the end of that week, unless the Court directs otherwise.

ORDER XCVIII

Stay of Proceedings and Execution on Appeal

O. 98, r. 1.
Appeal by itself does not stay proceedings.

1. An appeal shall not operate as a stay of proceedings except so far as the Court from whose decision or order the appeal is preferred or the Supreme Court may order.

O. 98, r. 2.
Nor execution.

2. Execution of a judgment, decree or order shall not be stayed by reason only of an appeal having been preferred against such judgment, decree or order.

O. 98, r. 3.
But execution may be stayed by Court.

3. Where an application is made for stay of execution of an appealable judgment, decree, or order, the Court which passed the judgment, decree or order may on sufficient cause being shown order the execution to be stayed.

O. 98, r. 4.
Application for stay by petition.

4. Every application to the Court for stay of execution under the last preceding rule shall be made by petition, in which the judgment-creditor shall be named respondent.

O. 98, r. 5.
Stay of execution in what circumstances.

5. No order for stay of execution shall be made under Rule 3 of this Order 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 judgment, decree or order as may ultimately be binding upon him.

O. 98, r. 6.
Stay ex-parte pending hearing of application.

6. Notwithstanding anything contained in the previous rule, the Court may make an ex-parte order for stay of execution pending the hearing of the application.

O. 98, r. 7.
Security may be ordered where execution allowed.

7. Where an order is made for the execution of a judgment, decree or order against which an appeal is pending, the Court which passed the judgment, decree or order shall require security to be given for the restitution of any property which may be taken in execution of the judgment, decree or order, or for the payment of the value of such property, and for the due performance of the judgment decree or order of the Supreme Court, if in all the circumstances the Court is satisfied that such security should be ordered in the interests of justice.

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O. 98, r. 8.
Stay of sale of immovable property seized pending appeal.

8. Where immovable property has been seized in execution of a judgment, decree or order and an appeal is pending against such judgment, decree or order, the sale may, on the application of the judgment-debtor to the original Court, be stayed until the appeal is disposed of on such terms as to giving security or otherwise as the Court thinks fit.

O. 98, r. 9.
Exception in favour of the Crown.

9. No such security as is mentioned in Rules 5 and 7 shall be required from the Crown or (when Government has undertaken the defence of an action) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

ORDER XCIX

Appeal Notwithstanding Lapse of Time

O. 99, r. 1.
Notwithstanding lapse, Supreme Court may enlarge time for appeal.

1. It shall be competent to the Supreme Court to order that a petition of appeal shall be admitted and entertained by a Court of first instance notwithstanding that the provisions of Rules 1, 3, 5, 6 and 7 of Order XCV have not been observed:

Where prevented by causes beyond control of appellant.

Provided that the Supreme Court is satisfied that the petitioner was prevented by causes not within his control from complying with those provisions; and

and appellant has good grounds of appeal.

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 judgment, decree, or order which is appealed from was passed to render it inequitable to the judgment-creditor that the judgment, decree, or order appealed from should be disturbed.

O. 99, r. 2.
Application by petition to which judgment-creditor shall be made respondent.

2. (1) Every application to the Supreme Court for an order as is referred to in the last preceding Rule shall be by petition to which the judgment-creditor shall be named respondent, and the petition shall be accompanied by a certified copy of the judgment, decree or order appealed from, and of the judgment, where the appeal is from a decree or order, and of the relevant parts of the record of the proceedings, 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 preceding rule, are fulfilled.

Petition to be presented to Supreme Court.

(2) Every such petition shall be presented immediately to the Supreme Court in its appellate jurisdiction, and shall contain a prayer that an order may be made directing the Court of first instance to admit and entertain the petition of appeal notwithstanding the lapse of time.

O. 99, r. 3.
Summary procedure to be followed in application.

3. (1) On any such petition being presented to the Supreme Court, the question whether the order applied for should be made or not shall be determined by way of summary procedure in terms of the provisions of alternative (*b*) of Rule 5 of Order LVI.

When Supreme Court may enlarge time.

(2) If upon the hearing of the question the Supreme Court is satisfied that the conditions prescribed in Rule 1 are fulfilled, it may make order for admitting and entertaining the petition of appeal.

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Where time enlarged, petition of appeal to be filed.

(3) Where an order is made granting the application, the petitioner shall file his petition of appeal in the Court of first instance as if the judgment, decree or order appealed from had been pronounced, entered or made on a day not later than the day on which the order of the Supreme Court is received in the District Court or in the Court of Requests, as the case may be.

Provisions of such petition of appeal governed by provisions relative to petition filed within time.

(4) The other provisions of Order XCV shall apply in respect of a petition of appeal filed under the provisions of the preceding paragraph.

O 98, r. 4. When Supreme Court may dismiss application.

4. Where the Supreme Court is not satisfied that the conditions prescribed in Rule 1 of this Order are fulfilled, it shall dismiss the petition and make such order as to costs as to it may seem fit.

ORDER C

Hearing of the Appeal

O. 100, r. 1. Petition of appeal to be numbered and entered in register.

1. (1) On the receipt of the record with the typewritten copies or on such copies being made in the Registry, the matter of the appeal shall come on for hearing before the Court in the order of its position on the roll, and according to the standing orders of Court without further notice to the parties concerned.

List of appeals to be posted.

(2) A list of the appeals pending before the Court in their order on the roll, or of a sufficient number of them shall be posted in the Court-house, and 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.

Hearing of appeal may be accelerated or postponed.

(3) Notwithstanding anything contained in the preceding paragraphs, 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 think fit.

O. 100, r. 2. Appellant and respondent to be heard.

2. (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.

Appellant absent appeal may be dismissed.

(2) If the appellant does not appear either by Counsel or in person, the appeal may in the discretion of the Court be dismissed:

When party may obtain rehearing of trial.

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.

O. 100, r. 3. Court not confined to grounds of appeal set out or taken by appellant.

3. The Court in deciding any appeal shall not be confined to the grounds set forth in the petition of appeal but the Court 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.

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O. 100, r. 4.
Respondent not noticed or interested party not made respondent, hearing may be adjourned.

4. Where on the hearing of the appeal the respondent is not present and the Court is not satisfied upon the acknowledgments or registered receipts or other evidence filed that the notice of appeal was duly served upon him or his Proctor, as prescribed in Rule 6 of Order XCV, 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 direct the requisite notices of appeal to be served by the appellant.

O. 100, r. 5.
Re-hearing of application of respondent against ex-parte decree.

5. Where an appeal is heard ex-parte and judgment is pronounced against the respondent, he may apply to the Supreme Court to re-hear 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 appearing when the appeal was called on for hearing, the Court may re-hear the appeal, on such terms as to costs or otherwise as it thinks fit to impose upon him.

O. 100, r. 6.
Rights of respondent at hearing.

6. (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has given to the party who may be affected by such objection or his Proctor seven days' notice in writing of such objection.

Form of cross-objection.

(2) Such cross-objection shall be in the form prescribed in paragraph (*e*) of Rule 12 of Order XCV.

Copies of cross-objection and proof of notice to be filed.

(3) Not less than three days before the hearing the respondent shall file in the Supreme Court—

(*a*) a copy of such cross-objection for the use of each of the Judges who shall sit on the hearing of the appeal, and

(*b*) a written acknowledgment from the party who may be affected by such objection or his Proctor, or a registered receipt in proof of the giving of such notice.

Cross-objection to be heard though appeal withdrawn.

(4) Where in any case in which any respondent has under this rule filed a cross-objection, the original appeal is withdrawn or is dismissed for non-appearance, the objection so filed may nevertheless be heard and determined.

O. 100, r. 7.
Power of Court to dismiss the appeal, affirm, vary or set aside the decree, or direct new trial, etc.

7. 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.

O. 100, r. 8.
Judgment to be pronounced in open Court.

8. (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.

Each Judge may pronounce a separate judgment.

(2) If the Bench hearing the appeal is composed of more than one Judge, each Judge may, if he desires it, pronounce a separate judgment.

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Contents of judgment.

(3) The judgment, which shall be given or taken down in writing, and shall be signed and dated by the Registrar, shall, unless the judgment, decree or order appealed 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.

O. 100, r. 9.
When appeal may be reheard.

9. (1) Where 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 re-heard 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 re-hearing 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.

Order in which such judgment shall be pronounced.

(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.

O. 100, r. 10.
Decree of the Supreme Court.

10. (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 otherwise, in accordance with the judgments of the majority of them. It shall bear date the day on which the judgment 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.

Decree to state by whom costs payable.

(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.

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O. 100, r. 11. Execution of the decree passed in appeal.

11. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this Order 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 hereinbefore prescribed for the execution of decrees in an action.

O. 100, r. 12. Consolidation of appeals.

12. Two or more appeals in which the questions of law or fact in issue are substantially the same may be consolidated by order of the Court for purposes of hearing.

O. 100, r. 13. Test appeal.

13. The Court may order one of several appeals to be heard and determined as a test appeal and the other appeals to be stayed to abide the result, subject to the power of the Court at any time thereafter to substitute another of the appeals as a test appeal where the selected appeal fails to be a real decision of the issues involved.

ORDER CI

Appeals by Persons of Limited Means

O. 101, r. 1. Appeals by persons of limited means.

1. (1) Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay for the stamps required for the petition of appeal, may, on an application for that purpose made to the Supreme Court in accordance with the rules hereinbefore 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 person of limited means:

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 judgment, decree or order appealed from is erroneous or unjust.

Mode of determination.

(2) The question as to whether the applicant is a person of limited means shall be inquired into and determined either by the Supreme Court or under the orders of the Supreme Court by the Court from whose judgment, decree or order the appeal is preferred, 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 person of limited means:

Provided that if the applicant was allowed to sue as a person of limited means in the Court against whose judgment, decree or order the appeal is preferred no further inquiry into the question whether he is a person of limited means shall be necessary unless the Supreme Court sees special cause to direct such inquiry into means of applicant.

ORDER CII

Courts of Requests

GENERAL

O. 102, r. 1. Procedure in Courts of Requests.

1. (1) This order relating to procedure in Courts of Requests shall be taken as limiting and controlling the other provisions in the Code contained, but so far only as any such provisions are either expressly or impliedly applicable to such Courts.

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Other provisions of Code not inconsistent to apply.

(2) Such other provisions contained in the Code shall apply to Courts of Requests in all respects whenever they are not inconsistent with the rules in this Order contained; but where there is any such inconsistency the rules of this Order shall apply.

ILLUSTRATION

As all summonses to defendants issued from the Courts of Requests will be in Form No. 20 in Appendix I (see Rule 6 of this Order) actions in the Court of Requests will be governed by rules applicable to actions governed by the Old Procedure and therefore the provisions for instance of Orders XVII and XVIII will not apply to Courts of Requests as they are neither expressly nor impliedly applicable to such Courts.

O. 102, r. 2. Plaintiff may state his case viva voce to Commissioner.

2. The plaintiff may, instead of filing a plaint as required by Order XIII, personally state his case *viva voce* in open Court to the Commissioner, who shall reduce the same to 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.

PLEADINGS

O. 102, r. 3. Pleadings.

3. 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.

O. 102, r. 4. Plaint to state cause of action.

4. The plaint must state in a plain and direct manner the facts constituting the cause of action.

O. 102, r. 5. What causes of action may be joined.

5. 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.

O. 102, r. 6. Summons to issue.

6. 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 Form No. 20 in Appendix I.

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7. All summonses, orders, and other processes issuing from any Court of Requests shall be signed by the Chief Clerk of the Court, and shall be served, and the return and proof of service thereto made, in the manner prescribed in the Code.

O. 102, r. 7. Service of summons.

PROCEEDINGS ON APPEARANCE

8. (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.

O. 102, r. 8. The defendant to appear and admit or deny the claim.

(2) If the defendant shall admit the claim, the Commissioner shall enter such admission on the record in Form No. 176 in Appendix I and shall require the defendant to sign the same:

Where the defendant admits claim, he shall be required to sign record.

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.

Defendant to forward his admission of claim to Chief Clerk.

(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 the defendant may instead of filing an answer as required by Order XV either state his defence orally in open Court to the Commissioner, 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 may 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.

If defendant denies claim defendant to state defence or file answer.

9. 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.

O. 102, r. 9. Examination of parties.

10. Where the defendant pleads a claim in reconvention with his answer, the plaintiff shall be called upon to admit or deny the same. Where 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 paragraph (3) of Rule 8 of this Order shall, so far as applicable, apply, *mutatis mutandis*, to the plaintiff's reply to the defendant's claim in reconvention:

O. 102, r. 10. Claim in reconvention.

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.

Reply thereto.

11. Where the plaintiff admits the claim in reconvention, the Commissioner shall enter such admission of record, and shall require the plaintiff to sign the same.

O. 102, r. 11. Of entering admission.

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MISCELLANEOUS PROVISIONS RELATING TO PLEADINGS

O. 102, r. 12. Action founded upon account or instrument for payment of money.

12. 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.

O. 102, r. 13. Immaterial variance to be disregarded.

13. 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.

O. 102, r. 14. Amendment of pleadings.

14. 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.

O. 102, r. 15. Consequence of neglect to plead claim in reconvention.

15. 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.

O. 102, r. 16. Cases to which Rule 15 does not apply.

16. The prohibition in the last preceding rule 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.

O. 102, r. 17. Judgment upon claim in reconvention.

17. 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.

O. 102, r. 18. Provisions not applicable.

18. The provisions of Order XXVII and of Rules 1 to 15, both inclusive, of Order XXI, shall not apply to Courts of Requests. The other rules of Order XXI shall apply as if all reference to preliminary investigation were deleted therefrom.

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FIXING DAY OF TRIAL

O. 102, r. 19. Trial date to be fixed.

19. (1) Immediately after the defendant's oral defence has been recorded or his written answer received, as provided by paragraph (3) of Rule 8 of this Order, or where there is a claim in reconvention immediately after the same has been pleaded to as provided by Rule 10 of this Order, the Commissioner shall fix a day for the trial of the action, and shall enter a minute thereof on the record.

Trial to be taken up in the order on roll.

(2) 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:

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.

ADJOURNMENTS

O. 102, r. 20. Of adjournment at the instance of the parties.

20. Whenever the Commissioner shall be satisfied by affidavit or otherwise that either party is not ready to proceed 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 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.

O. 102, r. 21. The Court may upon adjournment order examination of witnesses.

21. 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

O. 102, r. 22. Proceedings on default of appearance of plaintiff.

22. (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 excuse his absence, the plaintiff's action may be dismissed:

Provided that if the defendant when called upon under Rule 8 of this Order 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:

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Provided, however, that in all cases wherein—

(*a*) the title to, interest in, or right to the possesion of land shall be in dispute;

(*b*) the claim is one for the recovery of:

(i) damages arising whether out of contract or tort, or

(ii) movable property, with or without a claim for damages;

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.

Plaintiff may be granted permission to institute fresh action.

(5) When an action has been dismissed under the provisions of paragraph (1) or (4) of this Rule, 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.

No appeal from judgment by default.

(6) No appeal shall lie against any judgment entered under this rule for default of appearance, anything in the Courts Ordinance, or in this Code contained to the contrary notwithstanding.

Order 16, Rules 1 to 6 not to apply to Courts of Requests.

(7) Rules 1 to 6, both inclusive, of Order XVI shall not apply to Courts of Requests.

O. 102, r. 23.

Even where defendants jointly liable upon bill of exchange, etc., judgment against defendant for default may be entered.

23. (1) Where there are several defendants jointly liable upon a bill of exchange, promissory note or cheque, and one or more of them fail to appear or sufficiently excuse his absence, either upon the day specified in the summons or upon any day fixed for the hearing of the action, the Commissioner may enter judgment by default against the defendant so failing to appear or to excuse his absence.

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(2) The plaintiff may issue execution upon such judgment without prejudice to his right to proceed with the action against such of the defendants as may appear or have appeared.

Such judgment may be executed without prejudice to proceed against defendants appearing.

ATTENDANCE OF WITNESSES

24. 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 Form No. 53 in Appendix I.

O. 102, r. 24. Attendance of Witnesses.

TRIAL

25. On the day of trial the Commissioner shall hear and determine the action according to law.

O. 102, r. 25. Trial.

26. 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.

O. 102, r. 26. Record of proceedings.

27. The provisions of Order XXXI shall, so far as they are not inconsistent with the provisions of this Order, apply to Courts of Requests.

O. 102, r. 27. Extent of Application of Order 31 to Courts of Requests.

28. (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 and the plaintiff desires to proceed by way of summary procedure, he may institute such action in manner provided in Order XCIV, and the provisions of that Order, exclusive of Rule 7, shall, for the purposes of any such action, apply to Courts of Requests.

O. 102, r. 28. Action by summary procedure on liquid claims.

(2) Except as provided in Order XCIV, the procedure in any such action shall be the same as the procedure in actions instituted under this Order.

Saving Clause.

DECREE

29. The decree in cases in the Courts of Requests, shall in addition to the requirements in Rule 5 of Order XXXII state the amount of costs to be paid.

O. 102, r. 29. Decree shall state amount of costs.

EXECUTIONS

30. 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.

O. 102, r. 30. Money realized in execution.

COSTS

31. All bills of costs whether between party and party or between Proctor and client shall be according to the scale specified in Appendix.

O. 102, r. 31. Special scale of costs for Courts of Requests actions.

32. Before any writ of execution shall be issued 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, shall enter a note of such taxation and of the amount thereby allowed on the record of the case.

O. 102, r. 32. Taxation of costs.

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O. 102, r. 33. What costs not recoverable.

33. 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.

APPEALS

O. 102, r. 34. Time within which application to be made to Commissioner for leave to appeal.

34. Where an application is made to the Commissioner of any Court of Requests for leave to appeal to the Supreme Court, such application shall be made within seven days from the date the judgment, decree or order appealed against was pronounced, entered, or made.

O. 102, r. 35. Where leave granted, petition of appeal to be filed within seven days.

35. Where the Commissioner grants leave, the applicant shall within seven days from the date of granting of such leave file in the Court of Requests a petition of appeal as provided in Order XCV, the provisions whereof shall *mutatis mutandis* apply to such petition of appeal, the date of granting of leave to appeal being regarded as the date of the judgment, decree or order appealed against.

O. 102, r. 36. Where leave to appeal is refused, aggrieved party to file in C. R. petition to S. C.

36. (1) Where the Commissioner refuses to grant such leave, 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.

Commissioner to forward record and petition to Supreme Court.

(2) 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 grant leave to appeal, and shall be disposed of ex-parte by a Judge of the Supreme Court.

If leave allowed petition of appeal to be admitted by Commissioner.

(3) 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 and the petitioner shall file his petition of appeal in the Court of Requests as if the judgment, decree or order appealed from had been pronounced, entered or made on a day not later than the day on which the order of the Supreme Court is received in the Court of Requests.

Petition of appeal governed by rules relative to petition filed within time.

(4) The other provisions of Order XCV shall apply in respect of a petition of appeal filed under the provisions of the preceding paragraph.

O. 102, r. 37. How period of seven days computed.

37. The period of seven days specified in Rules 34, 35 and 36 of this Order shall be computed as is directed for the computation of the period of seven days in paragraph (2) of Rule 1 of Order XCV.

O. 102, r. 38. Petition for leave to appeal liable to stamp duty.

38. (1) An application under the last preceding rule shall be liable to 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.

Stamp duty to be treated as affixed to petition of appeal.

(2) 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.

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39. Every motion required to be in writing under Rules 1 and 2 of Order X may be made orally by the applicant in person to the Commissioner who shall then reduce the same into writing.

O. 102, r. 39. Motions.

40. Every application to the Court, or action, of summary procedure may be made orally by the applicant in person, whose statement then being reduced into writing by the Commissioner, shall, upon the requisite stamp being furnished and affixed on behalf of the applicant, of a stamp be necessary, be deemed and treated as a written petition.

O. 102, r. 40. Application by way of summary procedure may be made orally.

ORDER CIII

Summary Procedure in Respect of Contempts of Court

1. 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 Code to be punishable as contempts of Court, shall be that which is prescribed in the rules next immediately following.

O. 103, r. 1. Summary procedure in case of contempt.

2. The Court shall issue a summons to the accused person in Form No. 177 in Appendix I, or to the like effect, which summons shall state shortly 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.

O. 103, r. 2. Summons to accused.

3. 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 Form No. 178 in Appendix I, or to the like effect, which warrant shall recite the issuing of 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:

O. 103, r. 3. When may Court issue warrant simultaneously with 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.

4. 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 Rule 2 is mentioned shall be necessary, but the accused person may be forthwith committed to jail or admitted to bail as in the last preceding Rule 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.

O. 103, r. 4. Judicial officer to record minute of facts observed by him.

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O. 103, r. 5.
On day of hearing Court may ask accused if he admits truth of charge.

5. 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 or otherwise, 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 the last preceding rule 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.

O. 103, r. 6.
Form of the conviction and sentence thereon.

6. (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 Form No. 179 in Appendix I, 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.

O. 103, r. 7.
Appeal to Supreme Court.

7. 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 Code 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 the District and Magistrate's Courts:

Provided, however, that no appeal shall lie from any order, sentence, or conviction made by the Supreme Court.

O. 103, r. 8.
Procedure for carrying out sentence of Court in case of conviction for contempt.

8. 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, 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.

ORDER CIV

Miscellaneous

O. 104, r. 1.
When may civil Court send cases for investigation to Magistrate.

1. (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 document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the

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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.

Magistrate to investigate such cases.

2. At any time after a warrant of arrest otherwise than under Order XLVI has been issued under this Code the Code may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

O. 104, r. 2. Warrant of arrest may be cancelled on ground of illness of party.

ORDER CV

Service of Foreign Process

1. (1) Where in any civil or commercial matter pending before a Court or Tribunal of a foreign country a letter of request from such Court or Tribunal for service on any person in Ceylon of any any process or citation in such matter is transmitted to the Supreme Court by the Permanent Secretary to the Ministry of Defence and External Affairs or otherwise, with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted:

O. 105, r. 1. Letters of Request for service of foreign process.

(i) The letter of request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language.

Letter of Request and process to be accompanied by translation in the English language.

(ii) Service of the process or citation shall, unless the Supreme Court otherwise directs, be effected by an approved process server or by the Fiscal of the Province or district in which the party desired to be served usually resides or has his or her place of business.

Approved process server or Fiscal may effect service.

(iii) Such service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served, and one copy of the translation thereof, in accordance with the provisions of this Code regulating the service of summons so far as the same shall be applicable.

Mode of service.

(iv) After the service has been effected, the approved process server, the Fiscal or other person by whom service has been effected shall return to the Registrar of the Supreme Court one copy of the process together with the evidence of service by affidavit of the person effecting the service verified by notarial certificate, and particulars of charges for the cost of effecting such service.

Return of service verified by notarial certificate to be made to Registrar, Supreme Court.

(v) The particulars of charges for the cost of effecting service shall be submitted to the Registrar of the Supreme Court who shall certify thereon the correctness of the charges or such other amount as shall be properly payable for the cost of effecting service. A copy of such charges certified as aforesaid shall be forwarded to the Permanent Secretary to the Ministry of Defence and External Affairs, together with the documents specified in the clause next following.

Cost of Service.

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Return of Letter of Request.

(vi) The Registrar of the Supreme Court shall forward to the Permanent Secretary to the Ministry of Defence and External Affairs the Letter of Request for service received from the foreign country, together with the evidence of service, with a certificate appended thereto duly sealed with the seal of the Supreme Court. Such certificate shall be in Form No. 180 in Appendix I to these rules.

Supreme Court to make order for substituted service.

(2) The Supreme Court or any Judge thereof may make all such orders for substituted service or otherwise as may be necessary to give effect to these rules. Such orders may be made either in Court or Chambers.

O. 105, r 2.

Letters of Request from countries with which Civil Procedure Conventions have been concluded.

2. Where in any civil or commercial matter before a Court or Tribunal in any foreign country with which a Convention on that behalf has been or shall be applied to Ceylon, a Request for service of any document on a person in Ceylon is received by the Permanent Secretary to the Ministry of Defence and External Affairs from the Consular or other authority of such country and transmitted by him to the Registrar of the Supreme Court, the following provisions shall, subject to any special provision contained in the Convention, be adopted:—

(1) The service shall be effected by the delivery of the original or a copy of the document, as indicated in the request, and the copy of the translation, to the party or person by an approved process server or the Fiscal.

(2) No Court fees shall be charged in respect of the service. The particulars of charges of the approved process server or the Fiscal shall be submitted to the Registrar, Supreme Court, who shall certify the amount properly payable in respect thereof.

(3) The Registrar, Supreme Court, shall transmit to the Permanent Secretary to the Ministry of Defence and External Affairs a certificate under the seal of the Supreme Court establishing the fact and the date of the service in person, or indicating the reasons for which it has not been possible to effect it, and at the same time shall notify the Permanent Secretary to the Ministry of Defence and External Affairs the charges certified under paragraph (2) hereof.

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APPENDIX I—FORMS

Contents

No.

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No.

50. Notice to admit facts.
51. Admission of facts, pursuant to notice.
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63. Prohibitory notice. (In the case of a debt not secured by a negotiable instrument.)
64. Prohibitory notice. (In the case of a share in a public company, &c.)
65. Prohibitory notice. (In the case of movable property not in the possession of the judgment-debtor.)
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70. Summons to garnishee or employer under Rule 3 of Order 40.
71. Certificate to Judgment-debtor authorising him to mortgage, lease or sell property.
72. Fiscal's certificate where there has been a re-sale at a loss, or a failure to pay the deposit.
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74. Fiscal's conveyance to purchaser after confirmation of sale by Court.
75. Order of delivery of possession to a purchaser where property in occupancy of judgment-debtor.
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77. Notice prohibiting payment of debts sold in execution to any person but the purchaser.
78. Fiscal's receipt.
79. Fiscal's deposit note. (Suitors' deposit.)
80. Paying-in Voucher.
81. Register of deposit notes.
82. Warrant for arrest of a judgment-debtor under Rule 1 (1) of Order 46.
83. Notice on judgment-debtor to show cause why he should not be committed to jail.
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91. Letter of appointment of Approved Process Server.
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94. Order Nisi or Interlocutory Order on a petition in an action of summary procedure.
95. Order refusing petition in an action of summary procedure where grounds adduced insufficient to show prima facie case, under Rule 8 of Order 56.
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105. Decree absolute.

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No.

106. Decree for separation " a mensa et thoro ".
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121. Order making absolute or discharging Order Nisi.
122. Probate.
123. Letters of administration (with the Will annexed and otherwise).
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125. Notice of application for re-sealing of probate.
126. Affidavit to accompany application for re-sealing of probate.
127. Administration Bond (with or without Will) on application by Administrator.
128. Administration Bond (with or without Will) on application by Attorney.
129. Oath by executor or administrator referred to in forms Nos. 122 and 123.
130. Security bond to be given by executor or administrator when required.
131. Inventory and valuation and statement of liabilities.
132. Schedule I to Inventory—valuation of furniture.
133. Schedule II to Inventory—valuation of jewellery.
134. Affidavit of failure to return Inventory and valuation and statement of liabilities.
135. Order on executor, &c., to render account.
136. Citation on person withholding property of deceased under Rule 4 of Order 82.
137. Order to be annexed to, or endorsed on citation on person withholding property of deceased.
138. Order Nisi declaring estate insolvent.
139. Affidavit requiring executor or administrator to file account.
140. Final account.
141. Schedule to final account—proceeds of sale of jewellery.
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143. Schedule to final account—income and expenditure account of a rubber estate.
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149. Receipt and Discharge in favour of executor or administrator.
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152. Citation on application for payment of debt due from the estate of the deceased.
153. Decree on citation under Rule 21 (5) of Order 85.
154. Petition for a judicial settlement of executor's or administrator's account.
155. Statement of objection by party contesting an account filed by an administrator or executor.
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157. Administrator's or executor's petition for a judicial settlement.
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159. Warrant of arrest before judgment.
160. Mandate of sequestration under Rule 6 (*b*) of Order 88.
161. Security to be given by plaintiff.
162. Security, &c., to be given by defendant arrested before judgment.
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No.

165. Authority to Proctors to apply for reference to arbitration.
166. Order of Court referring matter to arbitration.
167. Order of reference to arbitration.
168. Notice to arbitrators to appoint an umpire.
169. Written notice of filing of award.
170. Summons in an action of summary procedure on a liquid claim.
171. Notice to respondent that appellant will tender security in appeal, &c.
172. Notice of appeal to be served on respondent or his Proctor.
173. Secretary's certificate in appeal.
174. Security bond in appeal.
175. Security bond where execution is stayed of an appealable judgment or order.
176. Admission by the defendant of plaintiff's claim under Rule 8 of Order 102.
177. Summons to persons accused of contempt of Court.
178. Warrant to arrest persons accused of contempt of Court.
179. Conviction for contempt.
180. Certificate of service of foreign process.

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No. 1.

FORM OF NOTICE TO ATTORNEY-GENERAL OR PUBLIC OFFICER OF THE INSTITUTION OF AN ACTION

Section 30 (1), (2) and (3).

To the Attorney-General (or the 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 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).

No. 2

FORM OF NOTICE OF MOTION FOR TRANSFER OF ACTION OR MATTER

O. 1, r. 4.

In the Supreme Court of the Island of Ceylon

(Caption 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 of Ceylon 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 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. 3

FORM OF AFFIDAVIT IN SUPPORT OF MOTION FOR TRANSFER

O. 1, r. 4.

(For formal parts see Form No. 16.)

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. 4

O. 2, r. 12.

FORM OF NOTICE TO A PERSON WHO THE COURT CONSIDERS SHOULD BE JOINED AS A CO-PLAINTIFF.

Caption.

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. 5

.....

.....

Name of Proctor, if any, and his address for service. (0. 12, r. 1 (3).)

O. 3, r. 4.

SUMMONS TO THIRD PARTY

Old Procedure Actions

Form of third party summons where the claim is for indemnity or contribution or other relief or remedy under Order III, Rule 1 (a) or (b)

In the District Court / Court of Requests of Colombo (or as the case may be)

A. B. of .....
Plaintiff

V

C. D. of .....
Defendant

and

E. F. of .....
Third Party

To the above-named third party:

Whereas the above-named plaintiff has instituted this action against the defendant above-named in this Court for (state concisely the nature of the plaintiff's claim) as appears by the plaint, a copy whereof is hereto annexed:

And whereas the defendant above-named claims against you (state concisely the nature of the claim against the third party, as, for instance: to be indemnified against the plaintiff's claim and costs of action, or contribution to the extent of one-half of the plaintiff's claim, or the following relief or remedy, namely ———) as appears in the third party plaint, a copy whereof is hereto annexed:

You are hereby summoned to appear in this court either in person or by Proctor on the ——— day of ———, 19—, at ten o'clock of the forenoon, to answer the above-named defendant.

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, and you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to (indemnify the defendant or to contribute to the extent claimed or to ———

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stating the relief or remedy sought) and the validity of any judgment that may be given in the action and you will be bound by such judgment and such judgment may be enforced against you pursuant to Order III of the Civil Procedure Code, 1954.

By order of Court,
(*Signed*) ————, Secretary.

The ———— day of ————, 19—.

Note.—If you admit the demand, you should pay the money into court, with the costs of the action to avoid the execution of the decree which may be entered against you.

No. 6

.....

.....

SUMMONS TO THIRD PARTY

New Procedure Actions

Name of Proctor and his address for service. (0. 12, r. 1 (3).)

O. 3, r. 4.

Form of third party summons where the claim is for indemnity or contribution or other relief or remedy under Order III, Rule 1 (a) or (b).

In the District Court / Court of Requests of Colombo (or as the case may be)

A. B. of .....
Plaintiff

V

C. D. of .....
Defendant

and

E. F. of .....
Third Party

To the above-named third party:

Whereas the above-named plaintiff has instituted this action against the defendant above-named in this court for (state concisely the nature of the plaintiff's claim) as appears by the plaint, a copy whereof is hereto annexed:

And whereas the defendant above-named claims against you (state concisely the nature of the claim against the third party, as, for instance: to be indemnified against the plaintiff's claim and costs of action, or contribution to the extent of one-half of the plaintiff's claim, or the following relief or remedy, namely ————) as appears in the third party plaint, a copy whereof is hereto annexed:

You are hereby summoned to enter appearance in this court either in person or by Proctor within ten days of the date of service of this summons to answer the above-named defendant.

And you are hereby required to take notice that in default of your so entering appearance the action will be proceeded with and heard and determined in your absence, and you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability to (indemnify the defendant or to contribute to the extent claimed or to ———— stating the relief or remedy sought) and the validity of any judgment that may be given in the action and you will be bound by such judgment and such judgment may be enforced against you pursuant to Order III of the Civil Procedure Code, 1954.

By order of Court,
(*Signed*) ————, Secretary.

The ———— day of ————, 19—.

Note 1.—A defendant appearing personally may, if he desire, enter his appearance by post in terms of Rule 4 (1) of Order XVII of the Civil Procedure Code, 1954.

Note 2.—If you admit the demand, you should pay the money into court, with the costs of the action, to avoid the execution of the decree which may be entered against you.

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No. 7

O. 3, r. 4.

SUMMONS TO THIRD PARTY

Old Procedure Actions

Form of third party summons where a question or issue is to be determined under Order III, Rule 1 (c).

(Heading, etc., as in Form No. 5 down to " hereto annexed " in the first paragraph thereof, and proceed.)

And whereas the defendant claims that the following question or issue, viz. (state concisely the question or issue to be determined) should be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and yourself, as appears in the third party plaint, a copy whereof is hereto annexed:

You are hereby summoned to appear in this Court either in person or by Proctor on the ——— day of ———, 19—, at ten o'clock of the forenoon, to be heard on the said question or issue or in respect of the defendant's liability to the plaintiff or your liability to the defendant.

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, and you will be deemed to admit the validity of and will be bound by any decision or judgment arrived at or given in this action on the said question or issue and to admit any consequent liability of yourself and judgment may be given against you and enforced pursuant to Order III of the Civil Procedure Code, 1954.

(And continue as in Form No. 5.)

No. 8

O. 3, r. 4.

SUMMONS TO THIRD PARTY

New Procedure Actions

Form of third party summons where a question or issue is to be determined under Order III, Rule 1 (c).

(Heading, etc., as in Form No. 6 down to " hereto annexed " in the first paragraph thereof, and proceed.)

And whereas the defendant claims that the following question or issue, viz. (state concisely the question or issue to be determined) should be determined not only as between the plaintiff and the defendant but as between the plaintiff and the defendant and yourself, as appears in the third party plaint, a copy whereof is hereto annexed:

You are hereby summoned to enter appearance in this Court either in person or by Proctor within ten days of the date of service of this summons, to be heard on the said question or issue or in respect of the defendant's liability to the plaintiff or your liability to the defendant.

And you are hereby required to take notice that in default of your so entering appearance the action will be proceeded with and heard and determined in your absence, and you will be deemed to admit the validity of and will be bound by any decision or judgment arrived at or given in this action on the said question or issue and to admit any consequent liability of yourself and judgment may be given against you and enforced pursuant to Order III of the Civil Procedure Code, 1954.

(And continue as in Form No. 6.)

No. 9

O. 4, r. 2.

FORM OF GENERAL POWER OF ATTORNEY

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. 10

FORM OF APPOINTMENT OF A PROCTOR BY THE ATTORNEY-GENERAL O. 4, r. 3.

I, the undersigned, ————, Attorney-General for the Island of Ceylon, do hereby authorise and appoint ————, gentleman, one of the Proctors of the Supreme Court of the said Island (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 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. 11

FORM OF APPOINTMENT OF A PROCTOR O. 4, r. 3.

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 ————.

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, 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 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 ————.

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No. 12

O. 4, r. 3.

FORM OF REVOCATION OF SUCH APPOINTMENT

(Caption)

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. 13

O. 4, r. 4.

FORM OF NOTICE TO APPOINT A NEW PROCTOR IN PLACE OF ONE CEASING TO ACT

(Caption)

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 ———, 195 ———; 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 ———.

No. 14

O. 4, r. 4.

FORM OF NOTICE OF APPOINTMENT OF NEW PROCTOR IN PLACE OF ONE CEASING TO ACT

(Caption)

To (party or Proctor issuing the last preceding notice).

Take notice that the undersigned has been appointed (or, where the party himself gives the notice, that I, the said Y.. Z., have appointed 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 ———.

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No. 15

FORM OF APPOINTMENT OF AGENT TO ACCEPT SERVICE OF SUMMONS AND OTHER PROCESS (GENERAL AND SPECIAL) O. 4, r. 6.

(Where the appointment is special, head with caption 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. 16

FORMAL PARTS OF PLEADINGS O. 7, r. 1.

Formal parts of the Plaint

In the { District Court / Court of Requests } of Colombo (or as the case may be).

A. B., of ——— (names, desriptions, 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 lunatic appearing by his next friend, 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 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 apears by one; if otherwise, plaintiff must sign and an officer authorised by the court in that behalf must verify the signature.)

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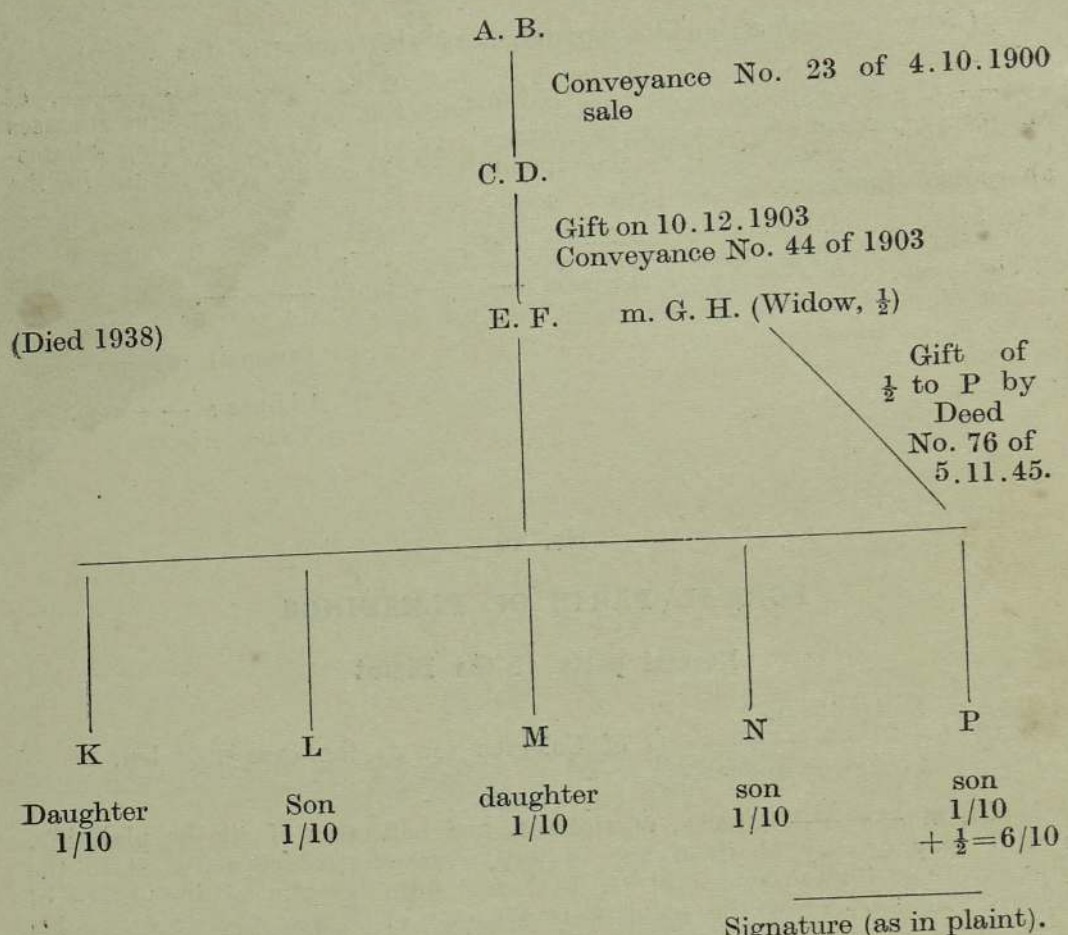
No. 17

TABLE OF DEVOLUTION

O. 7, r. 5 (2).



Signature (as in plaint).

No. 18

FORMAL PARTS OF THE ANSWER AND REPLICATION

O. 6, r. 1.
O. 9, rr. 1, 2.

(*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. 19

O. 12, r. 1.

FORM OF REGISTERED ADDRESS

(Where party appears in person)

(CAPTION)

The registered address of the abovenamed plaintiff (or defendant) is (here state the address within the city or town in which the Court is situate).

(*Signed*) ———,
Plaintiff (or defendant).

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No. 20

FORM OF SUMMONS

O. 13, rr. 8, 9, 10.
O. 14, rr. 1, 2, 3,

(Old Procedure Actions)

(CAPTION)

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 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.

By order of Court,
(*Signed*) ———, Secretary.

The ——— day of ———, 19—.

Note.—If you admit the demand, you should pay the money into Court, with the costs of the action, to avoid the execution of the decree which may be entered against you.

No. 21

FORM OF PRECEPT TO FISCAL TO SERVE SUMMONS

O. 13, r. 10.

(Caption)

To the Fiscal of the ——— Province.

Serve forthwith the summons in the above-named action, which, with duplicate, 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, together with such translations, if any thereof, all of 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. 22

Address for service:
———.

FORM OF SUMMONS

O. 13, r. 12 (1).

———.

(New Procedure Actions)

(name and address of Proctor or of the plaintiff.)

(CAPTION)

(*Valid for service for one year from date of issue*)

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 enter an appearance in this Court either in person or by Proctor within ten days of the service of this summons, to answer the above-named plain-

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tiff. And you are hereby required to take notice that in default of your so entering appearance the action will be proceeded with and heard and determined in your absence.

By order of Court,

(*Signed*) ———, Secretary.

The ——— day of ———, 19—.

Note.—If you admit the demand, you should pay the money into Court, with the costs of the action, to avoid the execution of the decree which may be entered against you.

No. 23

O. 13, r. 12.

Name and address of Proctor.

———.

———.

In the District Court of ———.

DOCKET

(In duplicate)

No. ———.

Class ———.

Name and address of parties

AB of ———.

———.

V.

CD of ———.

———.

Value of action: Rs. ———.

Value of stamps affixed to

(*a*) plaint: Rs. ———.
(*b*) process: Rs. ———.
(*c*) summons: Rs. ———.

Presented on ———.

———,

Signature of person presenting.

———,

Signature of officer of Court.

No. 24

O. 13, r 16.

FORM OF REQUESTS FOR SERVICE

(Caption)

To (*a*) the Fiscal of the ——— Province, or
(*b*) A. B., Approved Process Server,
as the case may be.

You are requested to serve forthwith the duplicate summonses in the above-named action which are herewith transmitted to you, under the provisions of Order XIII of the Civil Procedure Code, 1954, 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 the plaint (on concise statement) together with such translations, if any, thereof, all of which accompany the duplicate summonses.

And you are also requested to report to me on or before the ——— day of ———, 19—, in what manner you have effected the service of summonses, and if from any cause you have not been able to effect service, a full statement of such cause.

Signed ———,
Proctor for plaintiff.

The ——— day of ———, 19—.

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No. 25

FORM OF REQUEST FOR SERVICE O. 13, r. 16.

(Caption)

To the Commissioner of Prison and Probation Services, or the appropriate official specified in Rule 14, 15, 16, 17, or 18, of Order XIV.

You are requested to serve, or cause to be served, forthwith the duplicate summons in the above-named action which is herewith transmitted to you, under the provisions of Order XIII of the Civil Procedure Code, 1954, upon the defendant above named, who is said to be a prisoner (or an employee in your department, establishment, or institution, or a member of your unit, as the case may be) and leave with or tender, or cause to be left with or tendered, to the said defendant, the duplicate summons, together with a copy of the plaint (or concise statement) and the translations, if any, thereof, which accompany the duplicate summons.

And you are also requested to report to me on or before the ——— day of ———, 19—, in what manner the service of summons has been effected, and if from any cause service has not been effected, a full statement of such cause.

Signed ———,
Proctor for plaintiff.

N.B.—Neglect or refusal to effect service is liable to be visited with punishment.

(*Note.*—Where the Request for Service is forwarded under Rule 19 of Order 14, the Fiscal will sign the request instead of the Proctor.)

REPORT OF SERVICE

(*a*) *Acknowledgment of Service*

I, ——— of ———, the defendant (or where there are several defendants, the ——— defendant) above named, hereby acknowledge the receipt of the summons, together with the plaint (and translations thereof, if such be the case) in the above named action, on this ——— day of ———, 19—.

———,
Signature of Defendant.

(*b*) *Endorsement of Service*

I, ——— of ——— (name of person effecting service) do hereby declare that I did leave with (or tender to) the defendant above named (or where there are several defendants, the ——— defendant) above named, the duplicate summons, together with the plaint (and translations thereof, if such be the case) in the above-named action, on this ——— day of ———, 19—.

———,
Signature of person effecting service.

———,
Signature of Commissioner of Prison and Probation Services.

(or head of department, manager or principal officer of establishment or institution, or Commanding Officer.)

(*c*) *Endorsement of non-service*

I, ———, Commissioner of Prison and Probation Services, do hereby report that service of summons could not have been effected on the defendant above named for the following reason, to wit, (state concisely the reason).

———,
Signature of Commissioner of Prison and Probation Services.
(or Head of Department, etc.)

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No. 26

O. 14, r. 22.

FORM OF SUMMONS FOR SERVICE OUT OF THE ISLAND IN OLD PROCEDURE ACTIONS

(Caption)

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).

Note.—In respect of New Procedure Actions, follow Form No. 22, subject to variation in the number of days within which appearance is to be entered and the addition of any special direction of Court.

No. 27

O. 16, r. 1 (1).

FORM OF DECREE DISMISSING THE ACTION IN DEFAULT OF APPEARANCE OF PLAINTIFF

(Old Procedure Action)

(CAPTION)

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 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.

(*Signed*) ———, District Judge.

The ——— day of ———, 19—.

No. 28

O. 16, rr. 2 (2) and 4.
O. 18, r. 9.

FORM OF ORDER SETTING ASIDE DECREE AND DIRECTING ACTION TO PROCEED

The application made by the plaintiff (or the defendant) to have the decree entered in this action set aside coming on for disposal before (name and office of Judge) on ——— day of ———, 19—, being the day appointed therefor, and the plaintiff and the defendant appearing (in person, or as the case may be) and the evidence of ——— having been taken and both parties heard:

It is ordered that the above decree be set aside 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—.

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No. 29

FORM OF DECREE IN DEFAULT OF APPEARANCE OF DEFENDANT O. 16 r. 3.

(Old Procedure Actions)

(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 Preliminary Investigation or 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 rule 3 (1) of Order XIV of the Civil Procedure Code), as by the affidavit of ———, filed the ——— day of ———, 19—, appears:

It is decreed that the defendant do pay to the plaintiff the sum of ——— rupees and his costs of this action.

(*Signed*) ———, District Judge.

The ——— day of ———, 19—.

No. 30

Appearance entered by O. 17, r. 1 (1).

.....

.....

(Name and address of Proctor)
(Address for service)

for: (5th, 6th, 7th defendants or as the case may be).

MEMORANDUM OF APPEARANCE

(By Proctor)

NEW PROCEDURE ACTIONS

In the District Court of .....

A. B., Plaintiff.

No. of action: 0000

Class of action: (1, or as the case may be) Vs.

C. D. (and others)
defendant (s).

Value of Stamps affixed to proxy Rs. .....

Date of delivery: .....

.....
Signature of person presenting.

.....
Signature of Officer of Court.

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No. 31

O. 17, r. 2 (c). Appearance entered by

.....

.....

Name and registered address of defendant.

(Action defended in person.)

MEMORANDUM OF APPEARANCE

By party in person

NEW PROCEDURE ACTIONS

In the District Court of .....

A. B., Plaintiff.

No. of action : 000

Vs.

Class of action : (1, or as the case may be) C. D. (and others) Defendant(s)

Date of delivery : .....

.....

Signature of person present.

.....

Signature of Officer of Court.

No. 32

O. 17, r. 5 (1). **NOTICE OF APPEARANCE**

(New Procedure Action)

CAPTION OF ACTION

To the Proctor for the plaintiff or plaintiffs.

Take notice that appearance has been entered in this action for the defendant (name of defendant or defendants appearing).

Dated the ——— day of ———, 19—.

(*Signed*) Proctor for defendant (or defendants Nos. ———)

or

Defendant (or defendants Nos. ———).

No. 33

O. 17, r. 16. **NOTICE TO ADD A PARTY DEFENDANT**

(New Procedure Action)

CAPTION

To—

Take notice that the plaintiff (or defendant, as the case may be) has made application to have you added as a party defendant to the above-styled action and that you are hereby required to enter appearance within ten days of the date of service of this notice and shew cause against the application.

And you are hereby required to take further notice that in default of your so entering appearance the application will be heard and determined in your absence.

Proctor for plaintiff (or defendant as the case may be).

The ——— day of ———, 19—.

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No. 34

FORM OF DECREE IN DEFAULT OF APPEARANCE OF DEFENDANT O. 18, rr. 2, 3.

(New Procedure Action)

CAPTION

This action coming on for disposal ex-parte before (name and office of Judge) on the ——— day of ———, 19—, by reason of the failure of the defendant to enter appearance within the time limited in the summons therefor (or within such extended time as may have been allowed by Court) although he was duly served with the summons, together with a copy of the plaint, (or a concise statement of the claim, if such be the case) as by the affidavit of ———, filed on the ——— day of ———, 19—, appears:

It is decreed that the defendant do pay to the plaintiff the sum of ——— rupees and his costs of action.

(*Signed*) ———,
District Judge.

The ——— day of ———, 19—.

No. 35

FORM OF MOTION TO APPOINT A DAY FOR PRELIMINARY INVESTIGATION WITH THE CONCURRENCE OF ALL OTHER PROCTORS O. 19, r. 2.

Caption

I move that the Court be pleased to appoint a day for the preliminary investigation of this action.

(*Signed*) ———,
Proctor for plaintiff.

I/We consent.

Signed ———
———
———
———

Proctor (or Proctors) for defendant (or defendant.)

A copy of this motion forwarded to the Proctor for the ——— defendant (or defendants) has not been returned to me (if such be the case.)

(*Signed*) ———,
Proctor for plaintiff.

No. 36

FORM OF EX-PARTE MOTION TO APPOINT A DAY FOR PRELIMINARY INVESTIGATION WHERE CONCURRENCE OF ALL OTHER PROCTORS HAS NOT BEEN SECURED O. 19, r. 3.

Caption

I move that the Court be pleased to appoint a day for preliminary investigation of this action.

The Proctor (or Proctors) for the ——— defendant (or defendants) consents to the motion, but not the Proctor (or Proctors) for the ——— defendant (or defendants) as appears from his (or their) endorsements on the motion paper hereto annexed.

(*Signed*) ———,
Proctor for plaintiff.

The ——— day of ———, 19—.

I also annex hereto a copy of the motion forwarded to the Proctor for the ——— defendant (or defendants) and which has not been returned to me, if such be the case.

(*Signed*) ———,
Proctor for plaintiff.

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No. 37

O. 19, r. 4. **FORM OF MOTION TO HAVE THE ACTION SET DOWN FOR TRIAL WITHOUT PRELIMINARY INVESTIGATION WHERE THE CONCURRENCE OF ALL THE OTHER PROCTORS HAS BEEN SECURED**

Caption

I move that the Court be pleased to fix a day for the trial of this action.

(*Signed*) ——— Proctor for plaintiff.

The ——— day of ——— 19—.

I/We consent.
(signed) ———
———
———

Proctor (or Proctors)
for defendant (or
defendants.)

A copy of this motion forwarded to the Proctor (or Proctors) for the ——— defendant (or defendants) has not been returned to me (if such be the case).

(*Signed*) ———,
Proctor for plaintiff.

No. 38

O. 19, r. 5 (1). **FORM OF EX-PARTE MOTION BY PROCTOR FOR DEFENDANT TO APPOINT A DAY FOR PRELIMINARY INVESTIGATION**

Caption

As the plaintiff's Proctor is not desirous of having a preliminary investigation in this action, I move that the Court be pleased to appoint a day for such preliminary investigation.

The Proctor (or Proctors) for the ——— defendant (or defendants) are in favour of this motion, while the Proctor (or Proctors) for the ——— defendant (or defendants) is (or are) not.

The motion of the plaintiff to have the case set down for trial as well as a memorandum (or memoranda) signifying the views of the other Proctors are annexed hereto.

(*Signed*) ———,
Proctor for ——— defendant.

The ——— day of ——— 19—.

I also annex hereto a copy of the memorandum forwarded to the Proctor (or Proctors) for the ——— defendant (or defendants) and which has not been returned to me (if such be the case).

(*Signed*) ———,
Proctor for ——— defendant.

No. 39

O. 19, r. 5 (1). **FORM OF NOTIFICATION TO PROCTOR FOR PLAINTIFF.**

Caption

To ———, Proctor for plaintiff.

With reference to your motion dated ——— to have this action set down for trial, I hereby notify you that I intend to make application to Court to have the action set down for preliminary investigation, and that I have in terms of Rule 5 of Order XIX of the Civil Procedure Code, 1954, retained your motion.

(*Signed*) ———,
Proctor for ——— defendant.

The ——— day of ——— 19—.

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No. 40

FORM OF MEMORANDUM OF CONCURRENCE O. 19, r. 5 (2).

Caption

As the plaintiff is not desirous of having a preliminary investigation in this action, I am making application to Court to have such preliminary investigation.

Please signify your consent or otherwise to my intended application to have the case set down for preliminary investigation.

(Signed) ————,
(Proctor for ———— defendant (or ———— defendants).

The ———— day of ———— 19—.

I/We consent.

Signed ————

————

————

Proctor (or Proctors) for defendant (or defendants).

I/We do not consent for the reasons (here state the grounds).

Signed ————

Proctor for ———— defendant.
For the reasons (here state grounds).

Signed ————

Proctor for ———— defendant.
For the reasons (here state grounds).

Signed ————

Proctor for ———— defendant, etc.

No. 41

FORM OF NOTICE TO PRODUCE DOCUMENTS FOR INSPECTION

O. 20, r. 5.

Caption

To the Proctor for plaintiff (or defendant, as the case may be, or, where there is no Proctor, set out the name and registered address of party to be served).

Take notice that the abovenamed defendant (or as the case may be) requires you to produce for inspection by him or his Proctor the following documents (other than excluded documents) referred to in the list of documents filed by you, that is to say, (describe documents) and to permit him (or his Proctor) to take copies thereof.

This notice is issued pursuant to an order of Court dated ————, 19—, made in terms of Rule 5 (2) of Order XX.

(*Signed*) ————,
Proctor or party.

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No. 42

O. 21, rr. 1 and 2.

FORM OF INTERROGATORIES

Caption

Interrogatories on behalf of the abovenamed 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. 43

O. 21, r. 12.

FORM OF ANSWER TO INTERROGATORIES

Caption

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).

Affirmed (or sworn) this ——— day of ———, 19—, before me, &c.

No. 44

O. 21, r. 16 (1).

FORM OF NOTICE TO ADMIT GENUINENESS OF DOCUMENTS

Caption

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 five days of the service of this notice, 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.

(*Signed*) ———,
Proctor for Plaintiff (or as the case may be).

The ——— day of ——— 19—,

(Here annex Schedule of Documents.)

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No. 45

FORM OF ADMISSION OF GENUINENESS OF DOCUMENTS O. 21, r. 16 (4).

Caption

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 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 Proctor (or party).

The ——— day of ——— 19—.

No. 46

NOTICE FOR AFFIDAVIT AS TO DOCUMENTS O. 21, r. 17.

Caption

To the defendant (or as the case may be)

Take notice that you are hereby required within ten days from the date of service of this notice to declare by affidavit all the documents which are, or have been, in your possession or power relating to any matter in question in this action.

(Signed) ———,
Proctor for Plantiff.

N.B.—This notice, though addressed to the defendant, may be served at his registered address (Vide O. 12, r. 1 (3).

No. 47

AFFIDAVIT OF DOCUMENTS O. 21, r. 17.

Caption

I, C. D., the abovenamed defendant, do solemnly, sincerely and truly declare and affirm (or do make oath and say) as follows:—

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the First Schedule hereto.

2. I object to produce the said documents set forth in the second part of the First Schedule hereto (state grounds of objection).

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action set forth in the Second Schedule hereto.

4. The last-mentioned documents were last in my possession or power on (state when and what has become of them, and in whose possession they now are).

———,
Signature of Defendant.

The ——— day of ——— 19—.

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No. 48

O. 21, r. 22.

FORM OF APPOINTMENT, AND OF REFUSAL, TO GIVE INSPECTION OF DOCUMENTS

Caption

To (name, &c., of persons 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 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 herinbefore excepted, on the ground (state the ground).

(Signed) ———,
By Proctor (or party).

The ——— day of ——— - 19—,

No. 49

O. 21, r. 22.

FORM OF NOTICE OF OBJECTION TO GIVE INSPECTION

Caption

To (as in last form)

Take notice that the defendant (or as the case may be) objects to give the plaintiff (or as the case 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. 0

O. 22, r. 5.

NOTICE TO ADMIT FACTS

Caption

To———

Take notice that the plaintiff (or defendant) in this action requires the defendant (or plaintiff) to admit, for the purposes of this action only, the several facts respectively hereunder specified; and the defendant (or plaintiff) is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

Dated, &c.

G. D., Proctor for the plaintiff (or defendant).

To E. F., Proctor for the defendant (or plaintiff).

The facts, the admission of which is required, are:

1. That John Singho died on January 1, 1938.
2. That he died intestate.
3. That Punchi Singho was his only lawful son.
4. That Peter Singho died on April 1, 1944.
5. That Peter Singho never was married.

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No. 51

ADMISSION OF FACTS, PURSUANT TO NOTICE O. 22, r. 5.

Caption

To————, Proctor for the plaintiff (or defendant).

The defendant (or plaintiff) in this action, for the purposes of this action only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this action.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant (or plaintiff) on any other occasion, or by anyone other than the plaintiff (or defendant, or party requiring the admission).

Delivered, &c.

Signed ————,
Proctor for the defendant
(or plaintiff).

Facts admitted	*Qualifications or limitations, if any, subject to which they are admitted.*
1. That John Singho died on January 1, 1938.	1.
2. That he died intestate.	2.
3. That Punchi Singho was his lawful son.	3. But not that he was his only lawful son.
4. That Peter Singho died.	4. But not that he died on April 1, 1944.
5. That Peter Singho never was married.	5.

No. 52

FORMAL PARTS OF AN AFFIDAVIT IN AN ACTION O. 23, r. 9.

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),

Caption

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) solemnly, sincerely, and truly declare and affirm (or if a Christian, make oath and say) as follows :—

1. ————

2. ————

Affirmed (or sworn) (or if there are more than one deponent), affirmed (or sworn) by the deponents A. B.) at————this————day of ———— 19—.

Before me (name and office of person administering the oath or affirmation).

No. 53

FORM OF SUMMONS TO WITNESS O. 28, r. 1 (4).

Caption

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

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(here describe with convenient certainty any document the production of which is required ; if the summons is only to 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 reside, or carry on business or work for gain at a place within four miles of the Court, you are not entitled to any costs of attendance.

Note 3.—(*a*) No money having been paid into the Court, or deposited with me, to cover the costs of your attendance, your attendance on this summons is not obligatory, or

(*b*) A sum of Rs. ——— has been paid into Court (or has been deposited with me, as the case may be) for the costs of your attendance, and the said sum will be paid out to you by Court (or me) on the day of your attendance.

(Strike out whatever is inapplicable).

(*Signed*) ———, Proctor issuing summons.

No. 54

O. 28, r. 19 (2).

FORM OF PROCLAMATION TO BE ISSUED WHEN SUMMONS CANNOT BE SERVED

In the District Court of ——— (or as the case may be).

Proclamation

CAPTION

To all to whom these presents shall come, greeting.

Whereas it appears by the return made by the Fiscal of ——— (or A. B., approved process server) 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 (or approved Process Server) has not been able to serve 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—.

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No. 55

FORM OF MANDATE OF SEQUESTRATION AFTER PROCLAMATION

O. 28, r. 20.

Caption

To the Fiscal of ————.

Whereas it appears by the return made by you (or by the Fiscal of ————, or A. B., Approved Process Server 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 Rule 22 of Order XXVIII) 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 (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.

By order of Court,

(*Signed*) ————, Secretary (or as the case may be).

The ———— day of ———— 19—.

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No. 56

O. 28, r. 25.

FORM OF WARRANT OF ARREST AGAINST A WITNESS FOR DISOBEDIENCE TO A SUMMONS

Caption

To the Fiscal of ————.

Whereas it appears by your return (or the return of A. B., approved Process Server) 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 Rule 9 of Order XXVIII of the Civil Procedure Code, 1954): 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—.

No. 57

O. 30, r. 2 (2).

FORM OF NOTICE TO PARTIES OF THE DAY FIXED FOR THE EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION

Caption

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. 58

O. 31, r. 38.

FORM OF LIST OF DOCUMENTS PRODUCED BY PARTIES AT THE HEARING

Caption

PLAINTIFF'S (OR DEFENDANT'S) DOCUMENTS

Distinguishing Letter and Number	Description of Document	Date (if any) which it bears

————,
Signature of Proctor
or party.

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No. 59

FORM OF RECEIPT BOOK FOR RETURNED EXHIBITS O. 31, r. 41.

Distinguishing letter and number	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. 60 O. 32, r. 5.
O. 102, r. 29.

FORM OF DECREE

Caption

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.)

(Where the decree is for delivery of immovable property, describe the property in accordance with the requirements of Rule 7 of Order XXXII.

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 Rules 14 and 15 of Order XXXII.

Where the action is to enforce a right of pre-emption or to realize a mortgage, carry out the directions of Rule 16 of Order XXXII.

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. 61

O 36, r. 4. **FORM OF APPLICATION FOR EXECUTION OF A DECREE BY SEIZURE AND SALE OF MOVABLE PROPERTY**

In the District Court of ————

I, A. B., Proctor for plaintiff (or C. D. plaintiff, or as the case may be), hereby apply for execution of the judgment (or decree) hereinbelow set forth :

Number of Action	Names of Parties	Date of Judgment or Decree	Whether any Appeal preferred	Adjustments 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.
No. 175 D.C. Col.	A. B., plaintiff against C. D. defendant	Sep. 21, 1938	No	—	—	Rs. 2,650 and (interest at ———— per centum from date of decree to payment)	Rs. 250 costs as awarded in the decree, Rs. 10·50 subsequently incurred 260.50	The defendant, CD	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., Proctor for plaintiff
or (C. D. Plaintiff).

This ———— day of ————, 19—.

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No. 62.

FORM OF WRIT OF EXECUTION AGAINST PROPERTY O. 36, r. 5 (5).

Caption

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—.

No. 63

FORMS OF PROHIBITORY NOTICES O. 38, r. 10 (1).

(*In the case of a debt not secured by a negotiable instrument.*)

To (defendant) and to (defendant's debtor or employer).

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), or employer, salary in excess of Rs. 100 for each month of service); and that you, the said ——— (defendant's debtor or employer) 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. 64

(*In the case of a share in a public company, &c.*) O. 38, r. 10.

To (defendant) and to manager (&c.) ——— company.

Whereas ——— has failed to satisfy a decree (recital as in No. 63) 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.

The ——— day of ———, 19—.

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No. 65

O. 38, r. 10.

(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. 63) 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.

The ——— day of ———, 19—.

No. 66

O. 38, r. 11.

FORM OF NOTICE WHERE PROPERTY IS IN CUSTODY OF A COURT OR PUBLIC OFFICER

Caption

Sir, ——— The plaintiff in the above-named action having applied under Order XXXVIII, Rule 11 of the Civil Procedure Code of 1954 for seizure of certain moneys (or as the case is) now in your hands (state how the money, &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 am, &c., ———, Fiscal.

The ——— day of ———, 19—.

No. 67

O. 38, r. 15.

FORM OF NOTICE TO A COURT REQUESTING STAY OF EXECUTION OF ITS DECREE

Caption

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 (caption 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. 68

O. 38, rr. 16 and 17.

FORM OF PROHIBITORY NOTICE TO HOLDER OF A DECREE SOUGHT TO BE SEIZED

Caption

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 (caption, &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.

The ——— day of ———, 19—.

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No. 69

FORM OF PROHIBITORY NOTICE IN CASE OF IMMOVABLE PROPERTY O. 38, r. 30.

To (defendant).

Whereas you have failed to satisfy a decree passed against you on the ——— day of ———, 19—, in (caption, &c., of case), in favour of ———, for ——— rupees (here set out the particulars required by the rule), 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—.

SCHEDULE

No. 70

FORM OF SUMMONS TO GARNISHEE OR EMPLOYER O. 40, r. 3.

Caption

To (Name, description and address of garnishee or employer).

You are hereby summoned to appear in this Court in person or by Proctor on the ——— day of ———, 19—, at ——— o'clock in the forenoon, and show cause why (in the case of the garnishee) you should not pay to the judgment-creditor the debt due from you to the judgment-debtor, or so much thereof as may be sufficient to satisfy the judgment, or (in the case of the employer) why you should not withhold from payment to the judgment-debtor (the employee) such seizable part of the salary and allowances due to the judgment-debtor, either in one sum or by monthly instalments, as may be sufficient to satisfy the judgment.

By order of Court,

(*Signed*) ———, Secretary.

The ——— day of ———, 19—.

No. 71

FORM OF CERTIFICATE TO JUDGMENT-DEBTOR AUTHORISING HIM TO MORTGAGE, LEASE, OR SELL PROPERTY O. 42, r. 2.

Caption

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 party thereof:

This is to certify that the Court doth hereby authorise 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—.

SCHEDULE OF PROPERTY REFERRED TO

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No. 72

O. 42, r. 10 (2).

FORM OF FISCAL'S CERTIFICATE WHERE THERE HAS BEEN A RE-SALE AT A LOSS OR A FAILURE TO PAY THE DEPOSIT

Caption

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 re-sold, and one ——— was duly declared to be the purchaser at such re-sale 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

No. 73

O. 42, r. 16.

FORM OF ORDER CONFIRMING SALE OF LAND

Caption

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. 74

FORM OF FISCAL'S CONVEYANCE TO PURCHASER AFTER CONFIRMATION OF SALE BY COURT O. 42, r. 21 (1).

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 become 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 where there is a diagram or map) and described in the diagram or map (appended to some title deed delivered to the purchaser, or annexed to these presents and marked ——— as the case may be) 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—.

SCHEDULE

Annexures

——— Fiscal

Witnesses:

(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. 75

FORM OF ORDER OF DELIVERY OF POSSESSION TO A PURCHASER WHERE PROPERTY IN OCCUPANCY OF JUDGMENT-DEBTOR O. 42, r. 21 (1).

Caption

To the Fiscal, ——— Province.

WHEREAS ——— has become the purchaser of (land) hereinafter described at a sale in execution of the decree in the above-named action, 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.

SCHEDULE

(*Signed*) ———,
(Name and office of Judge.)

The ——— day of ———, 19—.

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No. 76

O. 43, r. 9.

FORM OF NOTICE TO PERSON IN POSSESSION OF MOVABLES SOLD IN EXECUTION

Caption

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. 77

O. 43, r. 10.

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, the notice will be directed to the person in whose name the shares are standing, and to the Manager (Secretary, etc.) of the company, and will be prohibitory of transferring the shares or receiving or making payment of dividends thereon.)

No. 78

O. 45, r. 1 (1).

FISCAL'S RECEIPT

No.

Date:

Court and No. of Case:

Received from:

the sum of Rupees and cents

in payment of:—

Purchase (or writ) amount			
Fiscal's Fees:			
Tom tom hire:			
Transfer stamps:			
Poundage:			
Other expenses			
Total			

(Signature and designation of Officer issuing receipt.)

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No. 79

Machine No. Serial No. of Note ———.

FISCAL'S DEPOSIT NOTE O. 45, r. 1 (3).

Suitors' Deposit

(One copy to be retained by the Kachcheri: receipt in Form General 172 to be issued to the Fiscal.)

Court:
Case No.
Names of parties:

To ——— Government Agent, ———

Please receive from the sum of Rupees being

Signature ———,

Fiscal.

Fiscal's Office, ———.

Date: ———, 19—.

Received the above amount.

Shroff, ——— Kachcheri.

Date: ———.

No. 80

Paying-in-Voucher O. 45, r. 1 (3).

Head of Receipt:
Sub-head:
To ———.

Please receive to the credit of the Government of Ceylon from ———

Rupees: ———.
Cents: ———. being

(Signature)

Rs. ———.

(For the use of the Shroff of the Receiving Department only.)

Received the above amount.

Shroff, ———, Kachcheri.

Date:

No. 81

FORM OF REGISTER OF SUCH NOTES O. 45, r. 1 (4).

No. and Date.	No. of Action.	Court	Plaintiff	Defendant	Payer	On what Account How recovered.	Amount	Initials of D. F.	Signature of person receiving Note	Date of Deposits	Date when Receipt sent back.	Initials of D. F.	Date of Return to Court.

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No. 82

O.46, r. 1.

FORM OF WARRANT FOR ARREST OF A JUDGMENT-DEBTOR

Caption

To ———— Fiscal of ———— 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 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 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. 83

O.46, r. 3.

FORM OF NOTICE ON JUDGMENT-DEBTOR TO SHOW CAUSE WHY HE SHOULD NOT BE COMMITTED TO JAIL

Caption

To (Judgment-debtor).

	Rs.	*c.*
Principal	.....	
Interest	.....	
Costs	.....	
Execution	.....	
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. 84

FORM OF WARRANT FOR ARREST OF A JUDGMENT-DEBTOR UNDER O. 46, r. 5

O. 46, r. 5.

Caption

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 :

	Rs.	*c.*
Principal	.....	
Interest	.....	
Costs	.....	
Execution	.....	
Total		

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 O. 46, r. 3 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 in Form 82.

No. 85

FORM OF WARRANT OF COMMITTAL TO JAIL

O. 46, r. 16.

Caption

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—.

No. 86

FORM OF WRIT FOR DELIVERY OF A SPECIFIC MOVABLE

O. 47, r. 2.

Caption

To the Fiscal of ———— 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 authorise 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, this mandate.

(Where the Court has in the alternative directed the levy by seizure and sale of the Judgment-debtor's property, combine Form No. 62 with such variations as may be nceessary.)

The ———— day of ———— 19—.

(Signed)————,
(Name and office of Judge.)

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No. 87

O. 48, r. 2.

FORM OF WRIT FOR DELIVERY OF IMMOVABLE PROPERTY

Caption

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).

SCHEDULE OF PROPERTY

(Signed)———.

The ——— day of ——— 19—.

No. 88

O. 49, r. 2.

FORM OF NOTICE OF RESISTANCE

Caption

To all to whom these presents shall come.

Whereas the Fiscal has been resisted or obstructed in delivering possession of the property described in the Schedule hereto (or, whereas the plaintiff above-named (judgment-creditor) has been hindered in taking complete and effectual possession of the property described in the Schedule hereto) by the defendant abovenamed (judgment-debtor) or other person:

Now know all persons to whom these presents shall come that all persons who object to possession being delivered to the said plaintiff are required by these presents to notify their claims to Court within thirty days of the receipt by Court of the Fiscal's report of the publication of these presents, on pain of their being committed to jail in the event of any resistance or obstruction (or hindrance, as the case may be), being offered to the said plaintiff being put into or restored to possession of the said property, in the event of the Court ordering that the said plaintiff be put into or restored to possession of the said property, after the holding of the inquiry into the complaint of resistance or obstruction (or hindrance, as the case may be) and the claims, if any, notified to Court.

By order of Court,
(Signed) ———,
Secretary.

The ——— day of ——— 19—.

No. 89

O. 49, r. 3.

FORM OF PRECEPT TO FISCAL TO PUBLISH NOTICE OF RESISTANCE

Caption

To the Fiscal of the ——— Province.

Publish forthwith the accompanying notice in the above-named action which with duplicates and translations thereof in the Sinhalese and/or Tamil languages is herewith transmitted to you:

(*a*) by affixing a duplicate notice and a translation (or translations if in both Sinhalese and Tamil languages) thereof in some conspicuous place on the property described therein and proclaiming by beat of tom-tom or in such other mode as may be customary the contents of such notice;

(*b*) by affixing duplicate notices and translations thereof to the Court-house and your office ;

(*c*) by publication of the said notice and translation (or translations as aforesaid) in the *Government Gazette*.

And certify to this Court forthwith after publication in manner aforesaid in what manner you have executed this precept, returning the summons attached to your certificate as an exhibit.

By order of Court,
(Signed) ———,
Secretary.

This ——— day of ———, 19—.

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No. 90

FORM OF NOTICE WHERE A SUM OF MONEY IN COURT IS CLAIMED O. 52, rr. 2 and 3.

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—, is now in Court (or lying in or in the custody of this Court, or as the case may be) and (name or names of claimants) has (have) given notice to this Court of a claim on his (or 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—.

No. 91

FORM OF LETTER OF APPOINTMENT OF APPROVED PROCESS SERVER O. 54, r. 2 (1).

Caption

I, A. B., District Judge of ———, do hereby appoint C. D. of ———, whose photograph appears hereunder, an Approved Process Server.

Given under my hand and the Seal of this Court on this ——— day of ———, 19—.

(*Signed*) ———,
District Judge.

SEAL OF COURT

Photograph

This apointment does not confer authority to execute writs, warrants, mandates, precepts or commands for execution (nor to serve the following processes: State them if such is the case).

No. 92

FORM OF OATH OF OFFICE OF APPROVED PROCESS SERVER O. 54, r. 2 (2).

I, C. D., of ———, do solemnly, sincerely and truly declare and affirm (or swear as the case may be) that I will well and truly discharge the duties appertaining to the office of an Approved Process Server in accordance with law.

(*Signed*) ———.

Jurat.

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No. 93

O. 56, rr. 2 and 3.

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 caption and Number of action) and (in the matter of A. B. deceased, or as the case may be. E. F. Petitioner and G. H., Respondent.

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 rule 4 of Order 56) requisite to furnish prima facie proof of the material facts set out.)

No. 94

O. 56, r. 5.

FORM OF (a) ORDER NISI OR (b) INTERLOCUTORY ORDER ON A PETITION IN AN ACTION OF SUMMARY PROCEDURE

Caption

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 (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. 60).

No. 95

O. 56, r. 8.

FORM OF ORDER REFUSING PETITION WHERE GROUNDS ADDUCED INSUFFICIENT TO SHOW PRIMA FACIE CASE

(Proceed as in No. 94, and the order will be—)

It is ordered that the prayer of the said petition be and the same is hereby refused.

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No. 96

FORM OF ORDER DISMISSING PETITION WHERE PETITIONER DOES NOT APPEAR O. 56, r. 10.

(Proceed as in No. 94, reciting the order made under (*b*) of Rule 5 of Order LVI, 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. 97

FORM OF ORDER WHERE RESPONDENT DOES NOT APPEAR O. 56, r. 11 (1).

(Proceed as in No. 94, reciting the order made under Order LVI, Rule 5, 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 Rule 5 (*a*) of Order LVI—)
The above order is made absolute.

(But if the order was an interlocutory order under Rule 5 (*b*) of Order LVI—)

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.)

No. 98

FORM OF SUMMONS TO LÉGAL REPRESENTATIVE OF A DECEASED DEFENDANT O. 57, r. 7 (1).

(Old Procedure Action)

CAPTION

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—.

(In regard to New Procedure Actions, vary the form as indicated in Form No. 22.)

No. 99

FORM OF APPLICATION FOR PERMISSION TO WITHDRAW FROM AN ACTION O. 58, r. 1.

Caption

I, ————, plaintiff in the above-named action, move that the Court be pleased to permit me 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. 100

O. 59, r. 2.

FORM OF NOTICE OF PAYMENT INTO COURT

Caption

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. 101

O. 61, r. 1.

FORM OF SECURITY FOR DEFENDANT'S COSTS WHERE PLAINTIFF RESIDES OUT OF JURISDICTION OF THE COURT

Caption

Know all men by these presents that we, A. B., of ———, and C. D., of ———, are jointly and severeally 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 ———,
Signature of X. Y.

Y. Z., of ———,
Signature of Y. Z.

District Judge
or
Notary Public.

(Use the same form with alterations where defendant resides out of the jurisdiction.)

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No. 102

FORM OF AUTHORITY TO SUE OR DEFEND GIVEN BY A MEMBER OF A NAVAL, MILITARY OR AIR FORCE O. 64, r. 1.

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 authorise 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 authorised 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. 103

DECREE NISI FOR DIVORCE "A VINCULO MATRIMONII" O. 70, r. 16 (1).

Caption

THIS ACTION coming on for disposal before ——— on the ——— day of ———, in the presence of ——— on the part of the plaintiff, and of ——— on the part of the Defendant: And it appearing to this Court that the defendant has been guilty of (state ground on the basis of which divorce is granted).

It is ordered and decreed that the marriage between ——— and ——— be set aside, dissolved, and annulled by reason of the Respondent's——— unless sufficient cause be shown to the Court why this Decree should not be made absolute within ——— months from the making thereof.

It is further ordered that the said ——— may henceforth resume and be known by her name of ——— and have and enjoy all the rights and privileges to which unmarried women are by law entitled.

(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 ——— in the pleadings mentioned: Provided always that this order for the custody. care, and education of the said infant 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 ——— 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).

(*Signed*) ———,
District Judge.

The ——— day of ———, 19 ——.

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No. 104

O. 70, r. 16 (1).

DECREE NISI FOR NULLITY OF MARRIAGE

Caption

THIS ACTION coming on for disposal before ——— on the ——— day of ———, in the presence of ———, on the part of the Plaintiff, and of ——— on the part of the Defendant: And it appearing to this Court that on the ——— day of ———, a pretended marriage was had and solemnized between the said ——— and ——— otherwise called ——— but that at the time of the solemnization of the said pretended marriage (state the ground upon which nullity of marriage is ordered):

It is decreed, that the said pretended marriage so had and solemnized between the said ——— and ——— be pronounced and declared to have been and to be wholly and absolutely null and void to all intents and purposes whatsoever: And that the said ——— be pronounced to have been and to be free from all bond of marriage with the said ——— otherwise called ———unless sufficient cause be shown to the Court why this Decree should not be made absolute within ——— months from the making thereof.

And it is further ordered (state order as to costs).

(*Signed*) ———,
District Judge.

The ——— day of ———, 19—.

No. 105

O. 70, r. 17.

DECREE ABSOLUTE

No. ...../D.

The above decree nisi coming on for final disposal before ——— District Judge, Colombo, on the ——— day of ——— 19 ——, and ——— months having elapsed since the entering of the decree nisi and no cause having been shown to the contrary: It is ordered and decreed, on the application of the said ——— that the decree nisi be and the same is hereby made absolute.

(*Signed*) ———.
District Judge.

The ——— day of ——— 19——.

No. 106

S. 63
O. 70, r. 18 (2).

DECREE FOR SEPARATION A MENSA ET THORO

(Begin as in an ordinary decree, see No. 60 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 person.

(And it is further decreed that the plaintiff, 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 decree, 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).

(No.)

(And it is further ordered (state order as to costs).)

(*Signed*) ———,
District Judge.

The ——— day of ——— 19—.

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No. 107

FORM OF APPLICATION FOR PERMISSION TO SUE AS A PERSON OF LIMITED MEANS

Sec. 26.
O. 71, r. 1.

(Caption as in 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 person of limited means in the action above specified.

Annexed are full and true schedule:

(*a*) 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.

(*b*) of my monthly salary and allowance.

(*c*) of my annual income from all sources.

(Subscribe as in the case of a plaint.)

(The Schedule)

(Annex affidavits of the applicant and of two headmen or other respectable persons of the place where plaintiff resides, verifying his means and containing the other particulars required by Rule 2 of Order LXXI).

No. 108

FORM OF CERTIFICATE OF PROCTOR REFEREE

O.71, r. 5.

Caption

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. 109

NOTICE OF MOTION TO DISCHARGE A CERTIFICATE TO SUE OR DEFEND AS A PERSON OF LIMITED MEANS

O. 71, r. 13.

Caption

To ————, of ———— (plaintiff or defendant in the above-named action).

Whereas you have been permitted to sue (or defend) as a person of limited means in the abovenamed action, and whereas the defendant (or plaintiff) has moved this Court that you may not be permitted to defend (or sue) as such, on the ground (state ground, see Rule 13 of Order LXXI):

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*) ———— District Judge.

The ———— day of ————, 19—.

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No. 110

O. 72, rr. 12. and 15.

FORM OF CERTIFICATE OF LEGAL AID

Caption

This is to certify that A. B., the plaintiff abovenamed (or C. D., the defendant abovenamed, or E. F., the intervenient abovenamed) has been under Order LXXII of the Civil Procedure Code, 1954, adjudged to be entitled to legal aid in connection with the above-styled action (or proceedings), and that G. H., Proctor of ——— has been appointed to render the necessary legal aid to him in conformity with the provisions of the above-said Order.

(*Signed*) ———,
Secretary.

This ——— day of ———, 19—.

Seal of the Court.

No. 111

O. 72, r. 18.

FORM OF CERTIFICATE OF LIMITED MEANS

Caption

This is to certify that A. B., the plaintiff abovenamed (or C.D., the defendant abovenamed, or E.F., the intervenient abovenamed) has been adjudged under Order LXXI of the Civil Procedure Code, 1954, to be a person of limited means, and further that he is entitled to legal aid in terms of Order LXXII of the said Code in connection with the above-styled action (or proceedings), and that G.H., Proctor of ———, has been appointed to render the necessary legal aid to him in conformity with the provisions of Order LXXII aforesaid.

(*Signed*) ———,
Secretary.

This ——— day of ———, 19—.

Seal of the Court.

No. 112

O. 75.

FORM OF CERTIFICATE OF CURATORSHIP AND GUARDIANSHIP

In the District Court of ———.

In the matter of the estate of A.B., a minor.

No. ———.

Whereas this Court has, under the provisions of Order LXXV of the Civil Procedure Code, 1954, appointed you, ———, of ———, to be curator of the estate of ———, a minor, until the said ——— shall have attained the age of twenty-one years:

1. 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 authorised 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.

4. In the event of this certificate being recalled under the provisions of Rule 18 of Order LXXV 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.

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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 authorised 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 maintenance and education of the said ——— in a suitable manner under the general superintendence and control of this Court.

8. You are authorised to expend the sum of ——— rupees a month fixed by this Court as an allowance for the maintenance and education of the said ———.

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 above form must be adapted thus:

" You are authorised to receive from the curator," &c.; paragraphs 7, 8 and 9 may be used as they stand.)

No. 113

FORM OF AFFIDAVIT TO BE PRODUCED WITH WILL

O.77, r. 2.

(Formal parts as in No. 52)

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.)

No. 114

FORM OF APPLICATION BY WAY OF SUMMARY PROCEDURE FOR PROBATE OR FOR ADMINISTRATION WITH THE WILL ANNEXED

O. 77, r. 6.

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.).

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).

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3. To the best of your petitioner's knowledge the intestate 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.)

(Where no respondent is named, state the reason to be that no opposition is apprehended: if the testator died out of Ceylon, state that the applicant has obtained an order appointing the Court to have sole testamentary jurisdiction: if the testator was not domiciled in Ceylon, state where he was domiciled at date of his death. Support all material averments by affidavit.)

No. 115

O. 77, r. 13.

ORDER ABSOLUTE IN THE FIRST INSTANCE

Caption

This matter coming on for disposal before ———, Esquire, District Judge of ———, on the ——— day of ———, 19—, in the presence of Mr. ———, Proctor, on the part of the petitioner abovenamed and the affidavit of the petitioner abovenamed dated the ——— day of ———, 19—, and the affidavit of the Notary and the two subscribing witnesses dated the ——— having been read:

It is ordered that the Last Will and Testament No. ——— made by the deceased abovenamed and attested by ———, Notary Public, on the ———, the original of which has been produced and now deposited in this Court, be and the same is hereby declared proved and that the petitioner abovenamed is the Executor named therein and he is hereby declared entitled to have Probate thereof issued to him accordingly.

(*Signed*) ———,
District Judge.

This ——— day of ———, 19——.

No. 116

O. 77, r. 14.

ORDER NISI DECLARING GRANT OF LETTERS WHERE THERE IS NO WILL

Caption

This matter coming on for disposal before ———, District Judge of ———, on the day of ———, 19——, in the presence of Mr. ———, Proctor, on the part of the petitioner abovenamed, and the affidavit of the petitioner abovenamed dated the ——— day of ———, 19——, having been read:

It is ordered that the petitioner abovenamed be and he is hereby declared entitled as ——— of the deceased abovenamed to have letters of administration to the estate of the deceased abovenamed issued to him accordingly; unless the respondents abovenamed or any other person or persons interested shall on or before the ——— day of ———, 19——, show sufficient cause to the satisfaction of this Court to the contrary.

(*Signed*) ———,
District Judge.

This ——— day of ———, 19——.

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No. 117

FORM OF ORDER NISI DECLARING WILL PROVED, ETC. O. 77, r. 14.

Caption

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 Last Will and Testament No. ——— made by the deceased abovenamed and attested by ———, Notary Public on ———, the original of which has been produced 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 ———, 19——, 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*) ———,
District Judge.

This ——— day of ———, 19——.

No. 118

FORM OF APPLICATION FOR ADMINISTRATION WHERE THERE IS NO WILL O. 77, r. 19

(Formal parts)

(Proceed as in form No. 114, 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.)

(Averments re sole Testamentary jurisdiction and domicile should be set out, if such are relevant and affidavits to be filed as indicated in form No. 114.)

No. 119

FORM OF AFFIDAVIT WHERE DECEASED IS INTESTATE O. 77, r. 19 (3).

(Formal parts as in No. 52.)

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.

3. The heirs of the said intestate are the following:— (or the respondents 1, 2, etc.) to the best of my knowledge and belief.

4. (If intestate had a foreign domicile say). The intestate at the date of his death was a person who had a domicile of ———.

(Formal conclusion.)

SCHEDULE

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No. 120

O. 77, r. 22 (1).

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 ————, Proctors for parties having interest, or as the case may be).

(Signed by the party and dated.)

No. 121

O. 77, r. 23.

FORM OF ORDER MAKING ABSOLUTE OR DISCHARGING ORDER NISI

Caption

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.)

No. 122

O. 77, r. 23.

PROBATE

Nett value of estate Rs. ————.

Estate Duty Rs. ————.

In the District Court of ————.

Caption

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 affirmed (or sworn) 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 as at date of death of the deceased a true, full, and perfect inventory and valuation of the said property as well as a statement of the deceased's liabilities within one month of the date on which the assessment of estate duty becomes final, and to file a true and final account of ..... executorship within three months after the filing of the inventory.

AND it is hereby certified that the Declaration and Statement of Property under the Estate Duty Ordinance have been delivered, and that the value of the said estate on which estate duty is payable, as assessed by the Commissioner of Stamps, amounts to Rs.

(Form)

AND it is further certified that it appears by a certificate granted by the Commissioner of Stamps, and dated the ———— day of ————, 19—, that Rs. ———— on account of Estate Duty (and interest on such duty) has been paid (or secured).

Given under my hand and the Seal of the Court this ———— day of ————, 19—.

District Judge.

Note.—When probate is limited, insert the limitation.

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No. 123

FORM OF LETTERS OF ADMINISTRATION O. 77, r. 23.

(with the Will annexed and otherwise)

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 authorised 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 affirmed (or sworn) well and faithfully to administer the same and to render to this Court as at the date of the death of the deceased a true, full and perfect inventory and valuation of all the said property and estate, rights and credits as well as a statement of the deceased's liabilities within one month of the date on which the assessment of estate duty becomes final, and also a true and final account of your administration thereof within three months after the filing of the inventory.

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 authorised by the Court so to do.

And it is hereby certified that the Declaration and Statement of Property under the Estate Duty Ordinance have been delivered, and that the value of the said estate on which estate duty is payable, as assessed by the Commissioner of Stamps, amounts to Rs.

And it is further certified that it appears by a certificate granted by the Commissioner of Stamps, and dated the ——— day of ——— 19—, that Rs. ——— on account of Estate Duty (and interest on such duty) has been paid (or secured).

Given under my hand and the Seal of the Court this ——— day of ———, 19—.

District Judge.

No. 124

FORM OF LETTERS AD BONA COLLIGENDA O. 78, r. 1.

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 authorised 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,

(*Signed*) ———,
Secretary.

The ——— day of ———, 19—.

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No. 125

O. 79, r. 1 (2).

NOTICE OF APPLICATION

In the District Court of ———.

Notice is hereby given that after the expiry of ——— days from the date hereof, application will be made to the District Court of ——— under the British Courts Probates (Re-sealing) Ordinance (Chapter 84) for the sealing of Probate of the will/*letters of administration in respect of the estate of ——— late of ——— deceased, granted by the ——— Court at ——— on the ——— day of ———, 19——.

(*Signed*) ———,
Proctor for ——— (Applicant).

*Strike out words that do not apply.

No. 126

O. 79, r. 2 (2).

AFFIDAVIT

In the District Court of ———.

I, ——— of ——— do solemnly, sincerely and truly affirm and declare (or make oath and say) as follows:—

1. That a grant of probate of the will (or letters of administration of the estate) of A. B., late of ——— deceased was granted to me or ——— by the ——— Court at ——— on ——— the ——— day of ———.

2. That the said deceased was at the time of his death domiciled at ——— (the following words to be struck out if inapplicable) within the jurisdiction of the said Court.*

3. That the notice hereunto annexed was made or published in the manner directed by the order of the Court dated the ——— day of ———, 19——.

4. That I am the attorney, lawfully appointed of ——— under power of attorney dated the ——— day of ———, 19——, and am duly authorized to apply to this Court for the sealing of the said grant (this paragraph to be struck out if inapplicable).

5. That the value of the estate in Ceylon amounts to the sum of ——— rupees and no more, to the best of my knowledge, information and belief.

Sworn (or affirmed) at ——— this ——— day of ———, 19——.

*This is the Court referred to in paragraph 1 of this affidavit.

No. 127

O. 79, r. 3 (2).

ADMINISTRATION BOND (WITH OR WITHOUT WILL) ON APPLICATION BY ADMINISTRATOR

In the District Court of ———.

Know all men by these presents that we, A. B. of ———* and C. D. of ———* and E. F. of ———* (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 A. B. in the sum of ——— rupees *and the said C. D. and the said E. F., in the sum of ——— rupees each/to be paid to the said Secretary or to the Secretary of that Court 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 the benefits to which we as sureties are by law entitled.

The condition of this obligation is such that if the above-bounden A. B. the administrator* (with the will dated ——— day of ——— 19——, annexed) by authority of the ——— Court at ——— acting under the letters of administration granted to ——— on the ——— day of ———, 19——, and now about to be sealed in the District Court of ——— under the British Courts Probates (Re-sealing) Ordinance (Chapter 84) of the estate

* To be struck off if inapplicable.

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of K. L. ———, late of ——— deceased who died on the ——— day of ———, 19——, do render into this Court a true and perfect inventory of all the property and estate, rights and credits of the said deceased within the Island of Ceylon which have or shall come to the possession or knowledge of the said A. B. or of any other person for him within the time allowed by law and shall well and truly administer the same according to law, and further shall render to this Court a true and just account of (his) said administration within the time allowed by law 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.

Signed and delivered in Court this ——— day of ———, 19—.

Before me,

(*Signed*) ———,
District Judge.

No. 128

ADMINISTRATION BOND (WITH OR WITHOUT WILL) ON APPLICATION BY ATTORNEY

O. 79, r. 3 (2).

In the District Court of ———.

Know all men by these presents that we A. B. of ——— (Attorney of the hereinafter mentioned X. Y.) and *C. D. of ——— and *E. F. of ——— *(Sureties) are held and firmly bound unto ——— Secretary of the District Court of ——— (or the Secretary of the District Court of ——— for the time being) the said A. B. in the sum of ——— rupees *and the said C. D. and E. F. in the sum of ——— rupees each to be paid to the said ——— (Secretary or to the Secretary of that Court 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 the benefits to which we as sureties are by law entitled.

The condition of this obligation is such that if X. Y. of ——— the administrator *(with the will dated ——— day of ——— annexed) by authority of the ——— Court at ——— acting under letters of administration granted to ——— on the ——— day of ———, 19—, and now about to be sealed in the District Court of ——— under the British Courts Probates (Re-sealing) Ordinance (Chapter 84) of the ——— estate of M. N. late of ——— deceased who died on the ——— day of ——— do render into this Court a true and perfect inventory of all the property and estate, rights and credits of the said deceased within the Island of Ceylon which have or shall come to the possession or knowledge of the said X. Y. or of any other person for him on or before the ——— day of ——— 19—— or within such further time as the Court may allow and shall well and truly administer the same according to law, and further shall render to this Court a true and just account of (his) said administration on or before the ——— day of ——— 19 —— or within such further time as the Court may allow 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.

Signed and delivered in Court this ——— day of ———, 19—.

Before me,

———,
District Judge.

*To be struck off if inapplicable.

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No. 129

O. 80, r. 1.

FORM OF OATH BY EXECUTOR OR ADMINISTRATOR REFERRED TO IN FORMS Nos.

You solemnly, sincerely and truly declare and affirm (or swear) 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 as at the date of the deceased's death a true, full, and perfect inventory and valuation of all the property, movable and immovable, and all the rights and credits of the deceased as well as a statement of the deceased's liabilities within one month of the date on which the assessment of estate duty becomes final, and that you will file a true and final account of your executorship (or administration) within three months after the filing of the inventory.

(Affirmed, or sworn, etc.)

No. 130

O. 80, r. 2.

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 the benefits to which sureties are by law entitled.

Whereas by order of the said Court of the ———— day of ————, 19—, it is ordered that (probate of the will or 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 as at the date of the deceased's death a true, full and perfect inventory of all the property and estate, rights and credits, of the said deceased, as well as a statement of the deceased's liabilities which have or shall come to the possession or knowledge of the said ————, or of any other person for him, within one month of the date on which the assessment of estate duty becomes final and shall well and truly administer the same according to law; and further shall render to this Court a true and final account of (his) said adminstration within three months after the filing of the inventory, 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.)

Before me,

(*Signed*) ————,
District Judge.

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Form No. 131

O. 81, r. 2.

ESTATE OF X. Y. Z., DECEASED

Inventory and Valuation and Statement of Liabilities

Date of Death : (26th February, 1953). Testamentary No. ————.

ASSETS						LIABILITIES					
Immovable Property			*Rs.*	*c.*	*Rs.*	*c.*	*Secured Debts*			*Rs.*	*c.*	*Rs.*	*c.*
The M. N. P. Rubber Estate			120,000	0			G. H. on mortgage dated ———— on M. N. P.						
No. ————, Main Street, Pettah ..			65,000	0			Rubber Estate—Principal			25,000	0		
No. ————, Anderson Road			45,000	0			Interest thereon			1,500	0		
Ambagahawatte, situate at Ragama, in extent 5 A. 1 R. 20 P., ¼ share			5,000	0			L. M. Pawnbroker, on pawn of ring ..			1,000	0		
					235,000	0	Interest ..			140	0		
Movable Property												27,640	0
Movables on the M. N. P. Rubber Estate ..			5,200	0			*Unsecured Debts*						
Manufactured rubber			1,156	0			J. K. on promissory note dated ————						
Furniture as per Schedule I			6,800	0				Principal ..		5,000	0		
Motor car			3,000	0				Interest ..		250	0		
Jewellery as per Schedule II			4,075	0			Salary of Superintendent, L			1,000	0		
Amount due from L on promissory Note dated 28.2.52—							Wages of labourers			758	60		
Principal ..	750	0					Shop bills to R. & Co.			250	37		
Interest ..	45	0	795	0			S. &. Co.			305	12		
							T. & Co.			450	0		
Rent of ————, Main Street, Pettah, from January 1, 1953, to February 26, 1953			800	0			P. Q. Nursing home			1,250	0		
200 shares in A. B. Co., Ltd.			2,000	0			Wages of domestics			515	0		
100 shares in C. D. Co., Ltd.			10,000	0								9,779	9
40 shares in E. F. Co., Ltd.			8,000	0			Total Liabilities					37,419	9
Policy of Insurance in U. V. Co.			5,000	0			Nett value of estate					259,730	46
Cash in hand			1,200	0									
Cash at Bank			14,123	55									
					62,149	55							
					297,149	55						297,149	55

I, A. B., of ————, Executor of the Last Will of ————, deceased (or Administrator of the Estate, &c., if so) solemnly, sincerely, and truly declare and affirm (or make oath and say) as follows :—

1. To the best of my knowledge, information, and belief, the above-written inventory of assets and statement of liabilities contains as at date of deceased's death a full, true and correct account of all property, movable and immovable, and rights and credits and liabilities 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 and liabilities, the particulars of which are set forth and contained in the said inventory and statement, and to the best of my judgment and belief the several sums respectively set opposite to the several items in the said inventory and statement fully and fairly represent, as at the date of the deceased's death, the values of the items to which they are so respectively set opposite.

A. B,
Executor (or Administrator).

(Jurat)

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Form No. 132

SCHEDULE I TO INVENTORY—ESTATE OF X. Y. Z., DECEASED O. 81, r. 2.

Valuation of Furniture

	Rs.	*c.*
1 Teak upholstered drawing room suite	1,500	0
2 Nadun Bed Room Suites at 1,250 each	2,500	0
1 Dinner table, nadun, and 12 chairs	425	0
1 Office table—teak, polished	75	0
1 Wardrobe, satinwood, with mirror	275	0
2 arm chairs, 1 hat-stand with mirror, and 12 verandah chairs—all teak	325	0
1 Iron safe	850	0
2 Single beds and two wardrobes, jak	225	0
1 Dinner Wagon—teak, polished	125	0
Meat Safe, and sundry items	500	0
	6,800	0

Form No. 133

SCHEDULE II TO INVENTORY—ESTATE OF X. Y. Z., DECEASED O. 81, r. 2.

Valuation of Jewellery.

	Rs.	*c.*
1 Gold Brilliant ring	2,750	0
1 Gold ring set with ruby	750	0
1 Wristlet Watch—Rolex	200	0
1 Gold Cigarette Case	350	0
1 Parker Fountain Pen	25	0
	4,075	0

(Signature) A. B.,
(Executor or Administrator).

(Colombo), (date).

No. 134

FORM OF AFFIDAVIT OF FAILURE TO RETURN INVENTORY AND VALUATION AND STATEMENT OF LIABILITIES O. 81, r. 6.

(Formal part as in 52.)

1. (Allege residence and interest in estate.)

2. That (probate was granted of the Bill or letters of administration issued of the estate and effects) of ———, deceased, by an order of this Court dated, &c., to one ———, of ———.

3. That more than one month has elapsed since the date on which the assessment of estate duty became final, and the said ——— has not returned any inventory and valuation of the property and effects or statement of liabilities of the said ——— (or any sufficient inventory, &c., specifying the defects.)

4. (Formal conclusion.)

No. 135

FORM OF ORDER ON EXECUTOR, &C., TO RENDER ACCOUNT. O. 81, r. 7.

Caption

Upon reading the affidavit of ———, 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 in default thereof the said ——— personally be and appear before this Court at that time and show cause why he could not be attached. And it is further ordered that in case of disobedience to this order an attachment issue against him.

(*Signed*, &c.) ———,
District Judge.

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No. 136

FORM OF CITATION O. 82, r. 4.

Caption

To ————.

Whereas 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 be examined in connection with the matters averred in the petition.

(*Signed*, &c.) ————,
District Judge.

(Endorsement in regard to batta and travelling expenses to be made as in the case of a summons to a witness, Form No. 53.)

No. 137

FORM OF ORDER TO BE ANNEXED TO, OR ENDORSED ON, THE PRECEDING O. 82, r. 8.

Caption

On reading 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 attend personally to be examined in connection with the matters averred in the petition.

(*Signed*, &c.) ————,
District Judge.

No. 138

FORM OF ORDER NISI DECLARING ESTATE INSOLVENT O. 85, r. 5.

Caption

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 declared that the estate of ————, deceased, be administered as an insolvent estate in accordance with the provisions of Rule 11 of Order LXXXV of the Civil Procedure Code, 1954, unless (the respondent or any person on whom the Court directs the order to be served) shall, on or before the ———— day of ————, 19—— show sufficient cause to the satisfaction of this Court to the contrary.

(*Signed*, &c.) ————,
District Judge.

No. 139

FORM OF AFFIDAVIT REQUIRING EXECUTOR OR ADMINISTRATOR TO FILE ACCOUNT O. 86, r. 3.

Caption

I, A. B., do hereby solemnly, sincerely and truly declare and affrm (or make oath and say) as follows:—

1. I, the petitioner abovenamed, am a creditor of the estate of ———— deceased in a sum of Rs. ———— due to me (upon a promissory note dated ———— or say in what way).

2. Probate of the Last Will and Testament of the said ———— (or Letters of Administration with the Will annexed or Letters of Administration) was (were) duly issued to the Respondent abovenamed on ————.

3. The said Respondent filed inventory on ————.

4. More than three months have elapsed after the filing of the said inventory but the Respondent has not filed any account of his administration.

A. B.

(Jurat.)

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Form No. 140

ESTATE OF X. Y. Z., DECEASED

O. 86, r. 7. **FINAL ACCOUNT** Testamentary No. ————.

Date of Death—(26th February, 1953)

ASSETS

	Valuation as per Inventory Rs. c.	*Receipts and Transactions* Rs. c.
Immovable Property—		
M. N. P. Rubber Estate	120,000 0	
Transfer to A. B., devisee		.. 120,000 0
No. ————, Main Street, Pettah ..	65,000 0	
Nett amount realised by auction sale on		.. 75,000 0
October 26, 1953, No. ——, Anderson Road		.. 45,000 0
Transferred to widow, devisee ..		.. 45,000 0
Ambagahawatta in Ragama—¼ share ..	5,000 0	
Nett amount realised by sale on September 25, 1953		5,000 0
Movable Property—		
Movables on M. N. P. Rubber Estate ..	5,200 0	
Transferred to A. B., devisee ..		5,200 0
Manufactured rubber	1,156 0	
Proceeds of sale		2,000 0
Furniture as per inventory	6,800 0	
Transferred to widow legatee at valuation in inventory		6,800 0
Motor car	3,000 0	
Amount realised by sale of motor car ..		4,000 0
Jewellery as per inventory	4,075 0	
Proceeds of sale of jewellery as per Schedule A		3,000 0
Amount due from L. on promissory note dated February 28, 1952—capital and interest ..	795 0	
Recovered amount capital and interest due on above pronote		806 25
Rent of No. ———— Main Street, Pettah, for January and February, 1953 ..	800 0	
Above rent received by executor		800 0
Shares in limited Liability Companies—Schedule B	20,000 0	
Proceeds of sale of above—Schedule B ..		18,000 0

LIABILITIES, PAYMENTS AND DISTRIBUTIONS

	Liabilities as per Inventory Rs. c.	*Payments and Distributions* Rs. c.
Funeral expenses and almsgiving ..		.. 3,600 0
Income tax		.. 4,200 0
Estate duty at ———— %		.. 16,000 0
Costs of Administration		.. 4,250 0
Debts due and payable as per inventory ..		.. 37,419 09
Debts paid as per Schedule F		.. 38,250 0
M. N. P. Rubber Estate transferred to A. B., devisee		120,000 0
No. ————, Anderson Road, transferred to widow		50,000 0
Furniture transferred to widow		6,800 0
Executor's commission		1,500 0
Nett value of estate	259,730 46	
Cash assets distributed as per Schedule G ..		92,670 80

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Policy of Insurance in U. V. & Co. ..		5,000	0				
Recovered under Policy				6,250	0		
Cash in hand and in bank		15,323	55				
Cash as above taken over by executor ..				15,323	55		
Receipts from M. N. P. Estate from February 27, 1953 to ———as per Schedule C ..				26,227	0		
Rent of No. ————, Main Street, Pettah from March 1, 1953, to September 30, 1953, as per Schedule D				2,800	0		
Dividend on shares as per Schedule E ..				1,064	0		
		297,149	55	337,270	80	297,149	55 337,270 80

Note.—Income oustanding and recoverable on date of Final Account :

	Rs.	*c.*
Rent from No. ————, Main Street ..	400	0
Sundry Income	880	0
	1,280	0

Colombo, October 30, 1953.

(Signature) A. B. (Executor or Administrator.)

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Form No. 141

O. 86, r. 7.

SCHEDULE A TO FINAL ACCOUNT—ESTATE OF X. Y. Z., DECEASED

Proceeds of Sale of Jewellery

	Value as per Inventory Rs.	c.	*Proceeds of Sale* Rs.	c.
1 Gold Brilliant Ring ..	2,750	0	2,000	0
1 Gold Ring set with ruby ..	750	0	500	0
1 Wristlet Watch—Rolex ..	200	0	200	0
1 Gold Cigarette Case ..	350	0	275	0
1 Parker Fountain Pen ..	25	0	25	0
	4,075	0	3,000	0

(Signature) A. B.,
Executor (or Administrator).

(Colombo), (Date).

Form No. 142

O. 86, r. 7.

SCHEDULE B TO FINAL ACCOUNT—ESTATE OF X. Y. Z., DECEASED

Proceeds of Sale of Shares in Limited Liability Companies

Description of Shares	*Value as per Inventory* Rs.	c.	*Proceeds of Sale* Rs.	c.
200 shares in A. B. Co., Ltd. ..	2,000	0	1,950	0
100 shares in C. D. Co., Ltd. ..	10,000	0	9,000	0
40 shares in E. F. Co., Ltd. ..	8,000	0	7,050	0
	20,000	0	18,000	0

(Signature) A. B.,
Executor (or Administrator).

(Colombo), (Date).

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Form No. 143

SCHEDULE C TO FINAL ACCOUNT—ESTATE OF X. Y. Z., DECEASED

O. 86, r. 7.

Income and Expenditure Account of M. N. P. Rubber Estate for Period ———— (Extracted from estate account books)

INCOME

1953		*Rs. c.*
March 31	Sale of ———— lb. of dry rubber at Rs. ———— per lb.	————
April 30	Do.	————
May 8	Sale of timber	————
May 31	Sale of ———— lb. of dry rubber at Rs. ———— per lb. &c., &c.	————
		————
		————
		————

EXPENDITURE

1953		*Rs. c.*
March 31	Salary of Superintendent	————
	Wages of labourers	————
April 5	Transport of rubber	————
April 10	Commission on sale of rubber	————
April 10	Cost of criminal case in respect of theft of latex ..	————
April 30	Salary of Superintendent	————
	Wages of labourers	————
May 6	Transport of rubber	————
May 10	Commission on sale, &c.	————
	Income over expenditure	26,227 0
		————
		————
		————

(Colombo), (Date).

(Signature) A. B.,
Executor (or Administrator).

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Form No. 144

SCHEDULE D TO FINAL ACCOUNT—ESTATE OF X. Y. Z., DECEASED

Rent of No. ——— Main Street, Pettah, received from February 27, 1953, to September 30, 1953

Date of Receipt	*Month for which Rent is paid*	*Amount* Rs. c.
10th March, 1953 ..	.. March, 1953 ..	400 0
8th April, 1953 ..	.. April, 1953 ..	400 0
8th May, 1953 ..	.. May, 1953 ..	400 0
9th June, 1953 ..	.. June, 1953 ..	400 0
10th July, 1953 ..	.. July, 1953 ..	400 0
8th August, 1953 ..	.. August, 1953 ..	400 0
10th September, 1953 ..	.. September, 1953	400 0
		2,800 0

(Signature) A. B.,
Executor (or Administrator).

(Colombo), (Date).

Form No. 145

SCHEDULE E TO FINAL ACCOUNT—ESTATE OF X. Y. Z., DECEASED

Dividends on Shares received from February 27, 1953, to October 30, 1953

Date	*Details of Dividend*	*Amount*	*Less Income Tax deducted*	*Nett Amount received*
1953		Rs. c.	Rs. c.	Rs. c.
June 30 ..	8 per cent. on 200 Ten Rupee Shares of A. B. Co., Ltd., for year ending 31st March	160 0 ..	48 0 ..	112 0
June 30 ..	8 per cent. on 100 Hundred Rupee Shares of C. D. Co., Ltd., for year ending 31st March	800 0 ..	240 0 ..	560 0
August 10 ..	7 per cent. on 40 Two Hundred Rupee Shares of E. F. Co.,Ltd., for year ending 31st July	560 0 ..	168 0 ..	392 0
				1,064 0

(Signature) A. B.,
Executor (or Administrator).

(Colombo), (Date).

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Form No. 146

SCHEDULE F TO FINAL ACCOUNT—ESTATE OF X. Y. Z., DECEASED

Debts Settled

Description of Debt	*Amount due as per Inventory* Rs. c.	*Amount paid on settlement* Rs. c.
Secured Debts—		
G. H. on mortgage dated ——— on M. N. P. Rubber Estate	26,500 0	26,950 63
L. M. Pawn Broker on Pawn of ring ..	1,140 0	1,170 28
Unsecured Debts—		
J. K. on promissory note dated ——— ..	5,250 0	5,600 0
Salary of Superintendent	1,000 0	1,000 0
Wages of labourers	758 60	758 60
Shop bills to R. & Co.	250 37	250 37
S. & Co.	305 12	305 12
T. & Co.	450 0	450 0
P. Q. Nursing Home	1,250 0	1,250 0
Wages of domestics	515 0	515 0
	37,419 9	38,250 0

(Signature) A. B.,
Executor (or Administrator).

(Colombo), (Date).

Form No. 147

SCHEDULE G TO FINAL ACCOUNT—ESTATE OF X. Y. Z., DECEASED

Distribution of Cash Assets in Terms of Will

Name and Description of Party	*Share in terms of Will*	*Amount paid*
Mrs. X. Y. Z., widow, 1st Respondent ..	¼ ..	23,167 70
Mr. A. ———, son, Executor ..	¼ ..	23,167 70
Mrs. ———, daughter, 2nd Respondent ..	¼ ..	23,167 70
Miss ———, daughter, 3rd Respondent ..	¼ ..	23,167 70
		92,670 80

(Signature) A. B.,
Executor (or Administrator).

(Colombo), (Date).

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O. 86, r. 7 (2).

No. 148

FORM OF AFFIDAVIT OF ACCOUNTING PARTY

Caption

I, A. B., (Executor, or as may be) ———, deceased, do solemnly, sincerely and truly declare and affirm (or do make oath and 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 the 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 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 or person interested in the estate of the said deceased.

(Formal conclusion.)

Form No. 149

O. 86, r. 9.

FORM OF RECEIPT AND DISCHARGE IN FAVOUR OF EXECUTOR OR ADMINISTRATOR

Caption

We do hereby acknowledge the conveyance and delivery and/or receipt of the devises and legacies made and bequeathed severally to us under the last will (or the distributive shares due to us as heirs) (or the debts due to us as creditors) of the deceased above named, and do hereby grant a full discharge to the executor (or administrator) above named in respect of the said devises and legacies (or distributive shares or debts as the case may be).

(*Signed*) ———, Respondent.

———, Respondent.

———, Respondent.

Witness to the identity and signature of the above named.

(*Signed*) ———,
Proctor.

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Form No. 150

FORM OF PETITION FOR PAYMENT OF DEBT

O. 86, r. 21 (1).

Caption

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 account of his administration of the estate of the said deceased.

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), 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 your petitioner prays that a decree be entered directing the said ——— to pay to the petitioner the said sum of rupees ——— with ——— interest and costs.

(Conclusion.)

No. 151

FORM WHERE APPLICANT IS A LEGATEE

O. 86, r. 21 (1).

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 of " claim " substitute " legacy-" (or distributive share) ";

No. 152

FORM OF CITATION ON PRECEDING APPLICATIONS

O. 86, r. 21.

Caption

Proceed as in No. 136. 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 ——— ".

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No. 153

O. 86, r. 21 (5).

FORM OF DECREE ON THE PRECEDING CITATION

Caption

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 ——— (and to C. D. the sum of rupees, etc., as before).

(*Signed*) ———,
District Judge.

The ——— day of ———, 19—.

No. 154

O. 86, r. 22.

FORM OF PETITION FOR A JUDICIAL SETTLEMENT OF EXECUTOR'S ACCOUNT

Caption

1. The respondent above named (administrator or executor) is the administrator (or administrator with the will annexed or executor as the case may be) of the estate of the above-named deceased. Letters of administration (or letters of administration with the will annexed or probate) were issued to him on ———.

2. The petitioner is the (state interest such as widow, son, creditor, etc.) of the said deceased and is an heir (or creditor, etc.) of the said estate and is otherwise interested in the said estate.

3. The respondent has filed an account (or final account) in Court dated ——— and the said account has not been judicially settled.

4. It has become necessary to have the said account judicially settled.

5. The petitioner challenges the correctness of the said account on the following grounds:—

(set out the grounds): e.g.,

(*a*) The respondent has allotted to the petitioner a 1/16 share in the estate whereas he is entitled to a 1/4 share;

(*b*) The respondent has not included the following assets of the deceased:
(1)
(2)
(3)

(*c*) The respondent has received the following sums in addition to what he has shown in the said account as received by him:
(1)
(2)
(3)

(*d*) The respondent has debited the estate with the following sums for which the estate is not liable (or which he has not paid):—
(1)
(2)
(3)

etc.

6. The respondent is liable for interest on all monies received and retained by him for over a year.

Wherefor the petitioner prays:

(1) That the account of the administrator (or executor) be judicially settled.
(2) That the petitioner be declared entitled to (1/4 share of the estate).
(3) That the respondent be decreed to pay all monies found to be due from him as well as interest on sums retained by him as aforesaid.
(4) That a decree be entered distributing the estate, for costs and such other and further relief as to this Court may seem meet.

(*Signature*)
Petitioner.

(*Date*) (*Address*)

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No. 155

FORM OF STATEMENT OF OBJECTION BY PARTY CONTESTING AN ACCOUNT O. 86, r. 25.

Caption

The statement of objections of A. B., ——— Respondents (a creditor or a legatee, or otherwise of the said ———, deceased,) states as follows:—

1. The account filed by the Executor, Respondent, 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.).

Wherefore (conclusion adapt Form No. 154.)

Form No. 156

FORM OF DECREE ON JUDICIAL SETTLEMENT OF ACCOUNT O. 86, r. 35 (2).

(Caption, &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 some one 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 made to the said account (or recite fact of objections), and all parties having been heard: 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 in manner following: (set out the particulars)

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 follow, 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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Form No. 157

O. 86, r. 40.

FORM OF EXECUTOR'S PETITION FOR A JUDICIAL SETTLEMENT

Caption

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 (otherwise) of the said ———) (and your petitioner's co-executor, C. D.) be cited to attend such settlement.

(Formal conclusion.)

(*Signed*, &c.) ———.

Form No. 158

O. 86, r. 40.

FORM OF CITATION ON SUCH APPLICATION

(Adapt No. 136. The citation is:

" to attend the final judicial settlement of the account of the proceedings of ——— as ———, &c., of the said deceased ——— ")

Form No. 159

O. 88, r. 6 (*a*).

FORM OF WARRANT OF ARREST BEFORE JUDGMENT

Caption

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 Order 88 r. 6) 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 authorised to discharge the said defendant. And have here this mandate on the return day thereof.

(*Signed*) ———.

(Date)

Memorandum—This warrant is to be executed within one calender month from the date thereof, including the day of such date, and not afterwards.

Form No. 160

O. 88, r. 6 (*b*).

FORM OF MANDATE OF SEQUESTRATION

Caption

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. 55 with the necessary modifications).

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Form No. 161

FORM OF SECURITY TO BE GIVEN BY PLAINTIFF. O. 88, r. 7.

Caption

(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. 162

FORM OF SECURITY, &C., TO BE GIVEN BY DEFENDANT ARRESTED BEFORE JUDGMENT O. 88, r. 9.

Caption

Know all men by these presents that we ——— and ——— &c. (making the Fiscal the obligee and proceeding to the forms Nos. 101 and 130.)

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. 163

FORM OF BAIL ON APPEARANCE O. 88, r. 10.

(Bond, as in last preceding, making the Secretary of the Court obligee. The condition is to appear and answer, &c., in terms of O. 88, r. 10.)

No. 164

FORM OF WARRANT OF COMMITMENT O. 88, r. 11.

Caption

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. 165

FORM OF AUTHORITY TO PROCTORS TO APPLY FOR REFERENCE TO ARBITRATION O. 92, r. 2 (2).

Caption

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 authorise 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.

Witness:

——— Plaintiff.

——— Defendant.

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No. 166

O. 92, r. 5.

FORM OF ORDER OF COURT REFERRING MATTER TO ARBITRATION

Caption

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 the award of the majority of the arbitrators shall prevail and that if the said arbitrators being equally divided, 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. 167

O. 92, r. 5.

FORM OF ORDER OF REFERENCE ON THE ABOVE

Caption

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 affirmation or oath.

Given, &c.

(Signature) ———,
——— Judge.

No. 168

O. 92, r. 7.

FORM OF NOTICE TO ARBITRATORS TO APPOINT AN UMPIRE

Caption

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).

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No. 169

FORM OF WRITTEN NOTICE OF FILING OF AWARD O. 92, r. 17.

Caption

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.

(*Signed*) ————,
Judge.

No. 170

SUMMONS IN AN ACTION OF SUMMARY PROCEDURE ON A LIQUID CLAIM O. 94, r. 1.

Caption

To the above-named defendant (or defendants).

WHEREAS the above-named plaintiff has instituted an action against you in this Court under Chapter 94 of the Civil Procedure Code, 1954, 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 enter appearance and apply for leave to defend the action within seven days from the service hereof, inclusive of the day of such service. In default whereof the plaintiff will be entitled at any time after expiration of such seven 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 being expenses (of dishonour, state nature of dishonour) and the sum of ———— rupees for costs.

Leave to defend 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 carries endorsements, with the endorsements.)

By order of Court,
(*Signed*) ————,
Secretary.

The ———— day of ————, 19—.

No. 171

FORM OF NOTICE TO RESPONDENT THAT APPELLANT WILL TENDER SECURITY IN APPEAL, &c. O. 95, r. 3.

(Caption, which should show who the appellants or respondents are.)

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 when the petition of appeal was presented) move to fix the security for any costs which may be incurred by you in appeal in the premises.

(*Signed*) ————,
Party Appellant.

The ———— day of ————, 19—.

No. 172

FORM OF NOTICE OF APPEAL TO BE SERVED ON RESPONDENT OR HIS PROCTOR O. 95, r. 6.

Caption as in Form 171

To (party respondent or his Proctor).

You are required to take notice that the security tendered by the appellant for your costs of appeal in the above-named action having been accepted, and the appeal having been perfected, 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.

(*Signed*) ————,
Appellant (or his Proctor).

The ———— day of ————, 19—.

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O. 95, r. 8.

No. 173

FORM OF SECRETARY'S CERTIFICATE IN APPEAL

No. ———

Case Instituted	*Order Made*	*Decision in whose favour*	*Petition of Appeal filed*	*Security given on*	*Whether Plaintiff or Defendant appeared as a person of limited means*

I, A. B., (Secretary, &c.), do hereby certify that the above statement is correct

(Signed and dated) ———.

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No. 174

FORM OF SECURITY BOND IN APPEAL O. 95, r. 11 (1).

(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. ")

Signed by appellant (or his Proctor where authorised thereto) and surety or sureties in the presence of

————,
District Judge.

No. 175

FORM OF SECURITY BOND WHERE EXECUTION IS STAYED O. 98, r. 5.

(Follow the ordinary form of bond, 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 the last form.)

No. 176

FORM OF ADMISSION BY THE DEFENDANT O. 102, r. 8 (2).

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.

(*Signature*) ————,
Defendant.

Signed in my presence:

————, Chief Clerk.

No. 177

FORM OF SUMMONS TO PERSONS ACCUSED OF CONTEMPT OF COURT O. 103, r. 2.

In the ———— Court of ————

To ————

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 (caption of case, &c.), departed from the said Court in contravention of the provisions of Order XXVIII Rule 9 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.

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No. 178

O. 103, r. 3.

FORM OF WARRANT IN THE LIKE CASE

(Caption 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:

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. 179

O. 103, r. 6 (1).

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 ——— 19 —— (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*) ———, Judge.

and dated ———.

No. 180

O. 105, r. 1 (VI).

CERTIFICATE OF SERVICE OF FOREIGN PROCESS

I, ———, Registrar of the Supreme Court of the Island of Ceylon, hereby certify that the documents annexed hereto are as follows:—

(1) The original Letter of Request for Service of process received from the Court or tribunal at ———, in the ——— of ———, in the matter of ——— versus ———; and

(2) The process received with such Letter of Request; and

(3) The evidence of service upon ———, the person named in such Letter of Request, together with the verification of a Notary Public.

And I certify that such service so proved, and the proof thereof, are such as are required by the law and practice of the Supreme Court of the Island of Ceylon regulating the service of legal process and the proof thereof.

And I certify that the cost of effecting such service as duly certified by me in the statement of charges hereto annexed amounts to Rs. ———.

Dated this ——— day of ———, 19—.

(*Signed*) ———,

Registrar, Supreme Court.

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APPENDIX II—PLEADINGS

General Note re Plaints, Answers and Replications

1. The Plaint, Answer and Replication must commence with the caption (see Form No. 16 in Appendix I) and must conclude with a prayer specifying the relief claimed (see inter alia forms of pleadings Nos. P3, P4 and P16 where prayers to plaint, answer and replication are included).

2. The jurisdiction of the Court to entertain the action must either be averred in a special paragraph in the plaint as in Forms Nos. P3 and P5 or be otherwise incorporated therein as in Forms Nos. P14 and P23 and where the defendant challenges the jurisdiction of the Court, the answer must specifically do so.

3. In the forms following, the caption must in each case be set out and where there is no prayer or where there is no averment as to jurisdiction, these must be supplied.

4. Documents sued upon or copies thereof must be filed with the plaint and described in a list.

No. P. 1

AVERMENTS AS TO JURISDICTION (GENERAL)

The defendant or the defendants or 1st defendant (as the case may be) resides (or reside) at ————,

or

The land the subject matter of this action lies or is situate (in part if such be the case) at ————,

or

The cause of action set out hereinafter arose at ————,

or

The contract the subject matter of this action was made at ————, within the local limits of the jurisdiction of this Court.

Note.—1. Two or more grounds conferring jurisdiction may be combined.
2 In matrimonial actions, if the plaintiff's residence is relied upon, say, " the plaintiff resides, etc. " or where spouses who have a Ceylon domicile are both out of the Island, say " the plaintiff (or the defendant) last resided at ———— etc. "

No. P. 2

PRAYER TO A PLAINT (GENERAL)

(*a*) In money cases—

Wherefor the Plaintiff prays for judgment against the defendant for the said sum of ———— Rupees together with interest thereon at ———— per centum per annum from the ———— day of ————, 19——, to date hereof and thereafter at (5 per cent.) per annum on the aggregate sum till payment in full, for costs of action and for such other and further relief as to this Court shall seem meet.

(*b*) In land cases (actions rei vindicatio)—

Wherefor the plaintiff prays—

(i) that he be declared entitled to the said land and premises;

(ii) that the defendant be ejected therefrom and the plaintiff placed in quiet possession thereof;

(iii) that the defendant be condemned to pay ———— Rupees by way of damages to date hereof and further damages at ———— Rupees per mensem till plaintiff is restored to possession and for interest on the damages so awarded at ———— per centum per annum till date of judgment.

(iv) for costs of suit and for such other and further relief as to this Court shall seem meet.

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No. P. 3

PLAINT IN AN ACTION FOR DECLARATION OF TITLE TO LAND

1. The plaintiff and defendant reside and the land the subject matter of this action is situate within the local limits of the jurisdiction of this Court.

2. One A.B. was by long and prescriptive possession at one time (or the original) the owner of an allotment of land called (Ambagahawatte) fully described in the Schedule hereto.

3. By Deed No. ——— dated ——— and attested by ——— of ———, Notary Public, the said A.B. sold and transferred the said land to C.D.

(set out any further devolution of title.)

4. By Deed No. ——— dated ——— and attested by ——— of ———, Notary Public, the said C.D. sold and conveyed the said land and premises to the plaintiff who is now the lawful owner thereof.

5. The plaintiff and his predecessors in title have been in the undisturbed and uninterrupted possession of the said land and premises by a title adverse to and independent of the defendant and all others for a period of over ten years immediately preceding the date of the complaint set out hereinafter and the plaintiff has acquired a prescriptive title to the same.

6. On or about the ——— day of ——— 19——, the defendant who has no manner of right or title thereto wrongfully and unlawfully entered into forcible possession of the said land and premises denying the plaintiff's title thereto and set up title in himself to the plaintiff's loss and damage of ——— rupees per mensem.

7. By reason of the premises a cause of action has accrued to the plaintiff to sue the defendant for recovery of the said land and premises and for damages at ——— rupees.

WHEREFOR the plaintiff prays—

1. That he be declared the owner of the said land and premises described in the Schedule hereto.
2. That the defendant be ejected therefrom and the plaintiff placed in quiet and peaceful possession thereof.
3. For damages against the defendant in the sum of ——— rupees being damages sustained to date hereof and for further damages at ——— rupees till restoration of possession together with interest at ——— per centum per annum till payment in full.
4. For costs of suit and for such other relief as to this Court shall seem meet.

Schedule above referred to.
(describe land.)

No. P. 4

ANSWER TO ABOVE

1. The defendant admits paragraphs 1 and 2 of the plaint but denies the remaining allegations contained therein save as is consistent with the averments hereinafter contained.

2. By way of further answer the defendant states that by Deed bearing No. ——— dated ——— and attested by ——— of ———, Notary Public, and duly registered the said A.B. sold and transferred the said land and premises to one K.L. who died intestate leaving as his sole heir the defendant his son.

3. The defendant pleads that by virtue of prior registration, the deed in favour of K.L. gained priority over the deed in favour of C.D. and that no title passed under the deed in favour of C.D.

4. The defendant further states that he and his predecessors in title have been in the undisturbed and uninterrupted possession of the said land and premises by a title adverse to and independent of the plaintiff and all others for a period of over ten years immediately preceding the date of the complaint and that he has acquired a prescriptive title to the same.

WHEREFOR the defendant prays—

1. That the plaintiff's action be dismissed.
2. That he be declared entitled to the said land and premises.
3. For costs of suit and for such other relief as to this Court shall seem meet.

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No. P. 5

PLAINT IN A PAULIAN ACTION

1. The defendants reside and the cause of action hereinafter set out arose within the local limits of the jurisdiction of this Court.

2. At all dates material to this action the plaintiff was a creditor of the 1st defendant and had obained a decree in case No. ——— of this Court against the 1st defendant in a sum of ——— rupees with legal interest and costs aggregating to Rs. ———.

3. The said decree still remains unsatisfied and of full force and effect.

4. By Deed No. ——— dated ——— attested by ——— of ———, Notary Public, the 1st defendant acting fraudulently and collusively with the 2nd defendant conveyed without consideration to the 2nd defendant the premises described in the Schedule hereto and which are of the value of ——— rupees.

5. The 1st defendant was on the date of the execution of the said deed in insolvent circumstances and rendered himself by the execution of the said deed still further incapable of paying his creditors. The said deed was executed with the express intention of defeating the claims of the lawful creditors of the 1st defendant and in particular the claim of the plaintiff.

6. A cause of action has accrued to the plaintiff in the premises to have the said deed No. ——— dated ——— set aside and declared void and of no effect, and for a declaration that the said property is the property of the 1st defendant.

WHEREFOR the plaintiff prays—

1. That the said Deed No. ——— dated ——— be set aside and declared void and of no effect.
2. For a declaration that the premises described in the Schedule hereto are the lawful property of the 1st defendant.
3. For costs and for such further relief as to this Court shall seem meet.

No. P. 6

ANSWER TO THE ABOVE OF THE JUDGMENT-DEBTOR DEFENDANT

1. Answering to paragraph 1 of the plaint this defendant admits the residences but denies that any cause of action has accrued to the plaintiff.

2. This defendant admits the averments in paragraphs 2 and 3 of the plaint.

3. Answering to paragraphs 4 and 5 of the plaint this defendant admits the execution of the deed referred to therein but denies that the said deed was executed fraudulently and collusively or without consideration.

4. This defendant denies the allegations contained in paragraph 6.

WHEREFOR the 1st defendant prays that the plaintiff's action be dismissed with costs and for such further relief as to this Court shall seem meet.

No. P. 7

PLAINT IN AN ACTION UNDER O. 39, R. 25 BY JUDGMENT CREDITOR

1. The plaintiff on the ——— day of ——— 19 —— obtained a judgment and decree in Case No. ——— of the District Court of ——— against the 1st defendant for a sum of ——— rupees together with interest thereon and costs of suit aggregating to ——— rupees.

2. The judgment and decree obtained by the plaintiff against the 1st defendant still remains unsatisfied.

3. Under writ issued in execution of the said judgment (and/or decree) against the said 1st defendant, the plaintiff caused the Fiscal to seize the property fully described in the Schedule hereto and of the value of ..... rupees.

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4. Under and by virtue of a deed bearing No.—— dated ——— and attested by ——— Notary Public, the 1st defendant is the lawful owner of the said land (or set out other facts showing his title).

5. The plaintiff further states that the 1st defendant and his predecessors in title have been in the undisturbed and uninterrupted possession of the said property by a title adverse to and independent of all others for a period of over ten years immediately preceding the date of the action and that the 1st defendant has acquired a prescriptive title to the same, and that the 1st defendant was at the date of the seizure and is yet the lawful owner of the aforesaid property.

6. The 2nd defendant above named who has no manner of right or title to the said property preferred a claim to the property and on the ——— day of ———, 19——, his claim was upheld.

7. A cause of action has accrued in the premises to the plaintiff to sue the defendants for a declaration that the said land is liable to be seized and sold under his judgment (and/or decree).

WHEREFOR the plaintiff prays——

1. That the 1st defendant be declared entitled to the said property.
2. That the said property be declared liable to be seized and sold in execution of the said judgment and decree in the plaintiff's favour.
3. For costs and for such further relief as to this court shall seem meet.

(Schedule above referred to.)

No. P. 8

PLAINT IN AN ACTION UNDER O. 39, R. 25 BY CLAIMANT

1. The 2nd defendant on the ——— day of ——— 19 ——, obtained a judgment and decree against the 1st defendant in case No. ——— in the District Court of ——— for a sum of ——— rupees together with interest and costs amounting to ——— rupees.

2. Under the writ issued in execution of the aforesaid judgment (and/or decree) the 2nd defendant caused the property described in the Schedule hereto of the value of ——— rupees to be seized by the Fiscal in satisfaction of the amount due under the said writ.

3. The plaintiff claimed the said property as his but on the ——— day of ———, 19 ——, his claim was disallowed.

4. The plaintiff states that under and by virtue of (the partition decree entered in case No. ——— in the District Court of ——— on the ——— day of ———, 19 ——,) the plaintiff is the lawful owner of the said property and that the 1st defendant has no manner of right or title thereto.

5. The plaintiff further pleads that he and his predecessors in title have been in the undisturbed and uninterrupted possession of the said property by a title adverse to and independent of all others for a period of over ten years immediately preceding the date of the action and that he has acquired a prescriptive title to the said property.

6. By reason of the premises a cause of action has accrued to the plaintiff to sue for a declaration of his title to the said property and for a declaration that the said property is not liable to be seized and sold under the said writ.

(7. The plaintiff also states that he suffered damages to the extent of ——— rupees by reason of the seizure of the said property.)

WHEREFOR the plaintiff prays——

1. That he be declared the owner of the said property.
2. For a declaration that the said property is not liable to be seized and sold under the said writ.
3. For an order on the Fiscal directing him to release the seizure of the said property.
4. For Rs. ——— by way of damages and for costs and for such other and further relief as to this Court shall seem meet.

(Schedule above referred to.)

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No. P. 9

PLAINT IN AN ACTION UNDER O. 39, R. 25 COMBINED WITH A PAULIAN ACTION INSTITUTED BY JUDGMENT-CREDITOR

1.
2. } Same as paragraphs 1, 2, & 3 of Form No. P5.
3.

4. Under writ issued in execution of the said decree the plaintiff caused the Fiscal to seize the property fully described in the Schedule hereto and of the value of ——— rupees which belongs to the 1st defendant.

5. The 2nd defendant claimed the said property upon a Deed bearing No. ——— dated ———, and attested by ——— of ———, Notary Public, and executed by the 1st defendant in his favour.

6. On the ——— day of ———, 19 ——, the 2nd defendant's claim to the said property was upheld by Court.

7. The plaintiff states that the 1st defendant acting in collusion with the 2nd defendant executed the aforesaid Deed without consideration and with intent to defraud the plaintiff.

8. By the execution of the said Deed in favour of the 2nd defendant the 1st defendant has rendered himself insolvent and incapable of paying his creditors and in particular the judgment debt due to the plaintiff.

9. (Same as paragraph 6 of Form No. P5.)

No. P. 10

PLAINT IN AN ACTION FOR DAMAGES RESULTING FROM MOTOR COLLISION

1. The plaintiff and the defendant reside and the cause of action set out hereinafter arose within the local limits of the jurisdiction of this Court.

2. The plaintiff is the owner of (Daimler) motor car bearing registration No. ———, the defendant is the owner of a (Ford) motor van bearing registration No. ———.

3. On or about the ——— day of ———, 19 ——, the defendant at Colombo within the jurisdiction of this Court drove his van rashly and/or negligently (or the said van was driven by the defendant's servant rashly and/or negligently) and by reason of such rash and/or negligent driving collided with the plaintiff's motor car.

4. By reason of the said collision the plaintiff's car sustained considerable damage and the plaintiff was deprived of the use of his car for a period of ——— days.

5. The plaintiff incurred an expense of ——— rupees in effecting repairs to and replacing the damaged parts of his car and further incurred a sum of ——— rupees per diem from the ——— day of ——— 19 ——, to the ——— day of ———, 19 ——, as car hire for hiring a car during the period his car was undergoing repairs, all aggregating to ——— rupees.

6. A cause of action has accrued to the plaintiff to sue and recover from the defendant the said sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though demanded.

No. P. 11

PLAINT IN AN ACTION FOR RENT AND EJECTMENT

1. The plaintiff and the defendant reside and the cause of action set out hereinafter arose at (Colombo) within the local limits of the jurisdiction of this Court.

2. Prior to the dates material to this action at (Colombo) aforesaid the plaintiff let to the defendant and the defendant took on rent from the plaintiff the house and premises bearing assessment No. ——— in

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(Colpetty) in the Schedule hereto more particularly described at a rental of ——— rupees per mensem payable on or before the tenth day of the month following that for which the rent is due.

(If the Rent Restriction Act is applicable to the premises.)

3. The defendant failed to pay the rent for the month of (July), which fell due on the (10th August) and had been in arrears for one month after it became due

Or

The said premises are reasonably required for the occupation as a residence by the plaintiff (or his mother who is dependent on him) (or for the trade of the plaintiff) (or set out any of the other grounds specified in Section 13 of the Act.)

4. On the ——— day of (September), 19 —, the plaintiff gave the defendant notice in writing requiring him to quit and deliver vacant possession of the said house and premises to the plaintiff on the (31st) day of (October), 19 ——.

5. The defendant has failed and neglected to deliver vacant possession of the said house and premises to the plaintiff and the defendant has since the (1st) day of (November) 19 —— been and still is in the wrongful and unlawful possession of the said house and premises to the plaintiff's loss and damage of ——— rupees per mensem.

6. A cause of action has in the premises accrued to the plaintiff to sue the defendant for ejectment from the said house and premises and for recovery of damages with interest at the rate of ——— per mensem from the (1st) day of (November) 19 ——, till the defendant is ejected from the said house and premises and the plaintiff is placed in quiet possession thereof.

7. There is also due to the plaintiff from the defendant rent for the months of (July to October) 19 ——, at ——— rupees per mensem aggregating to ——— rupees; the defendant is entitled to credit in a sum of ——— rupees deposited by the defendant with the plaintiff by way of advance on account of rent.

8. There is now due and owing from the defendant to the plaintiff the balance sum of ——— rupees being rent up to the (31st) day of (October) 19 ——, which the defendant has failed and neglected to pay though thereto demanded.

WHEREFOR the plaintiff prays—

1. That the defendant be ejected from the said house and premises in the Schedule hereto more particularly described and that the plaintiff be placed and quieted in peaceful possession.
2. For judgment against the defendant for the sum of ——— rupees and damages at ——— rupees per mensem from the (1st) day of (November), 19 ——, till the plaintiff is placed in possession of the said premises.
3. For costs of the action for such further relief as to this Court shall seem meet.

(Schedule above referred to.)

No. P. 12

PLAINT IN AN ACTION FOR OBSTRUCTING A WAY

1. The parties to this action reside and the cause of action set out hereinafter arose within the local limits of the jurisdiction of this Court.

2. Under and by virtue of Deed bearing No. ——— dated ——— and attested by ——— of ———, Notary Public, and by right of long and uninterrupted possession the plaintiff is the owner of an allotment of land called ——— situate at ——— and fully described in the Schedule hereto.

3. The defendant is the owner or claims to be the owner of certain shares in an allotment of land called ——— lying to the south-east of the plaintiff's land as depicted in the sketch (or plan) herewith filed marked A

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4. The plaintiff was entitled to a right of cart way 12 feet wide from his land aforesaid over the defendant's land to the public highway called (the Galle road) and back again from the said highway over the defendant's land to the said plaintiff's land for himself and his servants with vehicles at all times of the year.

5. The plaintiff and his predecessors in title have by their undisturbed and uninterrupted possession by a title adverse to and independent of defendant for a period of over ten years acquired a prescriptive right of way.

6. The plaintiff values the said right of way as ——— rupees.

7. Since the ——— day of ———, 19—, the defendant has wrongfully and unlawfully obstructed and prevented the plaintiff in the use and enjoyment of the said right of cart way by removing the concrete slabs over a drain at the point Z of the said cart way (or by cutting a ditch across the said cart way at the point Z or by putting up a fence across the said cart way at the point Z) so that the plaintiff could not pass with vehicles (or on foot of in any manner) along the said cart way to the plaintiff's loss and damage of (ten) rupees per mensem.

WHEREFOR the plaintiff prays—

1. That he may be declared entitled to right of servitude of cart way in favour of his aforesaid land called ——— over the defendant's land called ——— and as more particularly depicted in the aforesaid sketch (or plan) marked A, for himself, members of his family, his servants, agents and licensees to proceed on foot as well as by vehicles from his said land to the high-way called (Galle Road) and back again from the said highway over the defendant's land to the plaintiff's said land.
2. That the defendant, his servants and agents be restrained by injunction from obstructing or in any way interfering with the exercise by the plaintiff of his said right.
3. For ——— rupees damages already sustained and for further damages at ——— rupees per mensem till the plaintiff is restored to the use of the said right of cart-way.
4. For costs and for such other and further relief in the premises as to this Court shall seem meet.

SCHEDULE REFERRED TO ABOVE

No. P. 13

PLAINT IN AN ACTION BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE

1. By an indenture of lease dated ——— and made at ——— and attested by ——— of ———, Notary Public, herewith filed marked A and pleaded as part of this plaint, the defendant leased to the plaintiff premises bearing Assessment No. ——— in ——— street for the term of ——— years at a monthly rental of ——— rupees and placed the plaintiff in possession thereof.

2. On the ——— day of ——— during the said term, one E.F. who was the lawful owner of the said premises by due process of law evicted the plaintiff therefrom in action No. ——— in the District Court of ———.

3. The defendant who was a party to the aforesaid proceedings though thereto requested failed and neglected to warrant the title under and by which he leased the said premises to the plaintiff.

4. The said premises were to the knowledge of the defendant taken on lease by the plaintiff for the purposes of a (licensed bakery) and the plaintiff in order to obtain a licence from the local authority effected additions and improvements to conform to the by-laws in that behalf at a cost of ——— rupees. By reason of the eviction aforesaid the plaintiff has suffered loss and damage which he assesses at ——— rupees.

5. There is now due and owing from the defendant to the plaintiff the sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

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No. P. 14

PLAINT IN AN ACTION FOR MALICIOUS PROSECUTION

1. The plaintiff is a merchant carrying on business on a large scale and the defendant is a landed proprietor.

2. On the ——— day of ———, 19—, at (Colombo) within the local limits of the jurisdiction of this Court the defendant prosecuted the plaintiff in the Magistrate's Court in Case No. ——— with having fraudulently assisted in the removal of goods under sections ——— and ——— of the Penal Code.

3. After trial extending over several dates the learned Magistrate made order on ——— (date) acquitting the plaintiff.

4. The plaintiff avers that in instituting the said case and in continuing the prosecution thereof the defendant acted falsely, maliciously and without reasonable or probable cause.

5. By reason of the said prosecution and the continuation thereof the plaintiff suffered pain of body and mind and was seriously injured in his reputation and his credit was affected thereby and in consequence suffered loss or damage in the sum of ——— rupees.

6. By reason of the premises a cause of action has accrued to the plaintiff to sue the defendant for the recovery from him of the said sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

WHEREFOR the plaintiff prays for judgment against the defendant for the said sum of ——— rupees together with interest thereon at ——— rupees per centum per annum till payment in full for costs of suit and for such other and further relief as to this Court shall seem meet.

No. P. 15

ANSWER TO ABOVE ACTION

1. The defendant admits the averments contained in paragraphs 1, 2 and 3 of the plaint.

2. The defendant specially denies the allegations contained in paragraph 4 of the plaint and states that the defendant acted in good faith and with reasonable and probable cause.

3. Answering paragraph 5 the defendant denies that the plaintiff has suffered any damage whatsoever and specially denies his liability to pay the plaintiff the said sum of ——— rupees or any sum whatsoever.

4. The defendant joins issue with the plaintiff on the averments contained in paragraph 6 of the plaint.

5. By way of further answer the defendant states:

(*a*) that on or about the ——— day of ———, 19—, the plaintiff acting fraudulently and collusively with X. Y. of (Colombo) against whom the defendant obtained judgment for a sum of ——— rupees in the District Court of ——— removed a quantity of ——— chests of tea which the defendant would have been entitled to seize in execution of the said judgment against the said X. Y. and thereby put the said chests of tea beyond the reach of the defendant;

(*b*) by reason of such fraud and collusion of the plaintiff with the said X. Y. the defendant has sustained damages to the extent of ——— rupees which the defendant claims by way of reconvention against the plaintiff.

WHEREFOR the defendant prays—

1. That in convention that plaintiff's action be dismissed.

2. In reconvention that judgment be entered against the plaintiff for the said sum of ——— rupees with legal interest thereon from date of action till payment in full.

3. For costs and for such other further relief as to this Court shall seem meet.

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No. P. 16

REPLICATION TO ABOVE ANSWER

1. The plaintiff joins issue with the defendant upon the denials contained in the answer.

2. Replying further to paragraph 2 of the answer the plaintiff denies that the defendant acted in good faith or with reasonable and probable cause.

3. Replying to paragraph 5 of the answer the plaintiff denies all and singular the averments contained in the said paragraph and specially denies that he acted fraudulently and collusively with the said X. Y. or any other person or that he removed any chests of tea or that the defendant suffered any damage by reason of any act of his.

4. Further replying to paragraph 5 the plaintiff says that on the ——— day of ———, 19—, the plaintiff advanced to the said X. Y. the sum of ——— rupees on the security of ——— chests of tea which the said X. Y. on the said date deposited with the plaintiff.

5. On the ——— day of ———, 19—, the plaintiff demanded payment of the said sum of ——— rupees and that as the said X. Y. was unable to pay the said sum the said X. Y. transferred to the plaintiff the said chests of tea for the sum of ——— rupees and after deducting the said sum of ——— rupees due to the plaintiff received the balance sum of ——— rupees from the plaintiff.

6. The plaintiff further says that the said sum of ——— rupees for which he purchased the said goods was the actual market price of the said goods.

7. The plaintiff denies that he acted fraudulently or collusively in purchasing the said goods and also denies that at the date of the said purchase the defendant had obtained a judgment as alleged—the plaintiff says that the defendant did not obtain judgment until the ——— day of ——— 19—, and the plaintiff was unaware of the defendant's claim at the time he purchased the said goods.

WHEREFOR the plaintiff prays that the defendant's claim in reconvention be dismissed with costs and for such further relief as to this Court shall seem meet.

No. P. 17

PLAINT IN AN ACTION FOR DIVORCE

1. The plaintiff and the defendants reside at (Colombo) within the local limits of the jurisdiction of this Court.

2. The plaintiff and the 1st defendant were married at (Kandy) on the ——— day of ———, 19—, and thereafter lived together as husband and wife and resided at (Colombo) aforesaid.

3. There are 4 children by the marriage, viz.:

A. B. a girl aged 10 years;
C. D. a boy aged 9 years;
E. F. a girl aged 6 years;
G. H. a boy aged 3 years.

4. The first defendant committed adultery with the 2nd defendant on various occasions and on various dates between the ——— day of ———, 19—, and the ——— day of ———, 19—, and more particularly on the following dates and at the following places:

(*a*) On or about the ——— day of ———, 19—, at the ——— Hotel.
(*b*) On or about the ——— day of ———, 19—, at the ——— Resthouse.

5. A cause of action in the premises has accrued to the plaintiff to sue the 1st defendant for dissolution a vinculo matrimonii of his marriage with her on the ground of her adultery with the 2nd defendant and to sue the 2nd defendant for the recovery of damages for his acts of adultery with the 1st defendant, which he assesses at ——— rupees.

6. The plaintiff claims the custody, care and maintenance of the aforesaid children of the marriage.

WHEREFOR the plaintiff prays that the Court be pleased to enter judgment:

(*a*) declaring the said marriage between plaintiff and 1st defendant dissolved a vinculo matrimonii on the ground of adultery with the 2nd defendant;
(*b*) declaring the plaintiff entitled to the custody, care and maintenance of the aforesaid children of the marriage;
(*c*) condemning the 2nd defendant to pay the plaintiff the sum of ——— rupees as damages;
(*d*) for costs of action against both defendants and for such other and further relief as to this Court shall seem meet.

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No. P. 18

ANSWER OF WIFE DEFENDANT TO ABOVE ACTION

1. This defendant admits the averments contained in paragraphs 1, 2 and 3 of the plaint but denies all and singular the allegations contained in paragraph 4 thereof.

2. Answering to paragraphs 5 and 6 of the plaint this defendant denies that a cause of action has accrued to the plaintiff to sue her for a dissolution of her marriage with the plaintiff or to claim the custody of the children of the marriage.

(3. By way of further answer this defendant states that since the ———— day of ————, 19—, there have been continuous quarrels and dissensions between the plaintiff and herself; that the plaintiff has falsely accused her of infidelity, has violently abused her on several occasions and has been habitually assaulting her on several occasions; and the said actions have rendered the living together of this defendant and the plaintiff insupportable and dangerous to her life and health and have compelled her to leave the plaintiff's house.)

(4. Still further answering, this defendant states that the plaintiff at various times during the months of ———— and ———— committed adultery with the servant woman in the house by the name of L. M.)

5. By reason of the facts pleaded in paragraphs 3 and 4 hereof, causes of action have accrued to this defendant to claim the dissolution of her marriage with the plaintiff on the ground of malicious desertion on the part of the plaintiff and on the ground of his adultery with the said L. M.

6. The plaintiff is a landed proprietor and is in receipt of an income of ———— rupees per mensem and this defendant claims a sum of ———— rupees per mensem by way of permanent alimony and a sum of ———— rupees per mensem for the maintenance of the children whose custody she claims.

7. This defendant left in the possession of the plaintiff:

(*a*) her dowry deed and the connected title deeds which are of the value of ———— rupees;

(*b*) jewellery and clothes, particulars whereof are set out in Schedule 1 hereto;

(*c*) furniture, particulars whereof are set out in Schedule 2 hereto, of the value of ———— rupees.

WHEREFOR this defendant prays—

(1) that the plaintiff's action be dismissed;

(2) that the defendant be granted a decree of dissolution a vinculo matrimonii of her marriage with the plaintiff;

(3) that she be granted custody of the children of the marriage;

(4) for permanent alimony in a sum of ———— rupees per mensem for herself and a sum of ———— rupees per mensem for the maintenance and education of the aforesaid children;

(5) that the plaintiff be ordered to return to this defendant the articles referred to in paragraph 7 hereof within a time to be fixed by the Court and in the event of his failure to do so to pay to this defendant the value thereof, viz., the sum of ———— rupees;

(6) and for such other and further relief as to this Court shall seem meet.

No. P. 19

ANSWER OF THE ADULTERER-DEFENDANT TO ABOVE ACTION

1. This defendant admits the averments in paragraph 1 of the plaint.

2. This defendant is unaware of the truth or otherwise of the allegations contained in paragraphs 2 and 3 thereof.

3. Answering to paragraphs 4 and 5 of the plaint this defendant denies all and singular the allegations therein contained and specially denies that he is liable to pay the plaintiff the sum of ———— rupees or any part of it.

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No. P. 20

REPLICATION TO THE WIFE-DEFENDANT'S ANSWER (FORM P. 18)

1. The plaintiff joins issue with the 1st defendant upon the denials contained in her answer.

2. The plaintiff denies the allegations contained in paragraph 3 of the answer and more particularly denies that the plaintiff falsely accused the 1st defendant of infidelity or that the 1st defendant had to leave the plaintiff's house for the reasons given by her.

3. The plaintiff denies the allegations in paragraph 4 of the answer and specially denies that he committed adultery with the said L. M. or with any other person.

4. Replying to paragraph 5 of the answer, the plaintiff denies that any cause of action has accrued to the 1st defendant to sue for a dissolution of her marriage with the plaintiff on the grounds alleged in her answer.

5. Replying to paragraph 6 of the answer, the plaintiff denies that the 1st defendant is either entitled to or should be given the custody of the said children or any of them as she has been guilty of adulterous intercourse with the 2nd defendant as is fully set out in the plaint and also as she has been and is still living in open adultery with the 2nd defendant at ——— since the ——— day of ———, 19—.

6. Replying further to paragraph 6, the plaintiff denies that the 1st defendant is entitled to any alimony whatsoever—

(*a*) by reason of the facts set out in paragraph 5 above;

(*b*) that she has been and is being maintained by the 2nd defendant with whom she is living in adultery as set out above.

7. Replying to paragraph 7 the plaintiff states that all the articles enumerated therein are not in his possession nor were such of them as are with him left in his possession by the 1st defendant nor has the plaintiff wrongfully or unlawfully retained the same.

8. Replying further the plaintiff states that by reason of the facts pleaded in paragraph 6 above the 1st defendant is not entitled to any of the said articles or to claim any right or interest or share in the same.

WHEREFOR the plaintiff prays—

1. that the claims made by her in reconvention be dismissed with costs;
2. that he be declared entitled to such of the articles as are in his possession;
3. for such other and further relief as to this Court shall seem meet.

No. P. 21

PLAINT IN AN ACTION FOR SEDUCTION

1. At all dates material to this action and on the (22nd) day of (July), 19 ——, the plaintiff was a spinster and a virgo intacta.

2. On or about the (22nd) day of (July), 19 —— and on several occasions thereafter the defendant who is an unmarried man carnally seduced the plaintiff under promise of marriage.

3. The defendant now refuses to marry the plaintiff.

4. The plaintiff has in consequence suffered pain of mind and body and has suffered in her reputation and her prospects in life have been greatly reduced.

5. The plaintiff estimates her damages at ——— rupees which amount or any portion thereof the defendant has failed and neglected to pay to the plaintiff though thereto often demanded.

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No. P. 22

PLAINT IN AN ACTION FOR BREACH OF PROMISE OF MARRIAGE

1. The plaintiff is a spinster of the age of ——— years and lives within the said jurisdiction.

2. The defendant is a (Clerk) in the ——— Department and resides at ——— in (Colombo) within the aforesaid jurisdiction.

3. On or about the ——— day of ———, 19 ——, and on diverse dates thereafter the defendant by his letters to the plaintiff bearing the said date and subsequent dates promised and agreed to and with the said plaintiff to marry her within a period of ——— and the plaintiff in return agreed to marry the defendant.

4. The plaintiff on her part was always willing to marry the defendant within the said period and even thereafter but the defendant on the ——— day of ———, 19 ——, and thereafter did refuse to marry the plaintiff.

5. By reason of the defendant's wrongful refusal the plaintiff sustained pain of mind and lost prospects of her entering into a suitable marriage.

6. By reason of the premises a cause of action has accrued to the plaintiff to sue and recover from the defendant damages for the wrong she has sustained which she estimates at ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 23

PLAINT IN AN ACTION ON A HIRE PURCHASE AGREEMENT

1. The plaintiff is a duly incorporated company having its registered office at ——— within the local limits of the jurisdiction of this Court.

2. The 1st defendant resides at ——— and the 2nd defendant resides at ———.

3. The plaintiff company is the owner of a motor car bearing registration No. ——— which is of the value of ——— rupees.

4. On or about the ——— day of ———, 19 ——, the 1st defendant hired from the plaintiff company and the plaintiff company let to the 1st defendant the said motor car subject to the terms of an agreement made on the said date at Colombo within the local limits of the jurisdiction of this Court, which is hereto annexed marked A, and pleaded as part of this plaint whereby the 1st defendant agreed inter alia to pay to the plaintiff company as rent the sum of ——— rupees per mensem on the ——— day of each month and every month commencing on the ——— day of ———, 19 ——, and that on failure of the 1st defendant to pay the said rent the plaintiff company should be entitled to terminate the hiring and re-take possession of the said motor car.

5. The 1st defendant paid the rent which fell due up to and including the ——— day of ———, 19 ——, but failed to pay the rent which fell due on the ——— day of the months of ——— and ———.

6. The 1st defendant having failed to pay the rent as aforesaid has wrongfully failed to deliver the said motor car or to permit the plaintiff company to re-take possession of it and is in the wrongful possession thereof contrary to the terms of the said agreement and a cause of action has arisen to sue the 1st defendant for recovery of possession thereof.

7. For a second cause of action against the 1st defendant there is due and owing from the 1st defendant to the plaintiff company the rent which fell due on the ——— day of ———, 19 ——, at the rate of ——— rupees per mensem aggregating in all to a sum of ——— rupees at the date of this plaint and the plaintiff company claims further rent at the said rate until the said motor car is returned or in the alternative claims

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such sum as damages for the wrongful detention, but the plaintiff company restricts its claim in respect of the cause of action to a sum of ——— rupees in all.

For a cause of action against 2nd defendant.

8. In consideration of the said plaintiff company letting the said motor car to the said 1st defendant, the 2nd defendant guaranteed to the plaintiff company by the agreement aforesaid to pay all or any sums which might become payable by the 1st defendant to the plaintiff company and guaranteed the due performance and observance by the 1st defendant of the terms of the said agreement.

9. The first defendant having committed the breach of the agreement as aforesaid and having become indebted to the plaintiff company as aforesaid the 2nd defendant is jointly and severally liable with the 1st defendant in the amounts and for the obligations to be performed as aforesaid.

WHEREFOR the plaintiff company prays for judgment against the defendants jointly and severally:

(*a*) for the delivery and possession of the said motor car, or if possession cannot be had then for the sum of ——— rupees being the value thereof.

(*b*) for the sum of ——— rupees on account of the second cause of action and for a further sum of ——— rupees per mensem from the date of this plaint until the return of the said motor car, but not exceeding ——— rupees in all.

(*c*) for interest on all sums awarded at the rate of (5 per cent.) per annum from the date of the judgment until payment in full.

(*d*) for costs and for such other relief as to this Court shall seem meet.

No. P. 24

PLAINT IN AN ACTION FOR AN INJUNCTION RESTRAINING WASTE

1. The plaintiff is the owner of certain house and premises bearing assessment No. ——— situate at ——— and fully described in the Schedule hereto.

2. By an indenture of lease bearing No. ——— dated ——— and attested by ——— of ———, Notary Public, the plaintiff leased the said house and premises to the defendant for a term of ——— years at a monthly rental of ——— rupees.

3. The defendant has without the consent of the plaintiff wrongfully and unlawfully cut down a number of valuable trees and threatens to cut down many more for the purpose of sale.

4. A cause of action has in the premises accrued to the plaintiff to restrain the defendant from committing any further waste and to recover damages already sustained by the plaintiff which he assesses at ——— rupees.

WHEREFOR the plaintiff prays—

1. That the defendant be restrained by an injunction from cutting down any of the trees standing on the said land or committing or permitting any such cutting or waste on the said premises.

2. For judgment against the defendant for ——— rupees being damages already sustained and for further damages as may be determined by Court.

3. For costs of suit and for such further relief as to this Court shall seem meet.

(Schedule referred to above.)

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No. P. 25

PLAINT IN AN INTERPLEADER ACTION

1. On or about the ——— day of ——— at ——— one G. H. deposited with the plaintiff (describe the property) for (safe keeping).

2. That the said G. H. died intestate on or about the ——— day of ———.

3. The 1st defendant claims the said property under an alleged assignment and transfer of the said property to him by the said G. H. and threatens to sue him if not delivered.

4. The 2nd defendant who claims to be the administrator of the estate of G. H. also claims the said property from the plaintiff and also threatens action against the plaintiff if not delivered to him.

5. The plaintiff is ignorant of the respective rights of the defendants and in instituting this action is not acting in collusion with any of the defendants.

6. The plaintiff has no claim upon the said property and is ready and willing to deliver it to such defendant as the Court shall direct.

7. The plaintiff brings into Court the said property to abide the result of this action (or that some person be authorised to receive the said property pending such litigation).

WHEREFOR the plaintiff prays—

1. That the defendants and each of them be restrained by injunction from taking any proceedings against the plaintiff in relation to this said property.

2. That the defendants be required to interplead together concerning their claims to the said property.

3. The plaintiff be discharged from all liability to either of the defendants in relation to the said property (upon delivering the same to some person authorised to receive the same).

4. For costs of action and for such other and further relief as to this Court shall seem meet.

No. P. 26

PLAINT IN AN ACTION FOR DISSOLUTION OF PARTNERSHIP, &c.

1. Under a partnership agreement bearing No. ——— dated ——— and attested by ——— of ——— Notary Public and entered into between the plaintiff and the defendant, the plaintiff and the defendant mutually agreed to carry on business under the name, style and firm of (X. Y. Z. & Co.) at ———.

2. In pursuance of the said agreement the plaintiff contributed a sum of ——— rupees by way of capital and the defendant a sum of ——— rupees and the business was established under the managership of the defendant.

3. The said business has been carried on from the ——— day of ———, 19 —.

4. Diverse disputes and differences have arisen between the plaintiff and the defendant as such partners, whereby it has become impossible to carry on the said business and partnership with advantage to the partners.

5. A cause of action has accrued to the plaintiff to have the said partnership dissolved and to have the said business wound up.

WHEREFOR the plaintiff prays that Court may be pleased—

1. To enter a decree dissolving the said partnership as from a date to be specified by Court.

2. That the accounts of the said partnership may be taken by Court and the assets thereof realized.

3. That each partner may be ordered to pay into Court any balance due from him upon such partnership account.

4. The debts and liabilities of the said partnership may be paid and discharged.

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5. That the costs of the action may be paid out of the partnership assets.

6. That any balance remaining out of such assets after such payment and discharge and the payment of the said costs may be divided between the plaintiff and the defendant according to the terms of the said partnership agreement or that if the said assets shall prove insufficient the plaintiff and the defendant may be ordered to contribute in such proportion as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities and costs.

7. And for such other and further relief as to this Court shall seem meet.

(*Note.*—In action for winding up of any partnership, omit the prayer for dissolution.)

No. P. 27

PLAINT IN AN ACTION FOR INJURIES CAUSED BY NEGLIGENT DRIVING

1. The plaintiff is a shoemaker, carrying on business at ———. The defendant is a merchant of ———.

2. On the ——— day of ———, 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.

4. The plaintiff assesses the damages at ——— rupees.

No. P. 28

PLAINT IN AN ACTION FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE

1. By an agreement bearing No. ——— dated ——— and attested by ——— of ——— Notary Public herewith filed marked A and pleaded as part and parcel of this plaint the plaintiff agreed with the defendant to purchase a land called ———, situate at ——— and fully described in the Schedule hereto for the price of ——— rupees.

2. The defendant represented that the said land was (100 acres) in extent and the plaintiff agreed to make the purchase and to pay the said price on the face of the said representation.

3. On the ——— day of ———, the plaintiff paid to the defendant the sum of ——— rupees as part of the purchase money.

4. On an admeasurement the said allotment of land was found to contain (30) acres.

5. By reason of the premises a cause of action has accrued to the plaintiff to sue the defendant for a cancellation of the said agreement and for recovery of the purchase price and for damages incurred in and about examining the title and having the land surveyed and for loss of interest on the sum advanced to the defendant all of which he assesses at ——— rupees.

(Schedule above referred to.)

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No. P. 29

PLAINT IN AN ACTION FOR MONEY LENT

1. On the ——— day of ———, 19 ———, at (Colombo) within the local limits of the jurisdiction of this Court the plaintiff lent and advanced to the defendant and the defendant borrowed and received from the plaintiff ——— rupees which he agreed to pay on demand with interest thereon at ——— per centum per annum.

(*If the plaintiff claims exemption from any law of limitation, say:*)

2. The plaintiff was a minor (or insane) from the ——— day of ——— till the ——— day of ———.

3. There is now due and owing from the defendant to the plaintiff the sum of ——— rupees being the aggregate amount of the principal sum of ——— rupees and interest amounting to ——— from ——— to ———, which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 30

PLAINT IN AN ACTION FOR MONEY RECEIVED TO PLAINTIFF'S USE

1. On the ——— day of ———, 19—, at (Colombo) within the local limits of the jurisdiction of this Court the defendant received ——— rupees (or a cheque on the ——— Bank for ——— rupees) from E. F. for the use of the plaintiff.

2. The defendant has not paid (or delivered) the same though thereto demanded.

No. P. 31

PLAINT IN AN ACTION FOR PRICE OF GOODS SOLD BY A FACTORY

1. On the ——— day of ———, 19 ———, at ———, the plaintiff delivered to the defendants (one thousand barrels of flour, five hundred bushels of rice, or as the case may be) for sale upon commission.

2. On the ——— day of ———, 19—, (or, on some day unknown to the plaintiff, before the ——— day of ———, 19—), the defendants sold the said merchandise for ——— rupees.

3. That the commission and expenses of the defendants thereon amount to ——— rupees.

4. There is now due to the plaintiff from the defendants the sum of ——— rupees being the net proceeds of the sale of the said merchandise which sum or any part thereof the defendants have failed and neglected to pay though thereto demanded.

No. P. 32

PLAINT IN AN ACTION FOR MONEY RECEIVED BY DEFENDANT THROUGH PLAINTIFF'S MISTAKE OF FACT

1. 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. 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. In fact, each of the said bars did contain only 1,200 ounces of fine silver.

4. By reason of the above premises the plaintiff has become entitled to recover from the defendant the amount overpaid amounting to ——— rupees which sum of any part thereof the defendant has failed and neglected to pay though thereto demanded.

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No. P. 33

PLAINT IN AN ACTION FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST

1. On the ——— day of ———, 19—, at ———, at the request of the defendant the plaintiff paid to one E. F. ——— rupees and which the defendant promised to pay to the plaintiff on demand (or as the case may be).

2. There is now due to the plaintiff from the defendant the said sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 34

PLAINT IN AN ACTION FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED

1. The plaintiff is the duly appointed executor of the last will and testament of E. F. deceased.

2. The said last will was admitted to probate in the District Court of ——— in Case No. ——— and the probate of the said last will was duly issued to the plaintiff.

3. On the ——— day of ———, 19—, at ———, E. F. sold and delivered to the defendant and the defendant purchased and received from the said E. F. (one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods), at or for the price of ——— rupees.

4. There is now due from the defendant to the plaintiff as such executor the sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 35

PLAINT IN AN ACTION FOR GOODS SOLD AT A REASONABLE PRICE AND DELIVERED

1. On the ——— day of ———, 19—, at ———, plaintiff sold and delivered to the defendant and the defendant bought and received from the plaintiff (sundry articles of house furniture), but no price was agreed upon.

2. The said articles were reasonably worth ——— rupees.

3. There is now due and owing from the defendant to the plaintiff the said sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 36

PLAINT IN AN ACTION FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST, AT A FIXED PRICE

1. On the ——— day of ———, 19—, at ———, plaintiff sold to the defendant and the defendant bought from the plaintiff (one hundred barrels of flour), at or for the price of ——— rupees.

2. The said goods were at the request of the defendant delivered to one E. F. who received the same for and on behalf of the defendant.

3. There is now due and owing to the plaintiff from the defendant the said sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

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No. P. 37

PLAINT IN AN ACTION FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR, WITHOUT HIS EXPRESS REQUEST AT A REASONABLE PRICE

1. On the ——— day of ———, 19—, at ———, plaintiff sold and delivered to (U. D. Podihamy) the wife of (S. Carolis Singho), deceased, and the said (U. D. Podihamy) bought and received from the plaintiff articles of food and clothing fully set out in the Schedule hereto necessary for the maintenance of herself and her family.

2. No prices were agreed upon but the said articles were reasonably worth ——— rupees as are fully set out in the aforesaid schedule.

3. The said (S. Carolis Singho) was liable to pay the value of the goods so sold and delivered to his wife but the said (S. Carolis Singho) failed and neglected to pay the same.

4. The said (S. Carolis Singho) died on ——— leaving a last will which was duly admitted to probate in the District Court of ——— and probate was granted to the defendant above-named.

5. There is now due and owing to the plaintiff from the defendant the said sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 38

PLAINT IN AN ACTION FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED

1. On the ——— day of ———, 19 ——, at ———-, defendant entered into a contract with the plaintiff, herewith produced marked 'A', whereby the plaintiff agreed to make and deliver to the plaintiff (6 tables and 50 chairs) and the defendant agreed to pay for the same upon delivery thereof the sum of ——— rupees.

2. The plaintiff made the said goods and on ——— tendered the same to the defendant and has ever since been ready and willing to deliver the same to him. But the defendant has failed and neglected to accept the said goods or to pay the value thereof.

3. There is now due and owing to the plaintiff from the defendant the said sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 39

PLAINT IN AN ACTION FOR DEFICIENCY UPON A RE-SALE OF GOODS SOLD AT AN AUCTION

1. 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 re-sold 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.

2. 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.

3. That the plaintiff was ready and willing to deliver the same to the nor pay therefor, within (ten days) after the sale, not afterwards.

5. That on the ——— day of ———, 19 ——, at ———, the plaintiff re-sold the said (crate of crockery) on account of the defendant, by public auction for ——— rupees.

6. That the expenses attendant upon such re-sale amounted to ——— rupees.

7. That the defendant has failed and neglected to pay the aforesaid price or any part thereof though thereto demanded.

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No. P. 40

PLAINT IN AN ACTION FOR THE PURCHASE MONEY OF LANDS CONVEYED

1. On the ——— day of ———, 19 ———, at ———, the plaintiff sold and conveyed to the defendant by Deed bearing No. ——— dated ——— and was attested by ——— Notary Public, the house and compound No. ——— in the city of ———, (or a farm known as ——— in ———, or a piece of land lying, &c.) at or for the price of ——— rupees.

2. The defendant has failed and neglected to pay the aforesaid price or any part thereof though thereto demanded.

No. P. 41

PLAINT IN AN ACTION FOR SERVICES AT A FIXED PRICE

1. On the ——— day of ———, 19 ———, at ———, the defendant engaged the services of the plaintiff as a clerk at the salary of ——— rupees per mensem.

2. From the (said day) until the ——— day of ———, 19 ———, the plaintiff served the defendant as such clerk.

3. The defendant has failed and neglected to pay the plaintiff salary for the month of ——— amounting to ——— rupees which sum or any part thereof the plaintiff failed and neglected to pay though thereto demanded.

No. P. 42

PLAINT IN AN ACTION FOR SERVICES AT A REASONABLE PRICE

1. 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. The said services were reasonably worth ——— rupees which sum or any part thereof the plaintiff has failed and neglected to pay though thereto demanded.

No. P. 43

PLAINT IN AN ACTION FOR SERVICES AND MATERIALS AT A FIXED PRICE

1. On the ——— day of ———, 19—, at ———, it was agreed between the plaintiff and the defendant that the plaintiff (should furnish the paper for and print 1,000 copies of a book called ———) and that the defendant should pay the sum of ——— rupees on delivery of the same to him.

2. The plaintiff in pursuance of such agreement furnished the paper and printed the said book and delivered (or tendered) to the said defendant 1,000 copies thereof.

3. The defendant has failed and neglected to pay the said sum of ——— rupees (or has wrongfully and unlawfully failed and neglected to accept delivery of the said books or to pay the said sum ——— rupees).

4. There is now due and owing from the defendant to the plaintiff the said sum of ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

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No. P. 44

PLAINT IN AN ACTION FOR RENT RESERVED IN A LEASE

1. By an indenture of lease bearing No. ——— dated ——— and attested by ——— Notary Public, herewith filed marked ' A ', the plaintiff leased and demised to the defendant and the defendant took on lease from the plaintiff the premises called ——— fully described in the Schedule hereto, for a term of ——— years at a monthly rental of ——— per mensem, commencing from ———.

2. The defendant has failed and neglected to pay the rent for the period from the ——— day of ——— to the ——— day of ———, aggregating to ——— rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 45

PLAINT IN AN ACTION FOR RENT UNDER MONTHLY TERMS

1. Prior to the dates material to the action the plaintiff let to the defendant and the defendant took on rent from the plaintiff the premises bearing assessment No. ——— at a monthly rental of ——— Rupees.

2. The defendant has failed and neglected to pay the rent for the months of ——— aggregating to ——— Rupees.

3. There is now due and owing from the defendant to the plaintiff the said sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 46

PLAINT IN AN ACTION FOR USE AND OCCUPATION AT A REASONABLE RENT

1. With the consent and permission of the plaintiff the defendant had the use and occupation of house bearing No. ——— in ——— Street from the ——— day of ——— 19—, to the ——— day of ——— 19—, but the amount to be paid for such use and occupation was not agreed upon.

2. The use and occupation of the said premises are reasonably worth ——— Rupees per mensem.

3. There is now due and owing from the defendant to the plaintiff the said sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 47

PLAINT IN AN ACTION FOR BOARD AND LODGING

1. It was agreed between the plaintiff and the defendant that the plaintiff should provide the defendant with board and lodging at the monthly rate of ——— Rupees.

2. The defendant boarded and lodged with the plaintiff from the ——— day of ——— 19—, to the ——— day of ——— 19—.

3. The defendant has not paid the cost of such board and lodging for the months of ——— aggregating to ——— Rupees.

4. There is now due and owing from the defendant to the plaintiff the said sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

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No. P. 48

PLAINT IN AN ACTION FOR FREIGHT OF GOODS

1. 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. 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. The defendant has not paid the said freight amounting to ——— Rupees.

4. There is now due and owing from the defendant to the plaintiff the said sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 49

PLAINT IN AN ACTION ON AN AWARD

1. Disputes having arisen between the plaintiff and the defendant in respect to the sale by the plaintiff to the defendant (of 10 barrels of oil), such dispute was referred by the plaintiff and defendant to the arbitration of E. F. and G. H. nominated by them.

2. The said E. F. and G. H. as such arbitrators held arbitration proceedings at which the plaintiff and defendant were present and the arbitrators made an award, copy whereof is herewith filed marked A, whereby they directed the defendant to pay to the plaintiff the sum of ——— Rupees.

3. There is now due to the plaintiff from the defendant the said sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

(*Note.*—This will apply where the agreement is not filed, in Court.)

No. P. 50

PLAINT IN AN ACTION ON A FOREIGN JUDGMENT

1. On the ——— day of ——— 19 ——, at ———, in the State (or Kingdom) of ——— the ——— Court of that State (or Kingdom), in an action 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, a true copy of which adjudication is filed herewith marked A.

2. There is now due and owing from the defendant to the plaintiff the said sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 51

PLAINT IN AN ACTION ON AN ANNUITY BOND

1. By his bond bearing No. ——— dated ——— and attested by ——— Notary Public ——— filed herewith marked A, the defendant 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, but otherwise shall be of full force and virtue.

2. The defendant has not paid the half-yearly payments that fell due on ——— and ——— amounting to ——— Rupees.

3. There is now due to the plaintiff from the defendant the said sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

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No. P. 52

PLAINT IN AN ACTION BY PAYEE AGAINST MAKER OF PROMISSORY NOTE

1. By his promissory note dated ——— made at ——— herewith filed marked A, the defendant promised to pay to the plaintiff on demand the sum of ——— Rupees together with interest thereon at ——— per centum per annum from date thereof till payment.

2. There is now due to the plaintiff from the defendant the said sum of ——— Rupees which sum or any part thereof the defendent has failed and neglected to pay though thereto demanded.

(*Note.*—Where the note is payable at a particular place, say ———.)

1. By his promissory note dated ——— made at ——— herewith filed marked A, the defendant promised to pay to the plaintiff (at Messrs. A. & Co.'s, Colombo) the sum of ——— Rupees ——— months after date.

2. The said promissory note was duly presented for payment (at Messrs. A. & Co's) aforesaid, but was dishonoured.

3. There is now due to the plaintiff from the defendant the said sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 53

PLAINT IN AN ACTION BY FIRST INDORSEE AGAINST MAKER OF PROMISSORY NOTE

1. By his promissory note dated ——— made at ——— and filed herewith marked A, the defendant promised to pay on demand to E. F. or order the sum of ——— Rupees with interest thereon at the rate of ——— per centum per annum.

2. The said E. F. indorsed and delivered the said promissory note to the plaintiff for valuable consideration and the plaintiff is now the holder in due course thereof.

3. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from the ——— day of ——— to the ——— day of ——— 19 —.

No. P. 54

PLAINT IN AN ACTION BY SUBSEQUENT INDORSEE AGAINST MAKER OF PROMISSORY NOTE

1. By his promissory note dated ——— made at ——— and filed herewith marked A, the defendant promised to pay on demand to E. F. or order the sum of ——— Rupees with interest thereon at the rate of ——— per centum per annum.

2. The said E. F. indorsed and delivered the said promissory note to G. H. who indorsed and delivered the said note to I. J. who in turn indorsed and delivered the said note for valuable consideration to the plaintiff who is now the holder in due course thereof.

3. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

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No. P. 55

PLAINT IN AN ACTION BY FIRST INDORSEE AGAINST FIRST INDORSER

1. By his promissory note dated ——— made at ——— and filed herewith marked A, one E. F. promised to pay to the defendant or order the sum of ——— Rupees (——— months after date) together with interest thereon at ——— per centum per annum.

2. The defendant indorsed and delivered the said promissory note to the plaintiff for valuable consideration and the plaintiff is now the holder in due course thereof.

3. The said promissory note was duly presented for payment on the ——— day of ——— 19 ——, but the same was dishonoured (or state facts excusing want of presentment) and the defendant had due notice thereof.

4. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

No. P. 56

PLAINT IN AN ACTION BY DRAWER AGAINST ACCEPTOR OF BILL OF EXCHANGE

1. By a Bill of Exchange dated ——— and drawn by the plaintiff upon the defendant and filed herewith marked A, the plaintiff required the defendant to pay to him or his order the sum of ——— rupees (——— days after date, or sight, thereof) together with interest thereon at ——— per centum per annum.

2. The defendant accepted the said bill on ———.

3. The said bill was duly presented for payment to the defendant on ——— but was dishonoured.

4. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

No. P. 57

PLAINT IN AN ACTION BY DRAWER AGAINST ACCEPTOR WHERE THE BILL IS PAYABLE TO A THIRD PARTY

1. By a bill of exchange dated ——— and drawn by the plaintiff upon the defendant and filed herewith marked A, the plaintiff required the defendant to pay to E.F. or order the sum of ——— Rupees (——— days after date, or sight, thereof) together with interest thereon at ——— per centum per annum.

2. The plaintiff delivered the said bill to the said E.F. on ——— (date).

3. The defendant accepted the said bill on ———.

4. The said bill was duly presented for payment to the defendant on ——— but was dishonoured whereupon the said E.F. returned the said bill to the plaintiff.

5. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

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No. P. 58

PLAINT IN AN ACTION BY PAYEE AGAINST ACCEPTOR OF BILL OF EXHANGE

1. By a bill of exchange dated ——— made at ——— and drawn (or purporting to have been drawn) by one E.F. on the defendant and herewith filed marked A, the said E.F. required the defendant to pay to the plaintiff the sum of ——— Rupees (——— days after date, or sight, thereof) together with interest thereon at ——— per centum per annum, and delivered the said bill to the plaintiff.

2. The defendant duly accepted the said bill on the ——— day of ———, 19 ——, but dishonoured the same by non-payment thereof.

3. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

No. P. 59

PLAINT IN AN ACTION BY FIRST INDORSEE AGAINST ACCEPTOR OF BILL OF EXCHANGE

1. By a bill of exchange dated ——— made at ——— and drawn (or purporting to have been drawn) by one E. F. on the defendant and herewith filed marked A, the said E. F. required the defendant to pay to the order of G. H. the sum of ——— Rupees (——— days after date, or sight, thereof) together with interest thereon at ——— per centum per annum.

2. The defendant duly accepted the said bill.

3. The said G. H. duly indorsed and delivered the said bill to the plaintiff for valuable consideration and the plaintiff is now the holder in due course thereof.

4. The plaintiff duly presented the bill to the defendant for payment on the ——— day of ———, 19—, but the same was dishonoured.

5. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees with interest amounting to ——— Rupees from ——— to ———.

No. P. 60

PLAINT IN AN ACTION BY PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF BILL OF EXCHANGE

1. By his bill of exchange dated ——— made at ——— drawn by the defendant upon one E. F. and herewith filed marked A, the defendant required the said E. F. to pay to the plaintiff the sum of ——— Rupees (——— days after date, or sight, thereof) togethhr with interest at ——— per centum per annum, and delivered the said bill to the plaintiff for valuable consideration.

2. The plaintiff duly presented the said bill on the ——— day of ———, 19—, to the said E. F. for acceptance but the said bill was dishonoured.

3. The defendant had due notice of such dishonour.

4. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

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No. P. 61

PLAINT IN AN ACTION BY INDORSEE AGAINST DRAWER, ACCEPTOR, AND INDORSER OF BILL OF EXCHANGE

1. By his bill of exchange dated ——— made at ——— and drawn by the defendants C. D. upon the defendant E. F. the said C. D. required the said E. F. to pay to the order of the defendant G. H. the sum of ——— Rupees (——— days after date, or sight, thereof) together with interest at ——— per centum per annum.

2. On the ——— day of ——— 19—, the said E. F. duly accepted the said bill.

3. On the ——— day of ——— 19—, the said G. H. indorsed and delivered the same to the plaintiff for valuable consideration and the plaintiff is now the holder in due course thereof.

4. On the——— day of ———, 19—, the said bill was presented to the said E. F. for payment, but was dishonoured and due notice of the dishonour was given to the other defendants.

5. There is now due jointly and severally from the said defendants to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

No. P. 62

PLAINT IN AN ACTION BY PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL OF EXCHANGE

1. By his bill of exchange dated ——— and drawn at (Colombo) herewith filed marked A, the defendant required one E. F. to pay to the plaintiff in (London) ——— pounds sterling (——— days) after sight, thereof, together with interest at ——— per centum per annum, and delivered the said bill to the plaintiff.

2. The said bill was presented to the said E. F. for acceptance on the ——— day of ———, 19—, but was dishonoured and was thereupon duly protested at an expense of ——— Rupees.

3. The defendant had due notice of the said facts.

4. The value of ——— pounds sterling at the time of the service of notice of protest on the defendant was ——— Rupees and ——— cents.

5. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

No. P. 63

PLAINT IN AN ACTION ON A MARINE (OPEN) POLICY, ON VESSEL LOST BY PERILS OF THE SEA, &c.

1. The plaintiff was the owner of (or had an interest in) the ship ——— at the time of her loss, as hereinafter mentioned.

2. 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 marked A (or whereby they promised to pay to the plaintiff, within ——— days after proof of loss and interest, all loss and damage accruing the him by reason of the destruction or injury of the said ship, during her voyage from ——— to ———, whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding ——— Rupees.

3. 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. The plaintiff's loss thereby was a sum of ——— Rupees.

5. 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. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

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No. P. 64

PLAINT IN AN ACTION ON A FIRE POLICY ON CARGO LOST BY FIRE (VALUED POLICY)

1. 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. 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 marked A (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. 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. The plaintiff's loss thereby was a sum of ——— Rupees.

5. 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. There is now due and owing from the defendant to the plaintiff the sum of ——— rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

No. P. 65

PLAINT IN AN ACTION ON FREIGHT (VALUED POLICY)

1. 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. 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 marked A (or state its tenor as before).

3. 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. 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. On the ——— day of ———, 19——, he furnished the defenadnts with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

No. P. 66

PLAINT IN AN ACTION ON A GENERAL AVERAGE POLICY

1. 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., from ——— to ———, at the time of the loss hereafter mentioned.

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2. 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 marked A (or state its tenor as before).

3. 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. The plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of ——— Rupees.

5. 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. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

No. P. 67

PLAINT IN AN ACTION ON PARTICULAR AVERAGE POLICY

1. 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., from ——— to ———, at the time of the loss hereafter mentioned.

2. 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 marked A (or state its tenor as before).

3. 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. 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.

5. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees being the aggregate amount of the principal sum of ——— Rupees and interest amounting to ——— Rupees from ——— to ———.

No. P. 68

PLAINT IN AN ACTION ON A FIRE INSURANCE POLICY

1. Plaintiff (was the owner of, or) had an interest in a (dwelling-house, bearing assessment No. ———, ——— street, in the city of ———), at the time of its destruction (or injury) by fire as hereinafter mentioned.

2. 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 marked A (or state its tenor).

3. On the ——— day of ———, 19——, the said (dwelling-house) was totally destroyed (or greatly damaged) by fire.

4. The plaintiff suffered loss thereby to the extent of ——— Rupees.

5. 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. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

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No. P. 69

PLAINT IN AN ACTION FOR SPECIFIC PERFORMANCE OF AGREEMENT TO CONVEY LAND

1. By an agreement dated ——— and entered into at ——— between plaintiff and defendant and attested by ——— of ———, Notary Public, a copy whereof is hereto annexed marked A, the defendant agreed with the plaintiff that in consideration of a deposit of ——— Rupees then paid and of a further sum of (ten thousand) Rupees payable at the time of execution of the conveyance, to sell and convey on or before the ——— day of ———, 19——, to the plaintiff premises bearing assessment No. ——— fully described in the Schedule hereto (in ——— Street, in the city of ———) free from all encumbrances.

2. On the ——— day of ———, 19——, the plaintiff tendered the said sum of (ten thousand) rupees and called upon the defendant to execute the conveyance but the defendant has failed and neglected to do so to the plaintiff's loss and damage of ——— Rupees.

3. The plaintiff brings into Court the said sum of (ten thousand) Rupees.

4. All conditions have been fulfilled, all things happened, and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part.

WHEREFORE the plaintiff prays—

(1) that the defendant be ordered to execute the conveyance in respect of the said premises in favour of the plaintiff;

(2) that the defendant be ordered to pay damages already sustained and further damages at the rate of ——— Rupees per mensem till conveyance is executed;

(3) that the plaintiff be placed in quiet and peaceful occupation of the premises in execution of such conveyance;

(4) that damages against the defendant for ——— Rupees being damages already sustained and for further damages at the rate of ——— Rupees per mensem be awarded till the plaintiff is placed in possession of the property.

SCHEDULE ABOVE REFERRED TO

(Describe land by metes and bounds and give reference to the prior registration number of Deed relating to the property.)

No. P. 70

PLAINT IN AN ACTION FOR DAMAGES FOR BREACH OF AGREEMENT TO CONVEY LAND

1. By an agreement dated ——— and entered into at ——— between plaintiff and defendant and attested by ——— of ———, Notary Public, a copy whereof is hereto annexed marked A, the defendant agreed with the plaintiff that in consideration of a deposit of ——— Rupees then paid and of a further sum of (ten thousand) Rupees payable at the time of execution of the conveyance to sell and convey on or before the ——— day of ———, 19——, to the plaintiff premises bearing assessment No. ——— fully described in the Schedule hereto (in ——— Street, in the city of ———) free from all encumbrances.

2. On the ——— day of ———, 19——, the plaintiff tendered the said sum of (ten thousand) Rupees and called upon the defendant to execute the conveyance but the defendant has failed and neglected to do so.

3. The defendant has wrongfully and unlawfully and in breach of the agreement aforesaid sold and conveyed the said property to one E. F.

4. By reason of the premises the plaintiff has become entitled to recover damages sustained by him as a result of the breach of the contract to be performed on the part of the defendant which he assesses at ——— Rupees.

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No. P. 71

PLAINT IN AN ACTION FOR DAMAGES FOR BREACH OF AGREEMENT TO PURCHASE LAND

1. By an agreement dated ——— and entered into at ——— between plaintiff and defendant and attested by ——— of ———, Notary Public, a copy whereof is hereto annexed marked A, the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff the land and premises described in the Schedule hereto for a sum of ——— Rupees on or before the ——— day of ———, 19——.

2. The plaintiff has been ready and willing at all times to execute the conveyance in favour of the defendant on payment by the defendant of the said sum but the defendant has refused to perform his part of the contract and to purchase the said land from the plaintiff.

3. By reason of the premises a cause of action has accrued to the plaintiff to sue the defendant for recovery of the damages sustained by him which he assesses at ——— Rupees.

No. P. 72

PLAINT IN AN ACTION FOR NOT DELIVERING GOODS SOLD

1. On the ——— day of ———, 19——, at ——— the plaintiff and defendant mutually agreed that the defendant should sell and deliver (one hundred barrels of flour) to the plaintiff (on the ——— day of ———, 19—), and the plaintiff should pay therefor the price or sum of ——— Rupees on delivery thereof.

2. The defendant failed and neglected to sell and deliver to the plaintiff as aforesaid (the one hundred barrels of flour) or any part thereof though the plaintiff was ready and willing to offer to pay the price agreed therefor upon the delivery of the said goods.

3. By reason of the defendant's failure to so deliver the goods the plaintiff has sustained damages which he assesses at ——— Rupees.

No. P. 73

PLAINT IN AN ACTION FOR BREACH OF CONTRACT TO EMPLOY

1. 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 defendants should employ the plaintiff as such, for the term of (one year), and pay him for his services ——— Rupees (monthly).

2. 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. 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.

4. By reason of the premises a cause of action has accrued to the plaintiff to sue the defendant to recover the damages sustained by him which he assesses at ——— Rupees.

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No. P. 74

PLAINT IN AN ACTION FOR BREACH OF CONTRACT TO EMPLOY WHERE THE EMPLOYMENT NEVER TOOK EFFECT

1. 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. 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. The defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

4. By reason of the premises a cause of action has accrued to the plaintiff to sue the defendant to recover the damages sustained by him which he assesses at ——— Rupees.

No. P. 75

PLAINT IN AN ACTION FOR BREACH OF CONTRACT TO SERVE

1. 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. 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. 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.

4. By reason of the premises a cause of action has accrued to the plaintiff to sue the defendant, to recover the damages sustained by him which he assesses at ——— Rupees.

No. P. 76

PLAINT IN AN ACTION AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP

1. On the ——— day of ——— 19—, at ———, the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed marked A (or state the tenor of the contract).

2. The defendant (built the house referred to in the said agreement in a bad and unworkmanlike manner) and the said building developed cracks and has become unsafe to live in.

3. The plaintiff assesses the damages sustained by him as a result of the bad workmanship at ——— Rupees.

No. P. 77

PLAINT IN AN ACTION ON A BOND FOR THE FIDELITY OF A CLERK

1. On the ——— day of ———, 19—, at ———, the plaintiff employed one E. F., as a clerk.

2. 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

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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 marked A.)

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.

No. P. 78

PLAINT IN AN ACTION FOR BREACH OF WARRANTY OF MOVABLES

1. On the ——— day of ———, 19—, the defendant warranted to the plaintiff for the sum of ——— Rupees a steam engine and warranted it to be in good working order.

2. In truth and in fact the said engine was not then in good working order and the plaintiff incurred expenses in a sum of ——— Rupees in having the said engine repaired and lost the profits which he assesses at ——— Rupees which would otherwise have accrued to him while the engine was under repair.

3. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 79

PLAINT IN AN ACTION ON AN AGREEMENT OF INDEMNITY

1. Prior to the dates material to the action the plaintiff and defendant carried on business in partnership under the name, firm and style of X. Y. and Company.

2. On the ——— day of ——— 19 ——, the plaintiff and defendant dissolved the said partnership and it was mutually agreed between them that the defendant should take over all the partnership assets and 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.

3. On the ——— day of ———, 19 ——, one E. F. sued the plaintiff and defendant in action No. ——— in the District Court of ——— and recovered judgment against them in respect of a debt due from the said firm to the said E. F. in a sum of ——— Rupees.

4. In satisfaction of the said judgment the plaintiff paid a sum of ——— Rupees to the said E. F.

5. The defendant has not paid the said sum of ——— Rupees to the plaintiff though thereto demanded.

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No. P. 80

PLAINT IN AN ACTION AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS

1. 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.

2. In pursuance of the said agreement the plaintiff deposited with the defendant the said (one hundred barrels of flour).

3. On the ——— day of ———, 19 ——, the plaintiff demanded delivery of the said goods from the defendant and tendered him ——— Rupees (or the full amount of storage due thereon), but the defendant failed and neglected to deliver the same.

4. The plaintiff was thereby prevented from selling the said goods to E. F and the plaintiff has sustained damages to the extent of ——— Rupees.

5. There is now due and owing from the defendant to the plaintiff the sum of ——— Rupees which sum or any part thereof the defendant has failed and neglected to pay though thereto demanded.

No. P. 81

PLAINT IN AN ACTION FOR CARRYING ON A NOXIOUS MANUFACTURE

1. At all dates material to this action the plaintiff was and is the owner of a certain house, land and premises called ——— situate in ——— under a deed of conveyance bearing No. ——— and attested by ——— of ———, Notary Public, and fully described in the Schedule hereto.

2. The defendant carries on the business of a ——— at a manufactory called ——— at ——— aforesaid.

3. Ever since the ——— day of ———, 19 ——, the defendant has wrongfully caused to issue and proceed from the said manufactory large quantities of offensive, poisonous, unwholesome smoke, vapours and noxious matter which spread and were diffused into the plaintiff's said house and over his said land and settled and were deposited in and upon the same.

4. In consequence the said house has been rendered unwholesome, dirty and uncomfortable to live in; the trees, hedges, herbage and crops growing on the said land damaged and otherwise injured and the said house and land have deteriorated in value.

5. The cattle and livestock of the plaintiff on the said house, land and premises became unhealthy and many of them were poisoned and died.

6. By reason of the premises a cause of action has accrued to the plaintiff to sue the defendant for the recovery of damages sustained by him which he assesses at ——— Rupees and for continuing damages at ——— Rupees till the defendant discontinues the noxious manufactory and for an injunction restraining the defendant from carrying on such noxious manufactory.

(Schedule referred to above).

No. P. 82

PLAINT IN AN ACTION FOR DEFAMATION, THE WORDS BEING DEFAMATORY IN THEMSELVES

1. On the ——— day of ———, 19 ——, at ———, the defendant published in a newspaper, called the ——— (or in a letter addressed to E. F., or spoke in the hearing of E. F., or sundry persons), the following words concerning the plaintiff.

(Set forth the words used.)

2. The said publication was false and malicious.

3. By reason of the said publication the plaintiff suffered pain of body and mind and was injured in his reputation and credit.

4. The plaintiff assesses the damages sustained by him at ——— Rupees.

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No. P. 83

PLAINT IN AN ACTION FOR DEFAMATION, THE WORDS NOT BEING DEFAMATORY IN THEMSELVES

1. The plaintiff (is, and) was on and before the ——— day of ———, 19 ——, a merchant doing business in the city of ———.

2. 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, or spoke in the hearing of E. F. or sundry persons), 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. The defendant meant thereby that (the plaintiff had absconded to avoid his creditors, and with intent to defraud them).

4. The said publication was false and malicious.

5. By reason of the said publication the plaintiff suffered pain of body and mind and was injured in his reputation and credit.

6. The plaintiff assesses the damages sustained by him at ——— Rupees.

APPENDIX III—TRANSLATORS' FEES O. 31, r. 44.

For every folio of 120 words ...	...	...	44 cents.
For every fractional part of a folio	...	...	40 cents.

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APPENDIX IV

Part I

DISTRICT COURTS

SCALE OF FEES TO BE PAID TO PROCTORS, AS WELL BETWEEN PARTY AND PARTY AS BETWEEN PROCTOR AND CLIENT, EXCEPT IN TESTAMENTARY PROCEEDINGS

	Category	*Class I Up to and including Rs. 1,500*	*Class II Above Rs. 1,500 and up to and including Rs. 5,000*	*Class III Above Rs. 5,000 and up to and including Rs. 10,000*	*Class IV Above Rs. 10,000 and up to and including Rs. 25,000*	*Remarks*
		Rs. c.	Rs. c.	Rs. c.	Rs. c.	
A.	Where prior to the action being set down for trial inter-partes or for preliminary investigation the action is decided or concluded after either— (*a*) ex-parte trial, or (*b*) inter-partes proceedings.	63 0	94 50	157 50	220 50	
B.	Where subsequent to the action being set down for trial inter-partes or for preliminary ivesigation, the action is decided or concluded after ex-parte trial, without any proceedings under ORDER XXI having been taken	73 50	110 25	183 75	257 25	
C.	Where in the course of the preliminary investigation, whether proceedings under ORD XXI had been taken or not, the action is decided or concluded inter-partes	84 0	126 0	210 0	294 0	
D.	Where subsequent to the action being set down for trial inter-partes, the action is decided or concluded after ex-parte trial, after proceedings under ORDERS XXI and XXVII or either of them had been taken	105 0	157 50	262 50	367 50	
E.	Where without any proceedings under Orders XXI and XXVII or either of them having been taken, the action is decided or concluded after trial inter-partes	157 50	236 25	393 75	551 25	
F.	Where after proceedings under ORDERS XXI and XXVII or either of them had been ta, the action is decided or concluded after trial inter-partes	210 0	315 0	525 0	735 0	
G.	Execution proceedings, inclusive of all steps from application for writ, examination of defendant, &c., to withdrawal of money from Court	52 50	73 50	105 0	157 50	
H.	Appeals to Supreme Court, including all preliminary steps and attendances upon Counsel and in Supreme Court	31 50	47 25	78 75	110 25	

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Note 1.—Costs other than of execution proceedings and of appeals are taxable under not more than one of the categories A, B, C, D or E.

Note 2.—Costs ordered in favour of one party against another in incidental or interlocutory proceedings had or taken in the course of an action either of regular or of summary procedure shall be recoverable irrespective of any sum recoverable under the above scale of fees except in so far as the Court may have ordered a disallowance of any part of the fees prescribed under the scale.

Illustrations : (*a*) Plaintiff institutes action for the recovery of a sum of Rs. 4,000. After answer filed, he moves to amend plaint. Defendant opposes application ; Court allows amendment with costs fixed at Rs. 10·50 (no counsel appearing for plaintiff) payable by defendant to plaintiff. Thereafter judgment entered in favour of plaintiff, after trial inter-partes without any proceedings under either Order XXI or XXVII having been taken. Plaintiff's Proctor would be entitled to a sum of Rs. 236·25 on account of his fees under the above scale, and in addition the sum of Rs. 10·50 as costs of the successful application to amend the plaint.

(*b*) In the above illustration, if the application for amendment had been refused with costs Rs. 10·50 payable by the plaintiff to the defendant and Court made no order disallowing any part of the plaintiff's costs, the plaintiff would be entitled to Rs. 236·25 but he would have to pay defendant the sum of Rs. 10·50.

(*c*) If in case (*b*) the Court in addition to awarding to the defendant Rs. 10·50 by way of costs, ordered disallowance of the sum of Rs. 10·50 out of the plaintiff's Proctor's fees for his bad pleading, the plaintiff would be entitled to Rs. 225·75, and the defendant would be entitled to his costs of Rs. 10·50.

(*d*) If in case (*c*) plaintiff's action was dismissed with costs, defendant would be entitled to a sum of Rs. 236·25 and to the sum of Rs. 10·50 ordered in his favour, but the order disallowing plaintiff's costs to the extent of Rs. 10·50 would have no operative effect as between party and party, but as between proctor and client plaintiff's Proctor can tax as against the plaintiff only a sum of Rs. 236·25 less Rs. 10·50 disallowed.

Note 3.—In actions exceeding the value of Rs. 25,000 but not exceeding Rs. 100,000, fees to be one-sixth higher than in Class IV, and in actions exceeding the value of Rs. 100,000, fees to be one-third higher than in Class IV.

Note 4.—In land cases other than those relating to rent and ejectment or Partition, fees to be one-sixth higher than the fees above prescribed.

Note 5.—Divorce cases will be classified under Class I where no damages are claimed or where the damages claimed do not exceed Rs. 1,500, otherwise to be determined according to damages claimed.

Note 6.—Action or application of summary procedure except incidental or interlocutory proceedings had or taken in an action either of regular or of summary procedure to be taxed as if it were an action of regular procedure for the amount in dispute between the parties as follows : Where the action or application is decided or concluded under—

(*a*) Rule II or sub-rule 1 (*a*) of Rule 12 of Order LVI, taxation shall be under category A ;
(*b*) Rule 15 of Order LVI, taxation shall be under category C ;
(*c*) Rule 16 of Order LVI, taxation shall be under category E.

Note 7.—Incidental or interlocutory proceedings had or taken in an action either of regular or summary procedure, such sum as the Court may fix in its order and ordinarily not to exceed half the amount prescribed in the above scale under category A, the class being determined where circumstances so permit by the amount involved on such incidental or interlocutory proceedings.

Note 8.—Declaratory applications to be taxed under category C.

Note 9.—Claim proceedings in respect of—

(*a*) movable property, to be taxed as regular action in the appropriate class according to the value of property claimed ;
(*b*) immovable property, such sum as may be fixed by Court.

Note 10.—Interpleader action ; Where plaintiff is dismissed from the action there being no controversy between him and the defendants, such sum as the Court may fix.

Note 11.—Maps, surveys, plans or models when necessary, such sums as the taxing officer shall deem reasonable, subject to review and appeal.

Note 12.—Witnesses' expenses as the taxing officer may determine, subject to review and appeal.

Note 13.—Fees of expert as may be fixed by Court.

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Part II

TESTAMENTARY PROCEEDINGS

A.—Costs payable out of estate by executor or administrator to his Proctor for the administration of the estate exclusive of costs of contests, if any, arising in respect of disputes relating to (1) claims for the grant or issue of letters or probate, or (2) the judicial settlement of accounts.

	Class I *Up to and including Rs. 5,000*	*Class II* *Above Rs. 5,000 and up to and including Rs. 10,000*	*Class III* *Above Rs. 10,000 and up to and including Rs. 20,000*	*Class IV* *Above Rs. 20,000 and up to and including Rs. 50,000*	*Class V* *Above Rs. 50,000 and up to and including Rs. 100,000*	*Class VI* *Above Rs. 100,000*
For fully administering and closing the estate :						
Percentage of nett value of estate	3	2½	2	1½	1	½

(i) Where the costs payable under Classes II, III, IV, V or VI are in any case less than the maximum payable under the immediately preceding class, the minimum payable under the said classes II, III, IV, V or VI shall be Rs. 50 higher than the maximum payable under the immediately preceding class

(ii) Where for any reason the Proctor does not or cannot continue to act till completion of administration such proportion of above percentages as the Court considers reasonable ; and without prejudice to the powers vested in Court as set out above, where the proceedings have reached the stage of issue of letters or probate 70 per cent. of the percentages set out for fully administering the estate, or where the stage of entering of *Order Nisi* has been reached 40 per cent. of the percentages as aforesaid.

B.—Scale of fees payable between party and party as well as between Proctor and client in respect of contests arising upon disputed claims for probate or letters shall be the same as in Part I of Appendix IV under the following categories :—

Category D. Where dispute is settled before inquiry is concluded.

Category E. Where the dispute is adjudicated upon by Court after inquiry.

Note 1.—The amounts set out under the various classes under A relate to the gross value of the estate.

Note 2.—Where there is a contest the Proctor will be entitled to costs of contest under B as well as costs of administration under A.

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Note 3.—In regard to contested costs the value of the subject matter in controversy between the parties shall determine the class for purposes of Part I of Appendix IV.

Illustration 1.—A dies, leaving movable and immovable property of the value of Rs. 30,000 and debts amounting to Rs. 27,000. The estate is one under Class V above, as the gross value is Rs. 30,000.

Illustration 2.—Will in dispute. Executor succeeds in establishing validity of will against an intestate heir of the testator, and the heir is condemned to pay the executor's costs. Proctor for executor is entitled to the costs of contest in addition to the ordinary costs of administration set out in A.

Illustration 3.—A widow propounds a paper writing as the last will of her deceased husband under which she claims to be the sole beneficiary. The brother of the deceased contests the validity of the will. The value of the gross estate will determine the class under which scale of costs will be payable in regard to the contest as between party and party or between party and Proctor.

Illustration 4.—Gross value of the estate left by deceased is Rs. 15,000. A, alleging that he and his brother B and sister C are the only intestate heirs, applies for letters of administration. P, claiming to be the sole child by the first bed of the deceased, claims administration for himself in preference to A. The costs of contest will have to be taxed as in Class IV of Part I of Appendix IV, as the claims put forward are to administer the whole estate.

Illustration 5.—An heir disputes the administrator's final account in one particular, that the administrator has failed to include and account for the rent of certain premises amounting to Rs. 3,000. The costs of contest will be determined according to Class II of Part I of Appendix IV, whatever the value of the estate may be.

Note 4.—In respect of incidental proceedings such sum as the Court may fix in its order.

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Part III

SCALE OF FEES TO BE PAID TO ADVOCATES IN DISTRICT COURTS

Where the cause of action, title to land or property, value of estate or subject matter of action is—	*Class I* *Up to and including Rs. 1,500*	*Class II* *Above Rs. 1,500 and up to and including Rs. 5,000*	*Class III* *Above Rs. 5,000 and up to and including Rs. 10,000*	*Class IV* *Above Rs. 10,000*
	Rs. c.	*Rs. c.*	*Rs. c.*	*Rs. c.*
Retainer	10 50 to 21 0	21 0	21 0	21 0
Advising action, defence or appeal	10 50	10 50	21 0	21 0
Drawing, perusing, settling, and signing any pleading, application or petition	10 50	10 50	21 0	21 0
Drawing, perusing, and settling special case	10 50 to 21 0	31 50	31 50	31 50
Drawing, perusing, and settling interrogatories, decree, etc.	10 50 to 21 0	21 0	21 0	21 0
Consultation fee	10 50 to 21 0	31 50	31 50	31 50
Supporting or opposing any special motion or application	10 50 to 21 0	21 0	21 0	21 0
Brief fee on trial or argument	21 0 to 52 50	52 50 to 105 0	105 0 to 157 50	157 50 to 262 50
Brief fee where trial or argument is resumed	10 50 to 31 50	31 50 to 52 50	52 50 to 84 0	84 0 to 136 50

Note 1.—No fees will be allowed for a Junior Advocate in Class I.

Note 2.—No fees will be allowed for a third Advocate except in Class IV.

Note 3.—The brief fee of a Junior Advocate where two Advocates are engaged will be half of the Senior Advocate's brief fee.

Note 4.—Where three Advocates are engaged, the brief fee of the first Junior Advocate will be two-thirds, and of the second Junior Advocate half, of the Senior Advocate's brief fee.

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Part IV

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.

A.—In money cases which have not been contested :

	Rs.	*c.*
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
Above Rs. 300 and not exceeding Rs. 400	25	0
Above Rs. 400 and not exceeding Rs. 500	30	0

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
Above Rs. 300 and not exceeding Rs. 400	30	0
Above Rs. 400 and not exceeding Rs. 500	35	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 not exceeding Rs. 300	21	0	to 31 50
Retainer and brief fee in all cases above Rs. 300	31	50	to 42 0

Surveys and plans, when necessary, such sum as the Commissioner shall deem reasonable.

Witnesses' expenses as the Commissioner may determine.

For interpleader, summary or other incidental proceedings, such costs as the Commissioner in his discretion may allow.

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Part V

SUPREME COURT

IN APPEAL

Advocates' Fees

Appeals from Courts of Requests :			
Brief fee on argument	Rs. c. 10 50	to	Rs. c. 42 0
Appeals from District Courts			
Retainer	10 50	to	31 50
Consultation fee	10 50	to	52 50
Making or opposing any special motion	10 50	to	52 50
Brief fee	21 0	to	262 50
Drawing, perusing, settling, and signing any application or petition	10 50	to	52 50

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APPENDIX V.—SCALE OF CHARGES FOR TYPEWRITTEN COPIES OF RECORDS OF CASES UNDER APPEAL

Final Appeals from District Courts

	1st Class	*2nd Class*	*3rd Class*	*4th Class*	*5th Class*	*6th Class*
Where the action or proceedings involves property rights of the value of	Rs. 500 and under..	Over Rs. 500 and under Rs. 1,000 ..	Rs. 1,000 and under Rs. 5,000..	Rs. 5,000 and under Rs. 10,000	Rs. 10,000 and under Rs. 20,000	Rs. 20,000 and above
Payable by either party for each copy ..	Rs. 8 ..	Rs. 10 ..	Rs. 12 ..	Rs. 15 ..	Rs. 20 ..	Rs. 25

Appeals in partition actions, whatever the value of the land, shall be charged as in Class III ; in Matrimonial cases as in Class IV ; in actions relating to public charities as in Class IV ; in actions under the Patents Ordinance as in Class V.

Interlocutory Appeals from District Courts

	In Partition Actions	*In all other Interlocutory Appeals*
Payable by either party for each copy	Rs. 12 ..	Rs. 8

In Appeals in Insolvency, Testamentary, and all other proceedings not hereinbefore mentioned, the charges for typewritten copies shall be the same as that levied under the heading " In all other Interlocutory Appeals ".

Copies of maps, plans or pedigrees of great complexity, and beyond the skill of an Officer of Court, shall be furnished by the appellant for the use of the Judges ; the appellant shall also furnish at the same time, the necessary copies of same for inclusion in the typewritten copy or copies applied for by him.

Appeals from Courts of Requests

Class I.—Where the action or proceedings involves property or rights of the value of Rs. 100 or under—Payable by either party for each copy .. Rs. 4
Class II.—Where the action or proceedings involves property or rights of the value of over Rs. 100—Payable by either party for each copy .. Rs. 5

In appeals in Courts of Requets cases, copies of maps, plans of pedigrees of great complexity, and beyond the skill of an officer of Court, shall be furnished by the appellant as in appeals in District Court cases.

Note.—No further fees are chargeable in respect of copies made for the use of the Judges, as the fees prescribed in this schedule include those charges too.

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THE SECOND SCHEDULE

Laws, Ordinances and Rules of Court Repealed

Section 64.

Laws, Ordinances, &c.

Title	*Extent of Repeal*
(1) Civil Procedure Code (Chapter 86)	The whole
(2) Arbitration Ordinance (Chapter 83)	do.
(3) Courts Ordinance (Chapter 6)	Sections 49 and 50 so far as they affect the procedure, practice and administration of the Civil Courts

Rules.

(1) Civil Procedure Rules, 1909	The whole
(2) Rule of Court relating to the issue of Commissions, Rogatoires and Letters of Request for the taking of evidence in Foreign countries in Civil proceedings pending in Courts in the Island	do.
(3) Rules of Court relating to the execution of Letters of Request for service of Foreign Process	do.
(4) Civil Appellate Rules, 1939	do.
(5) Payment into Court Order, 1939	do.
(6) Rules governing applications for cases to stand out of the appeal lists	do.
(7) Rule regulating the service of processes emanating from countries with which Civil Procedure Conventions have been concluded	do.
(8) British Courts Probates (Re-sealing Rules), 1939 ..	do.

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	*Section or Order	Rule
Abscond		
Warrant of arrest of judgment-debtor about to ..	46 ..	1
Absconding		
witness, proceedings against	28 .. S 6	19, 20, 22
Absence		
commissioner appointed under O 62 to proceed ex parte in the, of party	62 ..	21 (2)
Abandonment		
of part of claim, with leave of Court ..	58 ..	1, 2
of part of claim, without leave of Court ..	58 ..	3
See also withdrawal and adjustment of action		
Abatement		
of action by order of Court for non-prosecution ..	57 ..	11
bankruptcy does not cause, unless assignee refuses to continue	57 ..	9, 10
death of party—abatement when caused by ..	57 ..	1, 2, 5
effect	57 ..	2, 3, 4, 7, 12
death of plaintiff	57 ..	1, 2, 3, 4, 5
death of defendant	57 ..	1, 2, 7
fresh action not to be brought	57 ..	12
marriage of female party—effect	57 ..	8
setting aside, order of	57 ..	12
appeals of :—		
(*a*) on failure to give security	95 ..	9
(*b*) on failure to make application for type-written copies	96 ..	14 (*a*)
(*c*) on failure to pay additional charges due under O 96 R 3 or R 9	96 ..	14 (*b*)
Abeyance		
action to lie in on death of sole plaintiff or sole surviving plaintiff until legal representative make application for substitution	57 ..	5
Absence		
in action on negotiable instruments ..	94 ..	2
in Court of Requests	102 ..	22
of appellant, dismissal of appeal on ..	100 ..	2 (2)
of both parties, case to be dismissed ..	16 ..	5
of defendant	16 ..	3
of party on adjourned day	27 ..	4
of petitioner in summary procedure, dismissal of petition on	56 ..	10
of plaintiff, action to be dismissed	16 ..	1
Absent		
copy of original, how proved	31 ..	36
person, from Island, when letters of administration granted to attorney	77 ..	3 (3)
Absolute		
See Decree, Order, Sale		
Abuse		
of authority, by officer executing process not protected	S 13 (2)	

* Where " S " precedes a number, the reference is to a section.

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	Section or Order	Rule
Accident		
a ground for re-opening judgment by default in Court of Requests	102	22 (3)
to permit plaintiff in Court of Requests to file fresh action	102	22 (5)
Accidental		
slip in decree, correction to bring into line with judgment	32	5 (4)
Account		
Accounting Party may file a further and better	86	26
action for unsettled, approximate amount to be stated in	7	1
action founded on, in Court of Requests	102	12
action of, procedure in	25	3
	31	47-50
	32	20, 21
adjournment of hearing for taking	25	3
Attorney-General may impugn, of lunatics' estate	76	20 (3)
compelling executor and administrator to file	86	4
commission to examine	62	14
Court may compel executor to file at any time intermediate	86	18
Court to furnish instructions to Commission for examination of	62	15
Curator may be compelled to judicially settle	75	26 (2)
Curator to file	75	15 (2)
Curator, who may sue, for an	75	17
Curator's, court may compel judicial settlement of	75	26 (2)
Date of hearing to be fixed, into	86	27
day for filing, fixing	31	48
day for filing objections to, fixing	31	48
decree or order postponing hearing, for taking of	32	19
default in filing	31	50
Executor or administrator to be made respondent on application for payment of claims by Crown or legatee, &c.	86	21
interlocutory order for taking	32	20
	32	21
Final: *See* Final Account		
form and scope of order for taking	31	46
form of	86	7 (1)
Guardian may be ordered to file	75	28 (1)
Guardian, next friend or guardian-ad-litem may be ordered to file	76	25 (1)
in interlocutory orders for taking, falsifying, etc., dates to be fixed for filing accounts, objections, &c.	31	47
Intermediate: Executor may file	86	17
Judicial settlement of curator's	75	26 (1)
Intermediate: may be ordered to be filed by court	86	19
in respect of lunatic's estate, judicial settlement	76	23 (1)
	76	24
Judicial settlement, in respect of minor's estate	75	26 (1); 27
Judicial settlement of, by creditor or person interested	86	22 (1)
Judicial settlement of manager's, by court	76	23 (2)
Judicial settlement of manager's, by manager himself	76	24 (1)
Judicial settlement of manager's by person interested in lunatic	76	23
Manager of estate of lunatic, liable to be committed to gaol for failure to file	76	30
Manager of estate of lunatic to furnish half-yearly	76	20 (2)
may be surcharged, of executor	86	22 (3)
Minor may sue curator for	75	17
money paid into Court to a separate, how to be drawn	52	1

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	Section or Order	Rule
Account		
Neglect or refusal to account: By manager punishment for	76 ..	30
Objections to be filed by any party concerned, in taking	31 ..	48 (2)
Objections to trials of issues arising out of ..	31 ..	47
of curator: Impeachment of	75 ..	16
of curator of minor, half-yearly	75 ..	15
of curator, to be verified by affidavit ..	75 ..	15 (4)
of guardain, next friend or guardian-ad-litem of minor: court may compel judicial settlement of	75 ..	29
of guardian, next friend or guardian-ad-litem may be judicially settled	76 ..	25 (3)
of guardian, next friend or guardian-ad-litem, to be verified by affidavit	75 ..	28 (2)
of guardian, next friend or guardian-ad-litem, to be verified by affidavit	76 ..	25 (2)
of receiver	91 ..	4
partnership action, taking of in	32 ..	17
Petition challenging accounts: citation to issue on executor or administrator	86 ..	21 (4)
Petitioner entitled to challenge, of executor or administrator	86 ..	21 (2)
Principal and agent, direction for, between ..	32 ..	18
Procedure where accounting party makes default	31 ..	50
Reasonable care to be taken in appointing days for filing and for objections thereto ..	31 ..	49
Relative may sue curator for	75 ..	17
Relative of lunatic may impugn	76 ..	20 (3)
Relative of lunatic may sue for	76 ..	22
Respondent added, entitled to contest, of executor or administrator	86 ..	24 (2)
Settlement of, application for Judge by creditor or person interested in deceased's estate ..	86 ..	23 (1)
Summary procedure to be followed, for Judicial settlement of executor or administrator ..	86 ..	22 (2)
taking, of, Interlocutory order to	31 ..	47
time to be allowed for opposing party to file objections to	31 ..	47
to be taken and accounting party to be examined on hearing of petition for Judicial settlement ..	86 ..	30 (1)
to be verified by affidavit	86 ..	7 (2)
to be verified in oath	31 ..	48 (1)
Trial of issues arising out of objections to, to proceed as in regular action	31 ..	48 (3)
When may be rejected	86 ..	8
Accounting		
of deceased's estate	86 ..	2
Order in favour of party interested though not appearing may be made	14	
Order in favour of purchasing creditor, when to be made	21 ..	(5)
Payment and distribution of available estate: Decree to direct	35 ..	(2)
Receipts and vouchers regular to be admitted without proof	31 ..	(2)
Vouchers and receipts to be produced ..	31 ..	(1)
Where cause shown, date for objections to be fixed	13	
Beneficiary may apply for order in his favour ..	86 ..	21
decree conclusive	35	
Costs	31 ..	(2)
Decree to direct payment and distribution of available estate	35 ..	(2)
Dismissal not to bar subsequent accounting ..	21 ..	(6)
Executor may be discharged on complying with order made upon adjudication	14	

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	Section or Order	Rule
Accounting		
Judgment and decree	35	(1)
Order in favour of creditors, etc., not parties to proceedings	21	(7)
of lunatic's estate : compulsory judicial settlement	76	23 (2)
of lunatic's estate : procedure	76	23
of lunatic's estate : voluntary judicial settlement	76	23 (1)
of minor's estate : Procedure	75	31
of minor's estate : voluntary judicial settlement	75	27
party, allowance for loss of property to	46	28
party, making default, procedure on	31	49
Accounting party		
entitled to add all other persons interested in the estate and to set out debt due to him	86	24 (1)
Liability of, to estate to be determined	86	30 (1) (*d*)
may be examined by court, without judicial settlement	86	42
may be ordered to file further account and hearing adjourned	86	30 (2)
may file a further and better account	86	26
Prescription : When it begins to run against	86	33 (2)
when it does not run against	86	33 (1)
may prove debt due to him	86	30 (1) (*c*)
objection to claims of : petitioner and respondent entitled to file	86	26
	86	33 (2)
	86	33 (1)
to be afforded reasonable time to make accounts	31	48
to verify on oath or affirmation the accounts	31	47
Accused		
Summons to person, of contempt of Court	103	2
Action		
abatement of, setting aside order of	57	12
abatement of, when court may order	57	11
adjournment for steps in	26	1
Adjustment of, out of Court	58	3
Adjustment of, outside court	58	3
against Crown : *See* Crown		
against Foreign State	S 36	
against High Commissioners	S 32	
against person serving or executing process : Amend where held inadequate, plaintiff to pay costs	S 13 (5)	
against person serving or executing process : Limitation of, period of	S 13 (3)	
against person serving or executing process : Notice of, to be given	S 13 (3)	
against public officer : when Attorney-General may intervene	63	4 (1)
against public officer, when to proceed as between private parties	63	4 (2)
Amendment of plaint not to alter character of	17	12 (2)
against person serving or executing process : Amends may be tendered by person executing process, before	S 13 (4)	
Answer deemed not filed where answer not amended as ordered	17	13 (2)
Appearance by party, in	4	1
Application for Representation order	2	8 (2)
Application for withdrawal and transfer of	1	4

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Action	*Section or Order	Rule
arbitration, reference of, to	92	1
bankruptcy or insolvency of plaintiff no bar to	57	9
between co-partners	66	8
by alien enemy	S 33	
by alien friends	S 33	
by Aliens	S 33	
by Commonwealth countries	S 31	
by curator in respect of estate of minor	75	24
by Foreign State	34	
by minor	68	1
by one or more co-owners	2	2
by or against administrator	67	1
by or against corporations and companies	65	1
by or against Crown	S 28 (1)	
by or against Crown in name of Attorney-General	S 28	
by or against executors	67	1
by or against firm	66	1
by or against lunatic	68	27
by or against member of air force, military force, naval force	64	1
by or against persons in naval, military or air force	64	1 (1)
by or against trustee	67	1
by party unsuccessful in claim proceedings	39	25
by paupers	S 26, 71	1-14
cause of, definition	S 63	
Causes of : *See* Cause(s) of action		
change in title of, on minor coming of age	68	12
claim in, to include what	5	2
commencement of, by plaint	13	1
concerning property vested in administrator, executor, trustee	67	1
conduct of, Court may assign to some of the parties	2	16
Consolidation, where same questions in issue in two or more	26	1
continuation of, after alteration of party's status	57	1
co-plaintiff minor on coming of age abandoning, procedure on	68	15 (1)
costs to be awarded failing for want of jurisdiction	73	1
court of institution of	S 3 (1)	
court of institution of where jurisdiction doubtful	S 3 (1)	
damages caused in execution of process, notice of	S 13	
Decree against defendant for default may be set aside	16	4
Decree dismissing, on default of defendant	16	3
Decree dismissing, on default of plaintiff	16	1
Definition	S 63	
Dismissal of, for default of taking steps for preliminary investigation	19	15
Dismissal of, in default of taking steps for P. I. may be set aside	19	16
Dismissal of, on neither party appearing bar to fresh action	16	5 (2)
Dismissal of, on default of plaintiff bars fresh action	16	2 (1)
Dismissal of, on default of plaintiff may be set aside	16	2 (2)
Dismissed for want of representation, when dismissal may be set aside	57	12
Dismissed on neither party appearing	16	5
failing for want of jurisdiction, costs in	73	1
for compensation for wrongful issue of injunction when barred	89	7 (2)
for costs by proctor	35	22
for dissolution of partnership, interlocutory order in	32	17
Further requisites of plaint in land	7	5 (1) (2)
Ground of defence arising pending	8	8 (1)

* Where " S " precedes a number, the reference is to a section.

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	*Section or Order	Rule
Action		
Guardian-ad-litem may not compromise, without leave of Court	68 ..	23 (1)
hearing of, when day to day	31 ..	6
In, action for damages, oral evidence to be placed before Court	18 ..	2 (2)
In, action for damages date to be fixed for ex-parte hearing	18 ..	2 (1)
incidental applications, in course of ..	10 ..	1
in lunacy— *See* lunacy		
in lunacy—no stamp duty on	76 ..	35
Institution of, in what Court	S 3 ..	(1)
Interest in, to be sold as if it were movable property	43 ..	4
Interpleader what is	69 ..	1
Intervention in pending	2 ..	15
Joinder of causes of	5 ..	3
Joinder of claims in by or against executor ..	5 ..	4
Joinder of claims in court ordering separation of ..	5 ..	6
Joinder of claims in, for immovable property ..	5 ..	4
Joinder of parties liable on one contract in same ..	2 ..	7
Journal to be kept	11 ..	1
Land and Matrimonial governed by old procedure	13 ..	3
Land : Defendant to file table of devolution of title	8 ..	2
Limited means, person of, cannot institute what ..	S 27	
Liquid claim on—*See* Negotiable Instruments ..	94 ..	1
Matrimonial definition of	S 63 ..	(18)
Matrimonial for nullity	70 ..	14
Matrimonial procedure	70 ..	1
Matrimonial what court to have Jurisdiction ..	S 3 ..	(2)
may be dismissed if security for costs not furnished when ordered	61 ..	4
may be stayed where same matter is pending in appeal in another action	33 ..	2
may proceed against defendants served, where two or more defendants are severally liable ..	16 ..	7
Minor on coming of age electing to abandon, procedure on	68 ..	13
Mixed	18 ..	4 (1)
Next friend may not compromise, without leave of Court	68 ..	23 (1)
No fresh, be brought where action has abated ..	57 ..	12
No oral evidence necessary in, other than those for damages	18 ..	3 (1)
No separate, for matters arising in execution ..	53 ..	10
Not abated by death of party, when ..	57 ..	1
Not abated by marriage of female party ..	57 ..	8
Not defeated by misjoinder or nonjoinder of parties	2 ..	11
Notice of (when to be given) against Attorney-General or Public officer	S 30	
Obligation and collateral security one cause of action	5 ..	7
	5 ..	2 (4)
Objections to misjoinder of causes of action ..	5 ..	7
Objections to nonjoinder or misjoinder of parties ..	2 ..	17
of account ; piecemeal Jt. may be entered in ..	32 ..	20
Ommission to sue for one of several reliefs ..	5 ..	2 (3)
on behalf of minor when to be compounded ..	68 ..	23
on death of one of several plaintiffs or defendants	57, 57 ..	2, 3
on death of sole plaintiff	57 ..	4
One, may be stayed where same matter in issue in two actions	33 ..	1 (1)
on lost negotiable instrument	7 ..	12
Pauper cannot institute what	S 27	
Pendancy of, in foreign Court no bar to action on same cause of action	33 ..	4

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	*Section or Order	Rule
Action		
Pending, on alteration of party's interests, continuation of	57	13
Permission to bring fresh, after withdrawal of first suit not to effect prescription	58	2
Plaintiff in, substituted or added	2	5
Pleading in, founded on an account in Court of Requests	102	12
Pleading in, founded on an instrument in Court of Requests	102	12
Pre-emption, decree in, when to be dismissed	32	16
Procedure of	1	2
Procedure of, to be ordinarily regular	1	3
Procedure of, to be regular or summary	1	2
Property the subject of an, Appointment of receiver of	91	1, 2
Recovery of property, when not to be maintained without administration	S 39 (1)	
Regular	1	2
Regular	5	1
Regular, how to be framed	5	1
Regular, to commence by plaint	13	1
Relief, in, party entitled to more than one	5	2 (3)
Relinquishment of part of claim in	5	2 (2)
Report and depositions of Commissioner to be evidence in	62	12
Representation of numerous parties in one	2	8 (1)
Right of, on death of partners	66	4 (1)
right of receiver to bring or defend	91	1 (*d*)
Several may be tried together or one tried as a test action	26	2
Stay of proceedings in, on inability of proctor to acts	4	4
Strangers to, summoned to give evidence	28	16
Summary	1	2
Test, one of several actions may be tried as	26	2
to be dismissed, neither party appearing	16	5 (1)
to be dismissed on non-appearance of plaintiff	16	1 (1)
to be dismissed where plaint not amended as ordered	17	12 (3)
to be dismissed where plaintiff fails to take steps for preliminary investigation or trial	19	14
to include whole of claim	5	2 (1)
Transfer of pending, in original court	1	4
Trustees, for appointment or removal of	87	1
What constitutes an	1	1
What, governed by new procedure	13	12
Withdrawal of, or part by plaintiff	58	1
Withdrawal of: *See* withdrawal of action		
Ad colligenda		
letters	78	1
letters, form of	78	1
letters, when to be issued to protect property of deceased	78	1
Added		
defendant, amendment of plaint when	2	13
parties	2	12
plaintiff	2	5
plaintiff cannot be, without consent	2	12 (4)

* Where " S " precedes a number, the reference is to a section.

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	*Section or Order	Rule
Address		
Change of	12 ..	4
Elusory or fictitious	12 ..	6
for service of process in plaint	7 ..	2
for service—*See* Service		
may be furnished subsequently	12 ..	2
on first appearence	12 ..	1 (2)
Party subsequently unrepresented to notify other parties of registered	12 ..	5 (3)
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	*Section or Order	Rule
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* Where " S " precedes a number, the reference is to a section.

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	* Section or Order	Rule
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	* Section or Order	Rule
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No decree for default need be passed against defendants failing to appear, one of several appearing	16 ..	8
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	*Section or Order	Rule
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Separation a mensa et thoro, grounds for reversal of	70 ..	21
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Default in appearance		
of plaintiff, action to be dismissed	16 ..	1 (1)
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	*Section or Order	Rule
Default in appearance		
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Such dismissal may be set aside	16 ..	5 (3)
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Consent of proctors insufficient to vacate order ..	16 ..	6 (3)
No decree for, need be passed against defendants failing to appear, when one of several appearing	16 ..	8
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	*Section or Order	Rule
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	*Section or Order	Rule
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* Where "S" precedes a number, the reference is to a section.

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	*Section or Order	Rule
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