

CHAPTER 105
CIVIL PROCEDURE CODE

Ordinances AN ORDINANCE TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE PROCEDURE OF
THE CIVIL COURTS.

Nos. 2 of 1889,
12 of 1895,
23 of 1901,
12 of 1904,
14 of 1907,
31 of 1909,
9 of 1917,
39 of 1921,
42 of 1921,
21 of 1927,
23 of 1927,
25 of 1927,
15 of 1930,
26 of 1930,
4 of 1940,
18 of 1944,
39 of 1945,

Acts
Nos. 7 of 1949,
43 of 1949,
20 of 1954,
48 of 1954,
32 of 1957,
49 of 1958,
3 of 1960,
24 of 1961,
5 of 1964,
23 of 1969,
24 of 1969,

Laws
Nos. 12 of 1973,
44 of 1973,
25 of 1975,
19 of 1977,
20 of 1977,

Act
No. 53 of 1980.

[1st August, 1890.]

CHAPTER I

PRELIMINARY

Short title.

1. This Ordinance may be cited as the Civil Procedure Code.*

Where no provision is made special directions to be given by Court of Appeal.

4.† In every case in which no provision is made by this Ordinance, the procedure and practice hitherto in force shall be followed, and if any matter of procedure or practice for which no provision is made by this Ordinance or by any law for the time

being in force shall after this Ordinance comes into operation arise before any court, such court shall thereupon make application to the Court of Appeal for, and the Court of Appeal shall and is hereby required to give, such special orders and directions thereupon as the justice of the case shall require :

Provided always that nothing in this Ordinance contained shall be held in any way to affect or modify any special rules of procedure which, under or by virtue of the

* The Civil Procedure Code No. 2 of 1889 was repealed by the Administration of Justice (Amendment) Law, No. 25 of 1975, with effect from 1st January, 1976, and was revived by section 2 of the Civil Courts Procedure (Special Provisions) Law, No. 19 of 1977, with effect from 15th December, 1977.

† Sections 2 and 3 are omitted, as they repeal previous laws relating to procedure in Courts, etc., and have taken effect.

provisions of any enactment, may have from time to time been laid down or prescribed to be followed by any civil court in Sri Lanka in the conduct of any action, matter, or thing of which any such court can lawfully take cognizance, except in so far as any such provisions are by this Ordinance expressly repealed or modified.

Interpretation. 5. The following words and expressions in this Ordinance shall have the meanings hereby assigned to them, unless there is something in the subject or context repugnant thereto:—

“action” is a proceeding for the prevention or redress of a wrong;

[§2, Law 20 of 1977.] “Attorney-General” includes the Solicitor-General, the Additional Solicitor-General and any State Counsel specially authorized by the Attorney-General to represent the Attorney-General;

“cause of action” is the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty and the infliction of an affirmative injury;

“civil court” means a court in which civil actions may be brought;

“counsel” means an attorney-at-law instructed by a registered attorney;

“court” means a Judge empowered by law to act judicially alone, or a body of Judges empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially;

“decree” means the formal expression of an adjudication upon any right claimed or defence set up in a civil court, when such adjudication, so far as regards the court expressing it, decides the action or appeal;

(An order rejecting a plaint is a decree within this definition.)

“foreign court” means a court situate beyond the limits of, and not having authority in, Sri Lanka;

“foreign judgment” means the judgment of a foreign court;

“Judge” means the presiding officer of a court and includes Judges of the Supreme Court and of the Court of Appeal, District Judges, Judges of Family Courts and Judges of Primary Courts; [§2, Law 20 of 1977.]

“judgment” means the statement given by the Judge of the grounds of a decree or order;

“judgment-creditor” and “decree-holder” mean any person in whose favour a decree or order capable of execution has been made, and include any transferee of such decree or order;

“judgment-debtor” means any person against whom a decree or order capable of execution has been made;

“legal document” includes all processes, pleadings, petitions, affidavits, notices, motions and other documents, proceedings, and written communications; [§2, Law 20 of 1977.]

“order” means the formal expression of any decision of a civil court which is not a decree;

“original court” includes District Courts, Family Courts and Primary Courts;

“Public Trustee” means the Public Trustee of Sri Lanka appointed under the Public Trustee Ordinance and includes a Deputy Public Trustee or any other state officer generally or specially authorized by the Public Trustee to act on his behalf; [§2, Law 20 of 1977.]

“recognized agent” includes the persons designated under that name in section 25 and no others;

[§2, Law 20 of 1977.] "registered attorney" means an attorney-at-law appointed under Chapter V by a party or his recognized agent to act on his behalf;

[§2, Law 20 of 1977.] "Registrar" in relation to a court includes an Additional, Deputy or Assistant Registrar;

"signed" includes "marked" when the person making the mark is unable to write;

[§2, Law 20 of 1977.] "the Island" and "this Island" means respectively the Island of Sri Lanka;

"written" and "writing" include "printed" and "print" and "lithographed" and "lithograph" respectively.

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.

8. Save and except actions in which it is by this Ordinance or any other law specially provided that proceedings may be taken by way of summary procedure, every action shall commence and proceed by a course of regular procedure, as hereinafter prescribed.

Procedure of action to be ordinarily regular. [§2, 53 of 1980.]

CHAPTER III

OF THE COURT OF INSTITUTION OF ACTION

PART I
OF ACTIONS IN GENERAL

CHAPTER II

GENERAL PROVISIONS

Action. 6. Every application to a court for relief or remedy obtainable through the exercise of the court's power or authority, or otherwise to invite its interference, constitutes an action.

Procedure of an action. 7. The procedure of an action may be either "regular" or "summary".

Illustrations

In actions of which the procedure is regular, the person against whom the application is made is called upon to formally state his answer to the case which is alleged against him in the application before any question of fact is entertained by the court, or its discretion thereon is in any degree exercised.

In actions of which the procedure is summary, the applicant simultaneously with preferring his application supports with proper evidence the statement of fact made therein; and if the court in its discretion considers that a prima facie case is thus made out—

(a) either the order sought is immediately passed against the defendant before he has been afforded an opportunity of opposing it, but subject to the expressed qualification that it

9. Subject to the pecuniary or other limitations prescribed by any law, action shall be instituted in the court within the local limits of whose jurisdiction—

Institution of actions: In what court.

(a) a party defendant resides; or

(b) the land in respect of which the action is brought lies or is situate in whole or in part; or

(c) the cause of action arises; or

(d) the contract sought to be enforced was made.

When 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:

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

Provided that the action is one with respect to which the court is competent as regards the nature and value of the action to exercise jurisdiction.

Of application for withdrawal and transfer of action. [§ 3, Law 20 of 1977.]

10. Any of the parties to an action which is pending in any original court may, before trial, and after notice in writing to the other parties of his intention so to do, apply to the Court of Appeal by motion, which shall be supported by affidavit setting out the grounds on which it is based, 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 Court of Appeal 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 following reasons:—

- (a) that a fair and impartial trial cannot be had in any particular court or place; or
- (b) that some question of law of unusual difficulty is likely to arise; or
- (c) that it is expedient on any other ground,

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 Court of Appeal 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.

CHAPTER IV

OF PARTIES AND THEIR APPEARANCES, APPLICATIONS, AND ACTS

Plaintiffs.

11. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of

the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief for such relief as he or they may be entitled to, without any amendment of the plaint for that purpose. But the defendant though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the court in disposing of the costs of the action otherwise directs.

12. Where two or more persons are entitled to the possession of immovable property as joint tenants or tenants in common, one or more of them may maintain an action in respect of his or their undivided shares in the property in any case where such an action might be maintained by all.

Where joint tenants or tenants in common.

13. Where an action has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the action, if satisfied that the action has been so commenced through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons, with his or their consent, to be substituted or added as plaintiff or plaintiffs, upon such terms as the court thinks just.

Substituted and added plaintiffs.

14. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Defendants.

15. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Who may be joined as parties defendant.

16. Where there are numerous parties having a common interest in bringing or defending an action, one or more of such parties may, with the permission of the court, sue or be sued, or may defend in such

Where numerous parties, one may sue or defend for all.

- Notice. an action on behalf of all parties so interested. But the court shall in such case give, at the expense of the party applying so to sue or defend, notice of the institution of the action to all such parties, either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable, then) by public advertisement, as the court in each case may direct.
- Misjoinder not to defeat action. 17. No action shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.
- Nothing in this Ordinance shall be deemed to enable plaintiffs to join in respect of distinct causes of action.
- If the consent of anyone who ought to be joined as a plaintiff cannot be obtained, he may be made a defendant, the reasons therefor being stated in the plead.
- Parties improperly joined may be struck out. 18. (1) The court may on or before the hearing, upon the application of either party, and on such terms as the court thinks just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out; and the court may at any time, either upon or without such application, and on such terms as the court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in that action, be added.
- Addition of parties. (2) Every order for such amendment or for alteration of parties shall state the facts and reasons which together form the ground on which the order is made. And in the case of a party being added, the added party or parties shall be named, with the designation "added party", in all pleadings or processes or papers entitled in the action and made after the date of the order.
19. No person shall be allowed to intervene in a pending action otherwise than in pursuance of, and in conformity with, the provisions of the last preceding section. And no person shall be added as plaintiff, or as the next friend of a plaintiff, without his own consent thereto:
- Intervention not otherwise allowed.
- Provided however that any person on whose behalf an action is instituted or defended under section 16 may apply to the court to be made a party, and all parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons.
- Except in cases under section 16.
20. The court may give the conduct of the action to such plaintiff as it deems proper.
- Conduct of the action.
21. Where a defendant is added, the plaintiff shall, unless the court direct otherwise, be amended in such manner as may be necessary, and a copy of the amended plead shall be served on the new defendant and on the original defendants.
- Amendment of plead.
22. All objections for want of parties, or for joinder of parties who have no interest in the action, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the hearing. And any such objection not so taken shall be deemed to have been waived by the defendant.
- Objections for non-joinder or misjoinder to be taken before hearing.
23. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any proceeding under this Ordinance; and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any such proceeding. The authority shall be in writing signed by the party giving it, and shall be filed in court.
- Plaintiffs (or defendants) may authorize one of them to act for them.

CHAPTER V

OF RECOGNIZED AGENTS AND
ATTORNEYS-AT-LAW

Appearances may be by party in person, his recognized agent, or attorney-at-law.

24. Any appearance, application, or act in or to any court, required or authorized by law to be made or done by a party to an action or appeal in such court, except only such appearances, applications, or acts as by any law for the time being in force only attorneys-at-law are authorized to make or do, and except when by any such law otherwise expressly provided, may be made or done by the party in person, or by his recognized agent, or by an attorney-at-law duly appointed by the party or such agent to act on behalf of such party :

Provided that any such appearance shall be made by the party in person, if the court so directs. An attorney-at-law instructed by a registered attorney for this purpose, represents the registered attorney in court.

Recognized agents.

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

(a) the Attorney-General, on behalf of the State in respect of any court; who is also authorized to depute his power of appointing a registered attorney on behalf of the State in respect to any court to any person by a written document to be signed by the Attorney-General, and to be filed in that court;

(b) persons holding general powers of attorney from parties not resident within the local limits of the jurisdiction of the court within which limits the appearance or application is made or act done, authorizing them to make such appearances and applications, and do such acts on behalf of such parties; which power, or a copy thereof certified by an attorney-at-law or notary, shall in each case be filed in the court;

(c) persons carrying on trade or business for and in the names of parties not resident within the local limits of

the jurisdiction of the court within which limits the appearance or application is made or act done, in matters connected with such trade or business only, where no other agent is expressly authorized to make such appearances and applications and do such acts.

[§4, Law 20 of 1977.]

26. (1) Processes served on the recognized agent of a party to an action or appeal shall be as effectual as if the same had been served on the party in person, unless the court otherwise directs.

Processes served on recognized agent, effectual.

(2) The provisions of this Ordinance for the service of process on a party to an action shall apply to the service of process on his recognized agent.

27. (1) The appointment of a registered attorney to make any appearance or application, or do any act as aforesaid, shall be in writing signed by the client, and shall be filed in court; and every such appointment shall contain an address at which service of any process which under the provisions of this Chapter may be served on a registered attorney, instead of the party whom he represents, may be made.

Appointment of registered attorney.

(2) When so filed, it shall be in force until revoked with the leave of the court and after notice to the registered attorney by a writing signed by the client and filed in court, or until the client dies, or until the registered attorney dies, is removed, or suspended, or otherwise becomes incapable to act, or until all proceedings in the action are ended and judgment satisfied so far as regards the client.

(3) No counsel shall be required to present any document empowering him to act. The Attorney-General may appoint a registered attorney to act specially in any particular case or to act generally on behalf of the State.

28. If any such registered attorney as in the last preceding section is mentioned shall die, or be removed or suspended, or otherwise become incapable to act as aforesaid, at any time before judgment, no further proceeding shall be taken in the action against the party for whom he

Death or incapacity of registered attorney.

appeared until thirty days after notice to appoint another registered attorney has been given to that party either personally or in such other manner as the court directs.

Service on registered attorney.

29. Any process served on the registered attorney of any party or left at the office or ordinary residence of such registered attorney, relative to an action or appeal, except where the same is for the personal appearance of the party, shall be presumed to be duly communicated and made known to the party whom the registered attorney represents; and, unless the court otherwise directs, shall be as effectual for all purposes in relation to the action or appeal as if the same had been given to, or served on, the party in person.

Agent to accept service.

30. Besides the recognized agents described in section 25, any person residing within the jurisdiction of the court may be appointed an agent to accept service of process. Such appointment may be special or general, and shall be made by an instrument in writing signed by the principal, which shall contain an address at which such service may be made, and which, or, if the appointment be general, a duly attested copy thereof, shall be filed in court.

No appointment under this section shall be of any force or effect for the purpose of enabling or authorizing process to be served on an agent so appointed in any action to recover money due upon the mortgage of immovable property.

Agent to accept service in action upon mortgage of immovable property. [32, Law 12 of 1973.]

30A. (1) The mortgagor of any immovable property may make application for the registration of the address of any registered attorney or any person for the service of process in any action upon the mortgage. The application shall be made substantially in the form No. 11A in the First Schedule.

(2) The address for service shall be registered in or in continuation of the folio in which is registered the mortgage of the immovable property.

(3) Where the applicant declares in his application that a previously registered address is cancelled, the Registrar shall

make a new entry in the register and cancel the registration of the previous address.

(4) The fee for registration of the address for service or for a change of such address shall be fifty cents, with an addition of ten cents for each folio after the first in which the address is to be registered.

CHAPTER VI

OF THE SCOPE AND SUBJECT OF ACTION

33.* Every regular action shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Regular action, how to be framed.

34. (1) Every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the action within the jurisdiction of any court.

Every action shall include whole claim.

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

(3) For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration

A lets a house to B at a yearly rent of Rs. 1,000. The rent for the whole of the two years 1886 and 1887 is due and unpaid. A sues B only for the rent due for one of those years. A shall not afterwards sue B for the rent due for the other year.

* Sections 31 and 32 in Chapter V are repealed by Law No. 20 of 1977.

Joinder of claims in actions for immovable property.

35. (1) In an action for the recovery of immovable property, or to obtain a declaration of title to immovable property, no other claim, or any cause of action, shall be made unless with the leave of the court, except—

- (a) claims in respect of mesne profits or arrears of rent in respect of the property claimed;
- (b) damages for breach of any contract under which the property or any part thereof is held; or consequential on the trespass which constitutes the cause of action; and
- (c) claims by a mortgagee to enforce any of his remedies under the mortgage.

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

In actions against executors, &c.

(2) No claim by or against an executor, administrator, or heir, as such, shall in any action be joined with claims by or against him personally unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator, or heir, or are such as he was entitled to or liable for jointly with the deceased person whom he represents.

In other cases.

36. (1) Subject to the rules contained in the last section, the plaintiff may unite in the same action several causes of action against the same defendant or the same defendants jointly, and any plaintiffs having causes of action in which they are jointly interested against the same defendant or defendants may unite such causes of action in the same action.

Exception: court may order separation.

But if it appears to the court that any such causes of action cannot be conveniently tried or disposed of together, the court may, at any time before the hearing, of its own motion or on the application of any defendant, in both cases either in the presence of, or upon notice to,

the plaintiff, or at any subsequent stage of the action if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

(2) When causes of action are united, the jurisdiction of the court as regards the action shall depend on the amount or value of the aggregate subject-matters at the date of instituting the action, whether or not an order has been made under the second paragraph of subsection (1).

37. Any defendant alleging that the plaintiff has united in the same action several causes of action, which cannot be conveniently disposed of in one action, may at any time before the hearing apply to the court for an order confining the action to such of the causes of action as may be conveniently disposed of in one action.

Application by defendant in such cases.

38. (1) If, on the hearing of such application, it appears to the court that the causes of action are such as cannot all be conveniently disposed of in one action, the court may order any of such causes of action to be excluded, and may direct the plaintiff to be amended accordingly, and may make such order as to costs as may be just.

Order of court thereon.

(2) Every amendment made under this section shall be attested by the signature of the Judge.

CHAPTER VII

OF THE MODE OF INSTITUTION OF ACTION

39. Every action of regular procedure shall be instituted by presenting a duly stamped written plaint to the court or to such officer as the court shall appoint in this behalf.

Regular action to commence by plaint. [§ 6, Law 20 of 1977.]

40. The plaint shall be distinctly written upon good and suitable paper, and shall contain the following particulars:—

Requisites of plaint. [§ 7, Law 20 of 1977.]

- (a) the name of the court and date of filing the plaint;
- (b) the name, description, and place of residence of the plaintiff;

(c) the name, description, and the place of residence of the defendant so far as the same can be ascertained ;

(d) a plain and concise statement of the circumstances constituting each cause of action, and where and when it arose. Such statement shall be set forth in duly numbered paragraphs; and where two or more causes of action are set out, the statement of the circumstances constituting each cause of action must be separate, and numbered ;

(e) a demand of the relief which the plaintiff claims ; and

(f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

If the plaintiff seeks the recovery of money, the plaintiff must state the precise amount, so far as the case admits. 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 plaintiff need only state approximately the value of the chattel, right, status, or privilege, or the amount sued for.

Land sued for to be described by metes and bounds or sketch.

41. When the claim made in the action is for some specific portion of land, or for some share or interest in a specific portion of land, then the portion of land must be described in the plaintiff 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 plaintiff, and not by name only.

Plaintiff suing in a representative character must show that the character has accrued to him.

42. When the plaintiff sues in a representative character, the plaintiff should show, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute an action concerning it.

Illustrations

(a) A sues as B's executor. The plaintiff must state that A has proved B's will.

(b) A sues as C's administrator. The plaintiff must state that A has taken out administration to C's estate.

43. The plaintiff must show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand. Plaint must show defendant's interest and liability to be sued.

44. If the cause of action arose beyond the period ordinarily allowed by any law for instituting the action, the plaintiff must show the ground upon which exemption from such law is claimed. Exemption from bar from lapse of time to be shown.

45. Every plaintiff shall contain a statement of facts setting out the jurisdiction of the court to try and determine the claim in respect of which the action is brought. Jurisdiction of court to be averred.

46. (1) Every plaintiff presented by a registered attorney on behalf of a plaintiff shall be subscribed by such registered attorney. In every other case in which a plaintiff is presented, it shall be subscribed by the plaintiff ; and his signature shall be verified by the signature of some officer authorized by the court in that behalf. Subscription of plaintiff.

(2) Before the plaintiff (whether presented by the plaintiff or by a registered attorney in his behalf) is allowed to be filed, the court may, if in its discretion it shall think fit, refuse to entertain the same for any of the following reasons, namely :— Court may refuse to entertain plaintiff.

(a) if it does not state correctly, and without prolixity, the several particulars hereinbefore required to be specified therein ;

(b) if it contains any particulars other than those so required ;

(c) if it is not subscribed, or subscribed and verified, as the case may be, as hereinbefore required ;

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

- (e) if it is not framed in accordance with section 33 ;
- (f) if it is wrongly framed by reason of non-joinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same action,

and may return the same for amendment then and there, or within such time as may be fixed by the court, upon such terms as to the payment of costs occasioned by the amendment as the court thinks fit :

Provided that no amendment shall be allowed which would have the effect of converting an action of one character into an action of another and inconsistent character ;

And may reject.

And provided further, that in each of the following cases, namely :—

- (g) where the relief sought is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so ;
- (h) where the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamps within a time to be fixed by the court fails to do so ;
- (i) when the action appears from the statement in the plaint to be barred by any positive rule of law ;
- (j) when the plaint having been returned for amendment within a time fixed by the court is not amended within such time,

the plaint shall be rejected ; but such rejection shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Where plaint presented to wrong court.

47. In every case where an action has been instituted in a court not having jurisdiction by reason of the amount or

value involved, or by reason of the conditions made necessary to the institution of an action in any particular court by section 9 not being present, the plaint shall be returned to be presented to the proper court.

48. Every order returning or rejecting a plaint shall specify the date when the plaint was presented and so returned or rejected, the name of the person by whom it was presented and whether such person was plaintiff or registered attorney, 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.

Order on rejection of plaint.

49. (1) The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents, if any, which he has produced along with it ; and if the plaint is admitted, shall present as many copies on unstamped paper of the plaint as there are defendants, translated into the language of each defendant whose language is not the language of the court ; unless the court, by reason of the length of the plaint or the number of the defendants or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the action, in which case he shall present such statements.

Memorandum of documents to be endorsed on plaint. [§8, Law 20 of 1977.]

(2) If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, such statement shall show in what capacity such plaintiff or defendant sues or is sued ; and the plaintiff may by leave of the court amend such statements so as to make them correspond with the plaint.

Such memorandum and copies or statements shall be examined by the Registrar of the court and signed by him if he finds them correct.

50. If a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

Plaintiff to produce with plaint document sued on.

To annex list of other documents.

51. If he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

And to state where document not in his possession is.

52. In the case of any such document not being in his possession or power, he shall, if possible, state in whose possession or power it is.

Action on lost negotiable instrument.

53. In the case of any action founded upon a bill of exchange, promissory note, cheque, or any negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon such instrument, the court may make such decree as it would have made if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Document not produced with plaint inadmissible afterwards without leave. [59, Law 20 of 1977.]

54. A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the action.

CHAPTER VIII

OF THE ISSUE AND SERVICE OF SUMMONS

Summons. [510, Law 20 of 1977.]

55. (1) Upon the plaint being filed and the copies or concise statements required by section 49 presented, the court shall order summons in the form No. 16 in the First Schedule to issue, signed by the Registrar of the court, requiring the defendant to answer the plaint on or before a day to be specified in the summons. The summons, together with such copy or concise statement each translated into the language of the defendant where his language is not the language of the court, attached thereto, shall be delivered under a precept from the court in the form No. 17 in the said Schedule, or to the like effect, to the Fiscal of the court or to the Fiscal of a court of

like jurisdiction within the local limits of whose jurisdiction the defendant resides, who shall cause the same to be duly served on the defendant, or on each defendant, if more than one, and shall as hereinafter provided, return the same and the execution thereof to the court, duly verified by the officer to whom the actual service thereof has been entrusted.

(2) (a) Every party to an action, not appearing by a registered attorney, shall on or before the date specified in the summons deliver to the Registrar a memorandum substantially in the form No. 16A in the First Schedule setting out an address (hereinafter referred to as the "registered address") for the service on him of the notice under section 80 and any other legal document required to be served on a party under the provisions of this Ordinance unless otherwise provided. Every party shall with such memorandum tender to the Registrar stamps to the value required to cover cost of service of such notice by registered post.

(b) Where a party appears by a registered attorney the address of the registered attorney contained in his appointment shall be deemed to be the registered address of such party; and such registered attorney shall, on or before the date specified in the summons, tender to the Registrar stamps to the value required to cover cost of service by registered post, of the notice under section 80.

(c) The despatch by registered post to the registered address of a party of the notice under section 80, and of any other legal document required to be served on him shall be deemed to be sufficient service.

(d) The Registrar shall keep and maintain a list of the registered addresses furnished to him under this subsection, which list shall be filed as part of the record of the case.

SERVICE

Personal service of summons, what is.

59.* Subject to the several provisions as to service hereinafter in Chapter XXIII contained, service of the summons shall be made by delivering or tendering to the defendant personally a duplicate thereof.

Service to be personal if practicable; otherwise court may direct.

60. Whenever it may be practicable, the service of summons shall be made on the defendant in person; but if, after reasonable exertion, the Fiscal is unable to effect personal service, he shall report such inability to the court in a fair-written return to the precept, having the summons attached thereto as an exhibit, and it shall be competent for the court, on being satisfied by evidence adduced before it that the defendant is within Sri Lanka, to prescribe any other mode of service as an equivalent for personal service:

Provided, however, that where such a return is made by the Fiscal in an action for the recovery of money due on the mortgage of immovable property, the court shall not under the preceding provisions of this section have the power to prescribe any other mode of service as an equivalent for personal service, but the following provisions shall apply whether or not the court is satisfied that the defendant is within Sri Lanka:—

- (a) if the court is satisfied upon a certificate filed in that behalf by the registered attorney for the plaintiff that the mortgagor has not registered an address for service under section 30A, or if such an address having been registered the court is satisfied that the Fiscal was unable to effect service on such agent under section 64A, the court shall upon application made by the plaintiff, order that copies of the summons in such language as the court may consider appropriate shall be affixed by the Fiscal in at least three conspicuous places upon the mortgaged property and at the court-house, and may in its discretion direct such other acts or things to be done as the court may

consider appropriate (including in a case where an address has been registered under section 30A, the sending of a copy of the summons by registered post to that address);

- (b) service effected in the manner specified in paragraph (a) shall be deemed to be service on the defendant.

61. The service substituted by order of the court shall be as effectual as if it had been made on the defendant personally.

Substituted service to be as effectual as personal.

62. Whenever service is substituted by order of the court, the court shall fix a day on or before which the defendant shall file his answer and comply with the other requirements of section 55.

Substituted service. [§12, Law 20 of 1977.]

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

When more defendants than one, service on each.

64. When a defendant has an agent appointed under section 30 empowered to accept service, service of summons on such agent shall be sufficient. And in the case of an action against partners relative to a partnership transaction, or to an actionable wrong in respect of which relief is claimable from the partners, as a firm, each partner is an agent so empowered of each other partner, as is also the person (if any) not being a partner, who has the management of the business of the partnership at the principal place of such business within the local limits of the court's ordinary jurisdiction.

Agents to accept service;

partners, and manager.

Nothing in the preceding provisions of this section shall be deemed to authorize summons in an action to recover moneys due on a mortgage of immovable property to be served on any agent appointed under section 30.

64A. Where the mortgagor has registered the address of an agent under section 30A, service of summons may be made on such agent and shall be sufficient.

Service on agent in mortgage action.

* Sections 56, 57 and 58 are repealed by Law No. 20 of 1977.

When defendant out of jurisdiction has manager within it.

65. In an action relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the court from which the summons issued, service on any manager or agent who at the time of the service personally carries on such business or work for such person within such limits shall be deemed good service; and for the purpose of this section the master of a ship is the agent of his owner or charterer.

70. Every order giving leave to effect such service shall direct the mode of service, and direct that the defendant shall, on or before the date specified in such summons, file his answer and comply with the other requirements of section 55.

Order for, to prescribe mode of. [§13, Law 20 of 1977.]

Service on agent in charge of immovable property.

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

71. A summons under sections 69 and 70 shall be in the form No. 18 in the First Schedule.

Form of summons.

Misdescription not to vitiate summons, &c.

67. No misnomer or misdescription of any person or place in any such summons, order, or process shall vitiate the same, provided that the person or place be therein described as he or it is commonly known, and provided that such misnomer or misdescription be not such as to mislead the party served therewith.

CHAPTER IX

OF FILING ANSWER

[§14, Law 20 of 1977.]

Service on defendant in jail.

68. If the defendant be in jail, the summons shall be delivered by the Fiscal to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

72. If the defendant admits the claim of the plaintiff, the court shall give judgment against the defendant according to the admission so made. Such admission shall be in writing, signed by the defendant and his signature attested by an attorney-at-law.

Judgment against defendant if he admits claim of the plaintiff. [§15, Law 20 of 1977.]

73. If the defendant does not admit the plaintiff's claim, he shall himself, or his registered attorney shall on his behalf, deliver to the court a duly stamped written answer.

Answer to be in writing. [§15, Law 20 of 1977.]

75.* Every such answer shall be distinctly written upon good and suitable paper, shall be duly stamped, shall be subscribed by the defendant or his duly constituted representative as in the case of a plaintiff is provided for the plaintiff's subscription, or if he is represented by a registered attorney, by such registered attorney, and shall contain the following particulars:—

Requisites of answer. [§17, Law 20 of 1977.]

The summons shall be returned through the Fiscal to the court from which it is issued, with a statement of the service endorsed thereon, and signed by the officer in charge of the jail.

Service out of Sri Lanka.

69. Service of a summons out of Sri Lanka 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 Sri Lanka 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.

- (a) the name of the court, the number of the case, and the date of filing the answer;
- (b) the name of the plaintiff;
- (c) the name, description, and residence of the defendant;
- (d) a statement admitting or denying the several averments of the plaintiff, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant

Application for, how made.

* Section 74 is repealed by Law No. 20 of 1977.

means to rely for his defence; this statement shall be drawn in duly numbered paragraphs, referring by number, where necessary, to the paragraphs of the plaint;

- (e) when the defendant sets up a claim in reconvention the answer must contain a plain and concise statement of the facts constituting the ground of such claim which the defendant makes in reconvention. A claim in reconvention duly set up in the answer shall have the same effect as a plaint in a cross action so as to enable the court to pronounce a final judgment in the same action both on the original and on the cross claim; but it shall not affect the lien upon the amount decreed of any registered attorney in respect of the costs payable to him under the decree.

Jurisdiction of court to be specially traversed.

76. If the defendant intends to dispute the averment in the plaint as to the jurisdiction of the court, he must do so by a separate and distinct plea, expressly traversing such averment.

Rejection and amendment of answer.

77. If any answer is substantially defective in any of the particulars hereinbefore defined, or is argumentative or prolix, or contains matter irrelevant to the action, the court may, by an order to be endorsed thereon, reject the same or return it to the party by whom it was made, for amendment within a time to be fixed by the court, imposing such terms as to costs or otherwise as the court thinks fit.

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

The order so endorsed shall specify the ground of the rejection.

Copy of answer to be delivered to plaintiff or his registered attorney. [§18, Law 20 of 1977.]

78. A copy of the answer shall be served on the plaintiff, or each of the plaintiffs, if more than one, or his or their registered attorney.

CHAPTER X

OF THE REPLICATION AND FURTHER PLEADINGS

79. Except in the case of a claim by a defendant in reconvention, no pleading after answer shall be filed except by order of court on special motion to be made after due notice to the other side, and before the day appointed for the hearing of the action, upon such terms as to costs and the postponement of the hearing of the action as the court shall think fit. Such order shall not be made (except in the case of a claim in reconvention on the part of the defendant) unless the court is satisfied on such motion that the real issues between the parties cannot be conveniently raised without such further pleading. All pleadings after answer shall be subject to the rules prescribed by section 75 relative to the form and substance of the answer, so far as the same can be made applicable, and copies of such pleadings shall be served on the opposite party or his registered attorney.

When replication may be allowed. [§19, Law 20 of 1977.]

CHAPTER XI

OF FIXING DAY OF TRIAL

80. (1) Forthwith on the expiration of the time allowed for the filing of the defendant's answer, or, where a replication is permitted, on the last day of the time allowed for filing such replication, and whether the same is filed or not, the court shall appoint a day for the case to be called in order to fix the day of trial of the action and shall give notice thereof in writing by registered post to all parties who have furnished a registered address and tendered the cost of service of such notice as provided by subsection (2) of section 55.

Day of trial. [§20, Law 20 of 1977.]

(2) On the appointed day under subsection (1) of this section or where it appears to the court that the case is not ready for trial, on any later day to which the matter shall on that day have been postponed, the court shall fix the day of trial in open court.

(3) The court may subsequently on application made by either party and after hearing both parties, or after proof of notice

of motion to the absent party, direct that the day for the hearing of any case shall be advanced or deferred.

A reasonable number of cases to be fixed for each day.

81. The court shall, in fixing the day of hearing, be careful not to appoint more cases for one day than there is a probability of the court getting through on that day.

Postponement.

82. When any case is in its turn called on for hearing upon the day appointed therefor, the court may, for sufficient cause to be specified in its written order; direct that the hearing be postponed to a day which shall be fixed in the order, upon such terms as to costs or otherwise as the court shall think fit :

Provided that the court may in its discretion take and deal with a case out of its order in the cause list on any day for good reason to be adjudicated upon and recorded by the court before entering upon the case.

Undisposed of cases to be placed at the head of the roll.

83. (1) The cases in any day's cause list not disposed of on that day, by reason of want of time, will be placed at the head of the next court-day's cause list, unless the Judge directs otherwise.

[§21, Law 20 of 1977.]

(2) As soon as the cause list for any day is prepared, legibly-written copies of it in the language of the court and the language or languages of the parties shall be placed in some fit and conspicuous place outside the court-house, so that the suitors and all others interested may be enabled readily to be informed of the contents of the same.

CHAPTER XII

[§ 22, Law 20 of 1977.]

OF THE CONSEQUENCES AND CURE (WHEN PERMISSIBLE) OF DEFAULT IN PLEADING OR APPEARING

Default of defendant. [§23, Law 20 of 1977.]

84. If the defendant fails to file his answer on or before the day fixed for the filing of the answer, or on or before the day fixed for the subsequent filing of the answer or having filed his answer, if he fails to appear on the day fixed for the hearing of

the action, and if the court is satisfied that the defendant has been duly served with summons, or has received due notice of the day fixed for the subsequent filing of the answer, or of the day fixed for the hearing of the action, as the case may be, and if, on the occasion of such default of the defendant, the plaintiff appears, then the court shall proceed to hear the case *ex parte* forthwith, or on such other day as the court may fix.

85. (1) The plaintiff may place evidence before the court in support of his claim by affidavit, or by oral testimony and move for judgment, and the court, if satisfied 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, and enter decree accordingly.

Procedure in *ex parte* trial. [§23, Law 20 of 1977.]

(2) 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.

(3) Where there are several defendants of whom one or more file answer and another or others of whom fail to file answer, the plaintiff may move for judgment against such of the defendants as may be in default without prejudice to his right to proceed with the action against such of the defendants as may have filed answer. The provisions of this subsection shall apply notwithstanding that the defendants are jointly liable upon a bill of exchange, promissory note or cheque.

(4) The court shall cause a copy of the decree entered under this section to be served on the defendant in the manner prescribed for the service of summons. Such copy of the decree shall bear an endorsement that any application to set aside the decree under subsection (2) of section 86 shall be made to court within fourteen days of such service.

If defendant excuses his default, any order or judgment to be set aside.
[§23, Law 20 of 1977.]

86.* (2) Where, within fourteen days of the service of the decree entered against him for default, the defendant with notice to the plaintiff makes application to and thereafter satisfies court, that he had reasonable grounds for such default, the court shall set aside the judgment and decree and permit the defendant to proceed with his defence as from the stage of default upon such terms as to costs or otherwise as to the court shall appear proper.

88. (1) No appeal shall lie against any judgment entered upon default.

No appeal against judgment for default but order setting aside or refusing to set aside judgment appealable.
[§23, Law 20 of 1977.]

(2) The order setting aside or refusing to set aside the judgment entered upon default 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 Court of Appeal.

(3) The provisions of sections 761 and 763 shall, *mutatis mutandis*, apply to and in relation to the execution of a decree entered upon default, where an order refusing to set aside such decree has been made.

[§4, 53 of 1980.]

89. In the case of an action against two or more defendants alleged to be severally liable, where a summons is served upon any of them, the plaintiff may proceed against the person or persons served as if no other defendant were named in the summons. Where it is served upon all of them, the plaintiff may take judgment against one or more of them, where he would be entitled to judgment if the action was against him or them alone. Where judgment is so taken the plaintiff may proceed in the same action against the other defendants.

Where two or more defendants severally liable.

(3) Every application under this section shall be made by petition supported by affidavit.

[§3, 53 of 1980.]

87. (1) Where the plaintiff or where both the plaintiff and the defendant make default in appearing on the day fixed for the trial, the court shall dismiss the plaintiff's action.

Non-appearance of plaintiff.
[§23, Law 20 of 1977.]

(2) Where an action has been dismissed under this section, the plaintiff shall be precluded from bringing a fresh action in respect of the same cause of action.

(3) The plaintiff 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 were reasonable grounds 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.

90. In the case of an action where there are more defendants than one, the court shall not be obliged to pass a decree for default against a defendant for failing to appear at a stage of the action, provided that one defendant at least appears at that stage against whom the action must proceed.

One of many defendants appearing, no decree for default need be passed against others.

CHAPTER XIII

OF MOTIONS

91. Every application made to the court in the course of an action, incidental thereto, and not a step in the regular procedure, shall be made by motion by the applicant in person or his counsel or registered attorney, and a memorandum in writing of such motion shall be at the same time delivered to the court.

Motions
[§24, Law 20 of 1977.]

* Subsection (1) is repealed by Act No. 53 of 1980.

Postponements,
adjournments
and extensions
of time.
[§25, Law 20 of
1977.]

91A. (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, upon the motion of such party and, if sufficient cause is shown, fix another day or enlarge or abridge the time appointed, upon such terms, if any, as to it may seem proper.

(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.

(3) The court may, for sufficient cause, either on the application of the parties or of its own motion, advance, postpone or adjourn the trial to any other date upon such terms as to costs or otherwise as to it shall seem proper.

(4) Where a date is fixed on or before which an act has to be done by a party to the action or a return has to be made to a commission issued by the court, the case shall be called in open court on such date for the purpose of making an appropriate order in connection therewith or relating thereto.

CHAPTER XIV

OF THE JOURNAL

Journal.

92. With the institution of the action the court shall commence a journal entitled as of the action, in which shall be minuted, as they occur, all the events in the course of the action, i.e., the original application, and every subsequent step, proceeding, and order; each minute shall be signed and dated by the Judge, and the journal so kept shall be the principal record of the action.

CHAPTER XV

OF AMENDMENT

Amendments
of pleadings.

93. At any hearing of the action, or any time in the presence of, or after reasonable notice to, all the parties to the action before final judgment, the court shall have full power of amending in its discretion, and upon such terms as to costs and postponement of day for filing answer or replication or for hearing of cause, or

otherwise, as it may think fit, all pleadings and processes in the action, by way of addition, or of alteration, or of omission. And the amendments or additions shall be clearly written on the face of the pleading or process affected by the order; or if this cannot conveniently be done, a fair draft of the document as altered shall be appended to the document intended to be amended, and every such amendment or alteration shall be initialled by the Judge.

CHAPTER XVI

OF DISCOVERY, INSPECTION, PRODUCTION, IMPOUNDING, AND RETURN OF DOCUMENTS

94. (1) Any party may at any time Interrogatories. be obtained on motion *ex parte*, deliver through the court interrogatories in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered his answer, and such answer has been received and placed on the record.

(2) For the purposes of this Chapter, "opposite party", means a party between whom and the party interrogating an issue has been raised.

95. Interrogatories delivered under the last section shall be served on the registered attorney (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions herein contained with regard to service of summons shall, in the latter case, apply, so far as may be practicable. Service of interrogatories.

96. The court, in adjusting the costs of the action, shall at the instance of any party, inquire, or cause inquiry to be made, into the propriety of delivering such Cost of unreasonable interrogatories to be borne by party in fault.

interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories, and the answers thereto, shall be borne by the party in fault.

Interrogatories to company, &c.

97. If any party to an action is a body corporate or a company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

When party may refuse to answer.

98. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is scandalous or irrelevant, or is not put bona fide for the purposes of the action, or that the answer will tend to criminate himself, or that the matter inquired after is not sufficiently material at that stage of the action, or on any other like ground.

To be answered by affidavit.

99. Interrogatories shall be answered by affidavit to be filed in court within ten days from the service thereof, or within such further time as the court may allow.

Application for further answer.

100. If any person interrogated omits or refuses to answer or answers insufficiently any interrogatory, the party interrogating may apply to the court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further, either by an affidavit or by viva voce examination, as the court may direct:

Provided that the court shall not require an answer to an interrogatory which in its opinion need not have been answered under section 98.

Notice to admit genuineness of documents.

101. (1) Either party may, by a notice issued by order of court, to be obtained on motion *ex parte* within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all

just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the action.

(2) The admission shall also be made in writing, signed by the other party or his registered attorney, and filed in court.

(3) If such notice be not given, no costs of proving such document shall be allowed, unless the court otherwise orders.

(4) If such notice is not complied with within four days after its being served, and the court thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the action.

102. (1) The court may, at any time during the pendency therein of any action, order any party to the action to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the action, and any party to the action may, at any time before the hearing, apply to the court for a like order.

Order for discovery of documents.

(2) Every affidavit made under this section shall specify which, if any, of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection.

103. The court may, at any time during the pendency therein of any action, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such action or proceeding as the court thinks right; and the court may deal with such documents when produced in such manner as appears just.

Order for production of documents.

103A. (1) In any action to which the State is a party, the State may also be required to make discovery or give inspection of documents.

State required to make discovery or give inspection of documents under certain circumstances. [§26, Law 20 of 1977.]

(2) The provisions of subsection (1) shall not prejudice the right of the State to withhold any document on the ground that in the opinion of the Minister in charge of

the subject to which the document relates, the public interest would suffer by such disclosure.

Notice to produce documents for inspection.

104. (1) Any party to an action may, at any time before or at the hearing thereof, by motion *ex parte*, obtain an order of court for notice to issue to any other party in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his registered attorney, and to permit such party or registered attorney to take copies thereof.

(2) No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such action, unless he satisfies the court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

Time and place of such production to be specified by party receiving notice.

105. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his registered attorney's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds.

Otherwise, order for inspection to be made by court.

106. If any party served with notice under section 104 omits to give notice under section 105 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the court for an order of inspection.

Application for order to be supported by affidavit.

107. Except in the case of documents referred to in any pleading or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing—

- (a) of what documents inspection is sought,
- (b) that the party applying is entitled to inspect them, and

(c) that they are in the possession or power of the party against whom the application is made.

108. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the court is satisfied that the right of such discovery or inspection depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the court may order that the issue or question be determined first, and reserve the question as to the discovery or inspection.

Court may reserve question as to discovery or inspection.

109. (1) If any party fails to comply with any order under this Chapter to answer interrogatories, or for discovery, production, or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not appeared and answered.

Consequence of not complying with order under this Chapter.

And the party interrogating or seeking discovery, production, or inspection may apply to the court for an order to this effect, and the court may make such order accordingly.

(2) Any party failing to comply with any order under this Chapter to answer interrogatories, or for discovery, production, or inspection which has been served personally upon him, shall also be deemed guilty of the offence of contempt of court.

110. (1) The court may of its own accord, or in its discretion upon the application of any of the parties to an action, send for, either from its own records or from any other court, the record of any other action or proceeding, and inspect the same.

Court may inspect records of other courts.

(2) Every application made under this section shall (unless the court otherwise directs) be supported by an affidavit of the applicant or his registered attorney, 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.

(3) Nothing in this section shall be deemed to enable the court to use in evidence any document which by the law of evidence in force in Sri Lanka would be inadmissible in the action.

Parties to be ready with all documents at trial.

111. The parties or their registered attorneys shall bring with them and have in readiness at the hearing of the action, to be produced when called for by the court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in court, and all documents which the court at any time before such hearing has ordered to be produced.

Document called for and not produced shall not be received afterwards.

112. No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of section 111, shall be received at any subsequent stage of the proceedings, unless good cause be shown to the satisfaction of the court for the non-production thereof. And the court on receiving any such evidence shall record its reason for so doing.

Documents to be received by court.

113. (1) The court shall receive the documents respectively produced by the parties at the hearing, provided that the documents produced by each party be accompanied by an accurate list thereof.

Rejection of irrelevant or inadmissible documents.

(2) The court may at any stage of the action reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

No documents to be placed on record unless proved.

114. (1) No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force.

(2) Every document so proved or admitted shall be endorsed with some number or letter sufficient to identify it. The Judge shall then make an entry on the record to the effect that such document was proved against or admitted by (as the case may be) the person against whom it is used, and shall in such entry refer to such document by such number or letter in such a way as to identify it with the document so proved or admitted. The document shall then be filed as part of the record.

Proved documents to be marked and filed.

(3) All documents produced at the hearing and not so proved or admitted shall be returned to the parties respectively producing them.

Documents which are not proved to be returned to parties.

115. Notwithstanding anything contained in section 114, the court may, if it sees sufficient cause, direct any document or book produced before it in any action to be impounded and kept in the custody of an officer of the court for such period and subject to such conditions as the court thinks fit.

Court may order any document to be impounded.

116. (1) When an action has been disposed of, or when the time for preferring an appeal from the decree has elapsed, or if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the action or not, desirous of receiving back any document produced by him in the action, and placed on the record, shall, unless the document is impounded under section 115, be entitled to receive back the same :

When document admitted in evidence may be returned.

Provided that a document may be returned at any time if the person applying for such return deliver to the proper officer a certified copy of such document to be substituted for the original ;

And provided further, that no document shall be returned which by force of the decree has become void or useless.

Certain documents not to be returned.

(2) On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt book to be kept for the purpose.

Receipt for returned documents.

Provisions as to documents apply to other material objects.
117. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

(a) a list of witnesses to be called by such party at the trial, and

(b) a list of the documents relied upon by such party and to be produced at the trial.

TRANSLATIONS OF DOCUMENTS

Translations of documents.
118. No translation of any document tendered in evidence in any court shall be permitted to be read as a translation of such document, unless the same shall be signed by an interpreter of the Supreme Court, or the Court of Appeal, or by a Government sworn translator, or by a sworn translator or interpreter of some District Court, Family Court or Primary Court.

122. The party applying for a summons shall, before the summons is granted, and within a period to be fixed by the court, pay into court, or give security for payment of, such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend, and for one day's attendance :
 Payment of witness's expenses.

Who shall be deemed a translator.
119. No person other than an interpreter of the Supreme Court, or the Court of Appeal, or a Government sworn translator, or an interpreter of a District Court, or Family Court or Primary Court, shall be deemed to be a translator of any court unless he shall have received a certificate from the Judge of such court that he is competent to fulfil the duties of a translator, and shall have taken an oath before such Judge faithfully to perform the duties of his office.

Provided that in the case of a witness residing within four miles of the court at which his attendance is required, no such payment shall be made nor security given ;

Fees of translators.
120. No such translator as aforesaid shall be entitled to have or recover in respect of fees for any translation any sum of money in excess of the following rates, namely :—

And provided further that the making of any such payment and the giving of any such security shall in no case be a condition precedent to the issue of a summons, but in every case (except the case of a witness residing within four miles from the court) where summons issues without such payment having been made or security given, the witness shall be informed on the face of the summons that such is the case, and that it is not obligatory on him to attend.

[§27, Law 20 of 1977.] For every folio of 120 words .. Rs. 1. 25
 For every fractional part of a folio .. Rs. 1. 25

123. The sum so paid into court, or so secured, shall at least be paid or tendered to the person summoned at the time when he is called on to give his evidence, if he demands the same.
 Witness's expenses to be paid before he gives evidence.

CHAPTER XVII

OF WITNESSES AND DOCUMENTS

[§28, Law 20 of 1977.]
 Summonses to witnesses.
121. (1) The parties may, after the summons has been delivered for service on the defendant, obtain, on application to the court or to such officer as the court appoints in that behalf, before the day fixed for the hearing, summonses to persons whose attendance is required either to give evidence or to produce documents.

124. If it appears to the court or to such officer as it appoints in this behalf that the sum paid into court is not sufficient to cover such expenses, the court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and in case of default in payment, may, by writ issued to the Fiscal, order such sum to be levied by sequestration and sale of the movable property of the party obtaining the summons as is hereinafter provided; or the court may discharge the person summoned without
 Court may order a sufficient sum to be paid.

Lists of witnesses and documents.
 [§29, Law 20 of 1977.]
 (2) Every party to an action shall, not less than fifteen days before the date fixed for the trial of an action, file or cause to be filed in court after notice to the opposite party—

requiring him to give evidence ; or may both order such levy and discharge such person as aforesaid.

summons on the defendant ; and the rules contained in this Ordinance as to proof of service of summons on the defendant shall apply in case of all summonses served under this section.

Expenses of detention.

125. If it is necessary to detain the person summoned for a longer period than one day, the court may from time to time order the party at whose instance he was summoned to pay into court such sum as is sufficient 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.

130. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Service must afford reasonable time for attendance.

131. (1) If the Fiscal returns to the court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the court may take evidence touching the non-service.

Procedure to be followed when summons cannot be served.

Summons to specify time, place, and purpose of attendance.

126. (1) Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes ; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

And upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding, or keeping out of the way for the purpose of avoiding the service of summons, the court may in its discretion either issue a warrant for the apprehension of such witness or may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein ; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

(2) If money has been deposited or security given for his expenses under the provisions of section 122, the summons shall contain a statement to that effect.

Summons to produce document.

127. Any person may be summoned to produce a document without being summoned to give evidence ; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he cause such document to be produced, instead of attending personally to produce the same.

(2) If he does not attend at the time and place named in such proclamation, the court may in its discretion, at the instance of the party on whose application the summons was issued make an order for the sequestration of the property of the person whose attendance is required, to such amount as the court thinks fit, not exceeding the amount of the costs of sequestration and of the fine which may be imposed under section 133.

Proclaimed witness how dealt with.

Person in court may be required to produce a document.

128. Any person present in court may be required by the court to give evidence, or to produce any document then and there in his actual possession or power.

132. If, on the sequestration of his property, such person appears and satisfies the court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the court shall direct that the property be released from

If witness appears, sequestration may be withdrawn.

Service of summons.

129. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in the manner hereinbefore prescribed for the service of

sequestration, and shall make such order as to the costs of the sequestration as it thinks fit.

Procedure when witness fails to appear.

133. If such person does not appear, or appearing, fails to satisfy the court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the court may impose upon him such fine, in the case of the Primary Court not exceeding fifty rupees, and in the case of the District Court not exceeding two hundred rupees, as the court thinks fit, having regard to his condition in life and all the circumstances of the case; and may order the property sequestered, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such sequestration, together with the amount of the said fine, if any:

Provided that if the person whose attendance is required pays into court the costs and the fine as aforesaid, the court shall order the property to be released from sequestration.

Court may summon and examine any person as witness.

134. Subject to the rules of this Ordinance as to attendance and appearance, if the court at any time thinks it necessary to examine any person other than a party to the action, and not named as a witness by a party to the action, the court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed; and may examine him as a witness, or require him to produce such document.

Person summoned must attend at time and place named in the summons.

135. Subject as last aforesaid, whoever is summoned to appear and give evidence in an action must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

When witness may depart.

136. No person so summoned and attending shall depart unless and until—

- (a) he has been examined or has produced the document and the court has risen; or

- (b) he has obtained the court's leave to depart.

137. (1) If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 136, the court may order him to be arrested and brought before the court:

Witness may be arrested for non-compliance with summons.

Provided that no such order shall be made when the court has reason to believe that the person so failing had a lawful excuse for such failure.

(2) When any person so brought before the court fails to satisfy it that he had a lawful excuse for not complying with the summons, he shall be deemed to be guilty of the offence of contempt of court, and punishable therefor.

Non-compliance with summons without lawful excuse deemed to be contempt of court.

138. If any person so apprehended and brought before the court cannot, owing to the absence of the parties or any of them give the evidence or produce the document which he has been summoned to give or produce, the court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given may release him.

Court may release arrested witness on bail.

139. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the court, the provisions of sections 131, 132, and 133 shall, *mutatis mutandis*, apply.

Procedure when witness absconds.

140. If any party to an action being present in court refuses, without lawful excuse, when required by the court, to give evidence, or to produce any document then and there in his actual possession or power, the court may in its discretion either pass a decree against him, or make such other order in relation to the action as the court thinks fit, or may punish him as for a contempt of court.

Court may pass decree against party refusing to give evidence.

141. (1) Whenever any party to an action is required to give evidence or produce a document, the rules as to witnesses contained in this Ordinance shall apply to him, so far as they are applicable.

Rules as to witnesses to apply to a party summoned to give evidence.

(2) Nothing in this Chapter contained shall be deemed in any way to contravene or affect the provisions of the Proof of Public Documents Ordinance except in so far as the same may be hereby expressly repealed or modified.

Privilege from arrest of witness.

142. Any person duly and in good faith summoned or ordered to attend for the purpose of being examined in a case is privileged from arrest in a civil action or special proceeding while going to, remaining at, and returning from the place where he is required to attend.

CHAPTER XVIII

OF ADJOURNMENTS

Adjournments.

143. (1) The court may, if sufficient cause be shown, at any stage of the action grant time to the parties, or to any of them, and may from time to time adjourn the hearing of the action.

(2) In all such cases the court shall fix a day for the further hearing of the action, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the action shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the hearing to be necessary for reasons to be recorded and signed by the Judge.

Non-appearance of a party on the adjourned day.

144. If on any day to which the hearing of the action is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the action in one of the modes directed in that behalf by Chapter XII, or make such other order as it thinks fit.

Default of party to carry out purpose of adjournment.

145. If any party to an action, to whom time has been granted, fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the action, for which time has been allowed, the court may, notwithstanding such default, proceed to decide the action forthwith.

CHAPTER XIX

OF THE TRIAL

146. (1) On the day fixed for the hearing of the action, or on any other day to which the hearing is adjourned, if the parties are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and the court shall proceed to determine the same.

Determining of issues.

(2) If the parties, however, are not so agreed, the court shall, upon the allegations made in the plaint, or in answer to interrogatories delivered in the action, or upon the contents of documents produced by either party, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to record the issues on which the right decision of the case appears to the court to depend.

(3) Nothing in this section requires the court to frame and record issues when the defendant makes no defence.

147. When issues both of law and of fact arise in the same action, and the court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issue of law have been determined.

Trial of issues of law first.

148. If the court is of opinion that the issues cannot be correctly framed without the examination of some person not before the court, or without the inspection of some document not produced in the action, it may adjourn the framing of the issue to a future day to be fixed by the court, and may compel the attendance of such person or the production of such document by summons or other process.

Adjournment for evidence.

149. The court may, at any time before passing a decree, amend the issues or frame additional issues on such terms as it thinks fit.

Amendment of issues.

Party having right to begin to state his case.

150. The party having the right to begin shall state his case, giving the substance of the facts which he proposes to establish by his evidence.

Rules as to right to begin.

Explanation 1.—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff, and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Explanation 2.—The case enunciated must reasonably accord with the party's pleading, i.e., plaint or answer, as the case may be. And no party can be allowed to make at the trial a case materially different from that which he has placed on record, and which his opponent is prepared to meet. And the facts proposed to be established must in the whole amount to so much of the material part of his case as is not admitted in his opponent's pleadings.

Party having right to produce his evidence.

151. After stating his case in person, or by his registered attorney or counsel, the same party shall produce his evidence, calling his witnesses and by questions eliciting from each of them the relevant and material facts to which such witness can speak of his own observation.

Explanation.—The questions should be simple, and so framed as to obtain from the witnesses, as nearly as may be in a chronological order, a narrative of all the facts relevant to the matter in issue between the parties which he has witnessed—i.e., which he has in any manner directly observed or perceived, and no others. And on any disputed point the questions should not be such as to lead, or suggest, the answer; nor such as to induce a witness, other than an expert, to state a conclusion of his reasoning, an inference of fact, or a matter of belief, in the place of describing what he actually observed.

Also, a general request to a witness to tell what he knows, or to state the facts of the case, is, as a rule, not to be permitted, because it gives an opening for a prepared story.

Nothing in this explanation operates to prevent a witness from stating hearsay, or giving any opinion, where the hearsay or opinion is a relevant fact in the case.

Cross-examination.

152. After the examination-in-chief by the party who called the witness, the cross-examination of the same witness, if required, shall in like manner be effected by the opposite side, only that in this case leading questions may be put.

Re-examination.

153. Then shall follow re-examination by the first side if required, for the purpose of enabling the witness to explain such answers given by him on cross-examination as may have left facts imperfectly stated by him, and to add such further facts as may have been suggested and made admissible by the cross-examination.

Explanation.—During the course of the examination, cross-examination, and re-examination, the court ought not, as a general rule, to interfere, except when necessary for the purpose of causing questions to be put in a clear and proper shape, of checking improper questions and of making the witness give precise answers. At the end of it, however, if it has been reasonably well conducted, the court ought to know fairly the position of the witness with regard to the material facts of the case, and it should then put such questions to the witness as it may consider necessary to possess itself of all the detailed relevant facts to which the witness can speak from personal observation, or which bear upon his trustworthiness.

Tender of documents in evidence.

154. (1) Every document or writing which a party intends to use as evidence against his opponent must be formally tendered by him in the course of proving his case at the time when its contents or purport are first immediately spoken to by a witness. If it is an original document already filed in the record of some action, or the deposition of a witness made therein, it must previously be procured from that record by means of, and under an order from, the court. If it is a portion of the pleadings, or a decree or order of court made in another action, it shall not generally be removed therefrom, but a certified copy thereof shall be used in evidence instead.

(2) It shall not be competent to the court to admit in evidence the entire body of proceedings and papers of another action indiscriminately. Each of the constituent documents, pleadings, or processes of the former action, which may be required in the pending action, must be dealt with separately as above directed.

Records of other actions not to be admitted in bulk.

(3) The document or writing being admitted in evidence, the court, after marking it with a distinguishing mark or letter by which it should, when necessary, be ever after referred to throughout the trial,

Documents admitted to be read aloud in court.

shall cause it, or so much of it as the parties may desire, to be read aloud.

Explanation.—If the opposing party does not, on the document being tendered in evidence, object to its being received, and if the document is not such as is forbidden by law to be received in evidence, the court should admit it.

If, however, on the document being tendered the opposing party objects to its being admitted in evidence, then commonly two questions arise for the court:—

Firstly, whether the document is authentic—in other words, is what the party tendering it represents it to be; and

Secondly, whether, supposing it to be authentic, it constitutes legally admissible evidence as against the party who is sought to be affected by it.

The latter question in general is matter of argument only, but the first must be supported by such testimony as the party can adduce. If the court is of opinion that the testimony adduced for this purpose, developed and tested by cross-examination, makes out a prima facie case of authenticity and is further of opinion that the authentic document is evidence admissible against the opposing party, then it should admit the document as before.

If, however, the court is satisfied that either of those questions must be answered in the negative, then it should refuse to admit the document.

Whether the document is admitted or not it should be marked as soon as any witness makes a statement with regard to it; and if not earlier marked on this account, it must, at least, be marked when the court decides upon admitting it.

Procedure to be followed before witness is asked to identify document.

155. Before a witness is allowed to, in any way, identify a document, he should generally be made, by proper questioning, to state the grounds of his knowledge with regard to it.

Illustration

If the witness is about to speak to the act, or factum, of signature he should first be made to explain concisely the occurrences which led to his being present on the occasion of the signing; and if he is about to recognize a signature on the strength of his knowledge of the supposed signer's handwriting, he should first be made to state the mode in which this knowledge was acquired.

156. The questioning for this purpose should be effected by the party who is seeking to prove the document; and the opposing party, if he desires to do so, should be allowed to interpose with cross-examination on this point before the document is shown to the witness.

Cross-examination as to knowledge.

157. It is the duty of the court, in the event of a witness professing to be able to recognize or identify writing, always to take care that his capacity to do so is thus tested, unless the opposite party admits it.

Court to see witness thus tested.

158. If on the examination effected for this purpose it appears to the court that the witness was not in fact present at the time of signing, or is not reasonably competent to identify the handwriting, then the court shall not permit him to give his testimony on the matter of the signature.

And to decide on his competency.

159. (1) The signature of a person, which purports or which appears by the evidence to have been written by the pen of another, is not proved until both the fact of the writing and the authority of the writer to write the name on the document as a signature is proved.

Signature by a mark how proved.

(2) Subsection (1) applies to the case where the signature is a mark explained by the name written adjacent thereto.

160. In the case of an illiterate person, who cannot read, it must also be proved that at the time when his name was written on, or his mark put to, the document, he understood the contents of it:

Proof in the case of an illiterate person.

Provided that where the name of such illiterate person shall have been written on, or his mark put to, any document for the purpose merely of attesting the signature of another, it shall not be necessary to prove that he understood the contents of such document, but it shall be sufficient to prove that he was aware of the purpose for which his name was so written or his mark so put, and that the person whose signature he purports to attest was known to him.

161. When the document purports on the face of it to be so old that proof of the actual execution is not required by law, it is not proved until sufficient evidence has been

Case of documents whose execution need not be proved.

given to prove both that it comes into court from the proper custody, and that it has continued to be in proper custody throughout the period during which it can be reasonably accounted for.

Copy of absent original how proved.

162. When the document, the admission of which is objected to, is put forward as the copy of an absent original, it is not proved until both such evidence as is sufficient to prove the correctness of the copy, and also such evidence as would be sufficient to prove the original, had it been tendered instead of the copy, has been given.

Note.—The question whether a copy document is admissible in evidence between the parties in the place of the original is quite distinct from the question whether the document (original or copy) is admissible as evidence relevant to the issue under trial.

On termination of beginning party's case the opposing party to state and prove his in like manner.

163. When the party beginning has stated his case and adduced his evidence in accordance with the foregoing rules, then the opposing party or parties (if there are more than one, who have distinct cases) shall in person, or by registered attorney or counsel, state his or their case or cases (and in the latter event in succession), and when the case of each opposing party has been so stated each such party shall adduce in order his evidence, oral and documentary, and the same shall be received and dealt with precisely as in the case of the party beginning, who shall then be entitled to reply. But where there are several issues, the burden of proving some of which lies on the other party or parties, the party beginning may at his option either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the opposing party or parties; and in the latter case the party beginning may produce evidence on those issues after the other party or parties has or have produced all his or their evidence, and such other party or parties may then reply specially on the evidence so produced by the party beginning, but the party beginning will in that case be entitled to reply generally on the whole case.

Reply.

When rebutting evidence is admissible.

164. The court may at any time, whether before or after the examination of a witness by the respective parties or during such examination, put and interpose such questions as it may consider conducive to the attainment of truth and justice. And the

Court may question witness at any time.

answers to such questions shall be made to appear on the face of the record as having been given to the court.

165. The court may also in its discretion recall any witness, whose testimony has been taken, for further examination or cross-examination, whenever in the course of the trial it thinks it necessary for the ends of justice to do so.

Court may recall witness.

166. The court may for grave cause, to be recorded by it at the time, permit a departure from the course of trial prescribed in the foregoing rules.

When may court permit departure from above rules.

167. The evidence of the witnesses shall be given orally, as above prescribed, in open court in the presence and under the personal direction and superintendence of the Judge.

Evidence of witness to be given orally in open court.

168. Witnesses professing to be Christians or Jews, who have discretion to understand the nature of an oath, shall be examined upon oath, unless they state that, according to their religious tenets or on other grounds they object to the taking of an oath, in which case they shall be examined on affirmation. Witnesses not professing to be Christians or Jews shall be examined on affirmation. The same rule shall apply to affidavits. And except when hereinafter otherwise expressly provided, the oath or affirmation shall be administered in open court.

Witness to be examined on oath or affirmation.

169. The evidence of each witness shall be taken down in writing by the Judge, or in his presence and hearing and under his personal direction and superintendence. The evidence shall be taken down ordinarily in the form of a narrative.

Evidence of witness how taken down. [§ 30, Law 20 of 1977.]

170. The court may of its own motion or on the application of any party take down or cause to be taken down any particular question and answer, or any objection to any question, if there appear to the court any special reason for so doing.

Any particular question and answer may be taken down.

171. If any question put to a witness be objected to, and the court allows the same to be put, the Judge may in his discretion take down in writing the question, the answer, the objection, and the name of the party making it, together with the decision of the court thereon.

The objection to question which is allowed and the decision of court thereon may be taken down.

The objection to question disallowed and the decision of court thereon to be taken down.

172. If on objection made the court refuses to allow the question to be put, the Judge shall, on the request of the questioner, take down in writing the question, the objection, and the name of the party making it, together with the decision of the court thereon.

Court may record remarks on demeanour of witness.

173. The court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Witnesses may be kept out of court.

174. The witnesses on either side or on both or all sides shall, on motion of any of the parties, be kept out of court and of hearing, except the witness immediately under examination; nor shall any witness, who shall remain in court or within hearing after order made to that effect, be permitted to give evidence, unless in the case of a witness called to prove some fact which has incidentally become essential in the course of the trial, and the necessity of which could not reasonably have been anticipated. And every witness who has been examined shall be kept separate from, and shall be allowed no communication with, those who still remain to be examined:

Provided that it shall be lawful for the court in its discretion to allow any witness to be examined, if it shall think such examination conducive to the attainment of truth or justice, notwithstanding that such witness shall have remained in court or within hearing contrary to such order aforesaid.

No witness to be called or document to be produced unless included in list of witnesses or documents.

175. (1) No witness shall be called on behalf of any party unless such witness shall have been included in the list of witnesses previously filed in court by such party as provided by section 121:

Provided, however, that the court may in its discretion, if special circumstances appear to it to render such a course advisable in the interests of justice, permit a witness to be examined, although such witness may not have been included in such list aforesaid;

Provided also that any party to an action may be called as a witness without his name having been included in any such list.

(2) A document which is required to be included in the list of documents filed in court by a party as provided by section 121 and which is not so included shall not, without the leave of the court, be received in evidence at the trial of the action:

[§31, Law 20 of 1977.]

Provided that nothing in this subsection shall apply to documents produced for cross examination of the witnesses of the opposite party or handed over to a witness merely to refresh his memory.

176. The court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the fact in issue existed.

Court may forbid indecent or scandalous questions.

177. The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

Court shall forbid insulting questions.

178. (1) If a witness is about to leave the jurisdiction of the court, or if other sufficient cause is shown to the satisfaction of the court why his evidence should be taken immediately, the court may upon the application of either party or of the witness, at any time after the institution of the action and before trial, take the evidence of such witness in manner hereinbefore provided.

Evidence *de bene esse*.

(2) Where such evidence is not taken forthwith, and in the presence of the parties, such notice as the court thinks sufficient of the day fixed for the examination shall be given to the parties.

(3) The evidence so taken may be read at any hearing of the action, provided that the witness cannot then be produced.

179. The court may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or by depositions taken on commission, instead of by the testimony of witnesses given *viva voce* before it, or that the affidavit, or deposition taken on commission, of any witness may be read at the hearing of the action on such conditions as the court shall think reasonable:

Evidence taken on affidavit or on commission.

Provided that when it appears to the court that either party bona fide desires the production of a witness before the court for cross-examination viva voce, and that such witness can be so produced, an order shall not be made authorizing the evidence of such witness to be given otherwise than viva voce.

Court may examine witness viva voce notwithstanding affidavit or commission.

180. In the event of an order having been made for the proof of facts by affidavit, or by deposition taken on commission, the court may, nevertheless, at the instance of either party order the attendance of the declarant or deponent at the hearing of the action for viva voce cross-examination, if he is in Sri Lanka and can be produced.

What statements may affidavit contain.

181. Affidavits shall be confined to the statement of such facts as the declarant is able of his own knowledge and observation to testify to, except on interlocutory applications in which statement of his belief may be admitted, provided that reasonable grounds for such belief be set forth in the affidavit.

Petitions cannot be converted to affidavits.

182. A petition stating facts of observation and belief is not converted into an affidavit by the addition of a verifying clause, an affirmation or oath, to the effect that the statements in the petition are true.

Who may administer oaths.

183. In the case of any affidavit under this Chapter—

- (a) any court, or Magistrate, or Justice of the Peace; or
- (b) any officer whom the Minister in charge of the subject of Justice may appoint for the purpose (and who shall be styled "Commissioner for Oaths") may administer the oath to the declarant.

CHAPTER XX

JUDGMENT AND DECREE

Judgment when pronounced.

184. (1) The court, upon the evidence which has been duly taken or upon the facts admitted in the pleadings or otherwise, and after the parties have been heard either in person or by their respective counsel or registered attorneys (or recognized agents),

shall, after consultation with the assessors (if any), pronounce judgment in open court, either at once or on some future day, of which notice shall be given to the parties or their registered attorneys at the termination of the trial.

(2) On the day so fixed, if the court is not prepared to give its judgment, a yet future day may be appointed and announced for the purpose.

185. A Judge may pronounce a judgment written by his predecessor, but not pronounced.

Judge may pronounce judgment written by predecessor.

186. The judgment shall be in writing and shall be dated and signed by the Judge in open court at the time of pronouncing it.

Judgment to be in writing and to be dated and signed in open court. [§32, Law 20 of 1977.]

186A. Where a Judge pronounces a judgment written by his predecessor but not pronounced as provided in section 185, such judgment shall, if such predecessor was a judicial officer within the meaning of Article 114 (6) of the Constitution at the time such judgment was written, not be deemed to be invalid by reason only of the fact that such predecessor had no jurisdiction to write such judgment.

Validation in certain circumstances of judgments pronounced by successors in office of Judges. [§2, 3 of 1960.]

187. The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively.

Requisites of judgment.

188. As soon as may be after the judgment is pronounced, a formal decree bearing the same date as the judgment shall be drawn up by the court in the form No. 41 in the First Schedule or to the like effect, specifying in precise words the order which is made by the judgment in regard to the relief granted or other determination of the action. The decree shall also state by what parties and in what proportions costs are to be paid, and in cases in the Primary Courts shall state the amount of such cost. The decree shall be signed by the Judge.

Decree.

Amendment of judgments, decrees and orders.

189. (1) The court may at any time, either on its own motion or on that of any of the parties, correct any clerical or arithmetical mistake in any judgment or order or any error arising therein from any accidental slip or omission, or may make any amendment which is necessary to bring a decree into conformity with the judgment.

(2) Reasonable notice of any proposed amendment under this section shall in all cases be given to the parties or their registered attorneys.

Requisites of decree relating to immovable property. [§33, Law 20 of 1977.]

190. 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 or otherwise as may secure, as far as possible, correctness of identification; and the description shall be in such form as to enable such decree to be registered under the Registration of Documents Ordinance.

Requisites of decree relating to movable property.

191. When the action is for movable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative, if delivery cannot be had.

At what rate may interest on money be decreed. [§5, 53 of 1980.]

192. (1) When the action is for a sum of money due to the plaintiff, the court may, in the decree order interest according to the rate agreed on between the parties by the instrument sued on, or in the absence of any such agreement at the rate of twelve *per centum* per annum to be paid on the principal sum adjudged from the date of the action to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the action, with further interest at such rate on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

(2) When such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest, and a separate action therefor shall not lie.

193. When the action is for damages for breach of contract, if it appear that the defendant is able to perform the contract, the court, with the consent of the plaintiff, may decree the specific performance of the contract within a time to be fixed by the court, and in such case shall award an amount of damages to be paid as an alternative if the contract is not performed.

When may court decree specific performance.

194. In all decrees for the payment of money, except money due on mortgage of movable or immovable property, the court may order that the amount decreed to be due shall be paid by instalments, with or without interest, and the court may in its discretion impose such terms as it may think fit as to giving security for the payments so to be made:

When may court decree payment by instalments.

Provided always that on failure to pay the first or any other instalment, the whole amount or any balance then due shall on such failure become immediately payable;

Provided also, that if the party ordered to pay by instalments shall appeal against the decree, and the appeal shall be decided against him, his right to pay by instalments shall cease, and the whole amount shall be immediately payable, unless the Court of Appeal or the Supreme Court, as the case may be, give express direction to the contrary;

Provided also, that no appeal shall lie against the refusal of the court to make an order for payment by instalments.

195. If the defendant shall have been allowed to set off any demand against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and the mandatory part of the decree shall be for the recovery of any balance which shall on that statement appear to be due to either party. The decree of the court with respect to anything awarded to the defendant on any matter on which the defendant obtains judgment by set-off or in reconvention, shall be to the same effect, and be subject to the same rules, as if such thing had been claimed by the defendant in a separate action against the plaintiff.

Decree when set-off or claim in reconvention is allowed.

Decree when claim in respect of mesne profits from date of action is allowed. [86, 53 of 1980.]

196. When the action is for the recovery of the possession of immovable property, yielding rent or other profit, the court may, whenever the prayer of the plaint asks for damages in respect of mesne profits or rent, provide in the decree for the payment of money in lieu of mesne profits or rent in respect of such property from the date of the institution of the action until the delivery of possession to the party in whose favour the decree is made, with interest thereon at such rate not exceeding twelve *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.

Mesne profits prior to date of action.

197. When the action is for the recovery of possession of immovable property and for mesne profits which have accrued thereon during a period prior to the institution of the action, the court may either determine the amount and make an order for the payment thereof additional to and embodied in the decree itself, or may pass a decree for the property and reserve the inquiry into the amount of mesne profits to be entered upon after the execution of the decree for the property, as may appear most convenient.

Interlocutory order for accounts.

198. When the action is for an account of any property and for its due administration under the decree of the court, the court, before making the final decree between the parties, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

Administration by the court.

199. In the administration by the court of the property of any person who dies after this Ordinance comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent

liabilities respectively as may be in force for the time being with respect to the estates of persons adjudged insolvent.

And all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration and make such claims against the same as they may respectively be entitled to by virtue of this Ordinance.

Decree in action for pre-emption, &c.

200. When the action is to enforce a right of pre-emption in respect of a particular sale of property, and the court finds for the plaintiff, if the amount of purchase money has not been paid into court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid on or before such day or any extension thereof which shall have been allowed for good cause shown, the action shall stand dismissed with costs.

Interlocutory order in action for dissolution of partnership.

202*. When the action is for the dissolution of partnership, the court before making its decree may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

Suit for account between principal and agent.

203. When the action is for an account of pecuniary transactions between principal and agent, and in all other actions not 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 making its decree pass an order directing such account to be taken as it thinks fit.

Decree or order postponing hearing.

204. When a decree or order made at the hearing of the action is such as to have the effect of postponing the further hearing and the final determination of the action, as for instance a decree for the taking of accounts, or an order for the issue of a commission to take evidence, or of a

* Section 201 is repealed by Ordinance No. 21 of 1927.

commission to divide by metes and bounds, it shall specify the time at which the further hearing of the action shall be proceeded with.

209. When disposing of any application or action under this Ordinance, whether of regular or of summary procedure, the court may, unless elsewhere in this Ordinance otherwise directed, give to either party the costs of such application or action, or may reserve the consideration of such costs for any future stage of the proceedings; any order for the payment of costs only is a decree for money within the provisions of section 194 as to payment by instalments.

Court always to have power to give or reserve costs.

Any person entitled to certified copies of decree and judgment.

205. Upon being paid such fee as the court shall from time to time determine, the Registrar of the court shall at all times furnish to any person applying for the same, and supplying the necessary stamp, copies of the proceedings in any action, or any party thereof, or upon such application and production of such stamp shall examine and certify to the correctness of any such copies made by such person.

Decree or copy to be primary evidence of decision.

206. The decree or such certified copy thereof shall constitute the sole primary evidence of the decision or order passed by the court.

Decrees must be decisive, and must not direct non-suit.

207. All decrees passed by the court shall, subject to appeal, when an appeal is allowed, be final between the parties; and no plaintiff shall hereafter be non-suited.

210. The decree or order shall direct by whom the costs of each party are to be paid, and whether in whole or in what part or proportion.

Court shall direct by whom costs to be paid.

211. The court shall have full power to give and apportion costs of every application and action in any manner it thinks fit, and the fact that the court has no jurisdiction to try the case is no bar to the exercise of such power:

Court may apportion costs.

Provided that if the court directs that the costs of any application or action shall not follow the event, the court shall state its reasons in writing.

Explanation.—Every right of property, or to money, or to damages, or to relief of any kind which can be claimed, set up, or put in issue between the parties to an action upon the cause of action for which the action is brought, whether it be actually so claimed, set up, or put in issue or not in the action, becomes, on the passing of the final decree in the action, a *res adjudicata*, which cannot afterwards be made the subject of action for the same cause between the same parties.

212. The court may direct that the costs payable to one party by another shall be set off against a sum which is admitted or is found in the action to be due from the former to the latter.

Set-off of costs.

But such direction shall not affect the lien upon the amount decreed of any registered attorney in respect of the costs payable to him under the decree.

Costs.

208. Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the action and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes, or of procuring copies of documents, fees and charges of counsel and registered attorneys, 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.

[§34, Law 20 of 1977]

213. The court may give interest on costs at any rate not exceeding twelve *per centum* per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the action.

Court may give interest on costs. [§7, 53 of 1980.]

214. All bills of costs, whether between party and party or between registered attorney and client, shall be taxed by the Registrar of the court according to the rates specified in the Second Schedule; and if either party is dissatisfied with this taxation, the matter in dispute shall be referred to the court for its decision, and the decision of the court in review of taxation of costs shall

Costs to be taxed.

(except when it is the decision of the Court of Appeal) be liable to an appeal to the Court of Appeal.

Action for costs by registered attorney.

215. No registered attorney 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 registered attorney. And after such delivery or service thereof, either the registered attorney 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.

Registered attorney to bear costs of taxation in what case.

216. If more than one-sixth of the amount of any bill of costs is disallowed by the taxing officer, the registered attorney shall bear the expense of taxation.

CHAPTER XXII

OF EXECUTIONS

Classification of decrees.

217. A decree or order of court may command the person against whom it operates—

- (A) to pay money;
- (B) to deliver movable property;
- (C) to yield up possession of immovable property;
- (D) to grant, convey, or otherwise pass from himself any right to, or interest in, any property;
- (E) to do any act not falling under any one of the foregoing heads;

or it may enjoin that person—

- (F) not to do a specified act, or to abstain from specified conduct or behaviour;

or it may, without affording any substantive relief or remedy—

- (G) declare a right or status.

And the method of procedure to be followed, when necessary, by the person party to the action in whose favour the decree or order is made, hereinafter called the "decree-holder" or "judgment-creditor", in order to enforce satisfaction or execution of the decree in each case respectively by the person party to the action against whom the decree is made, hereinafter called "the judgment-debtor", is that which is next hereinafter specified according to the above distinguishing heads.

(A)

EXECUTION OF DECREE TO PAY MONEY

218. When the decree falls under head (A) and is unsatisfied, the judgment-creditor has the power to seize, and to sell or realize in money by the hands of the Fiscal, except as hereinafter mentioned, all saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which the judgment-debtor has a disposing power, which he may exercise for his own benefit, and whether the same be held by or in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Power of creditor to seize and sell debtor's property in satisfaction of decree for payment of money.

Provided that the following shall not be liable to such seizure or sale, namely—

- (a) the necessary wearing-apparel, beds, and bedding of the judgment-debtor, or of his wife and children;
- (b) tools, utensils, and implements of trade or business, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may in the opinion of the court be necessary to enable him to earn his livelihood as such; and such quantity of paddy as may, in the opinion of the court, be necessary for the purpose of providing for the support of himself and his family until the next harvest;

Excepted property.

[§35, Law 20 of 1977.]

- [§35, Law 20 of 1977.] (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) any right of personal service ;
- [§2, 24 of 1961.] (g) the stipend, the cost of living allowance and the special living allowance of a naval, military, air force, civil or political pensioner of the Government ;
- [§35, Law 20 of 1977.] (h) so much of the salary and allowances of a state officer as does not in the aggregate exceed five hundred rupees per month ;
- (i) the pay and allowances of persons to whom the articles of war apply ;
- (j) the wages of labourers and domestic servants ;
- (k) an expectancy of succession by survivorship or other merely contingent or possible right of interest ;
- [§35, Law 20 of 1977.] (l) a right to future maintenance and all maintenance, alimony and costs ordered in matrimonial suits or maintenance actions ;
- [§35, Law 20 of 1977.] (m) so much of the salary or wages and allowances of an employee other than a state officer as does not in the aggregate exceed five hundred rupees per month ;
- [§35, Law 20 of 1977.] (n) any house which is not mortgaged as security for the payment of the whole or part of the sum referred to in such decree and which is the actual residence of the judgment-debtor at the time of the execution of such decree and has been such residence from the time of the institution of the action in which such decree has been entered together with such extent of land appurtenant thereto as the court may consider necessary for its enjoyment ;
- (o) the amount standing to the credit of an employee's individual account in the Employees' Provident Fund established under the Employees' Provident Fund Act, or in any other provident fund established for the benefit of employees in any employment.
- Explanation.*—The particulars mentioned in clauses (g), (h), (i), (j), (m) and (o) are exempt from sequestration or sale, whether before or after they are actually payable.
- 219.** (1) The party entitled to enforce any decree for the recovery or payment of money may apply to the court for an order that the debtor (or, in the case of a corporation, that any officer thereof) be orally examined before the court on oath or affirmation, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the decree ; and the court may thereon make an order for the attendance and examination on oath or affirmation of such debtor or of any other person whom it thinks necessary, and for the production by such debtor or person of any books or documents.
- (2) If a debtor for whose attendance an order has been made under this section fails to comply with such order, the court may, on its own motion or on the application of the party entitled to enforce the decree, issue a warrant for the arrest of such debtor :
- Provided the court may make it a condition of the issue of such warrant that the person applying for it shall deposit such sum as the court may deem reasonable for the subsistence of the debtor from the time of his arrest until he can be brought before the court, and for the purpose of defraying any other expenditure that may be incurred in executing such warrant.
- 220.** It shall not be necessary to support any such application by affidavits of the applicant's belief that any debts are owing to the debtor, or that he has any other property or means of satisfying the decree.
- [§2, 24 of 1961.]
- [§35, Law 20 of 1977.] Examination of judgment-debtor as to debts owing to him.
- [§35, Law 20 of 1977.]
- Application need not be supported by affidavit.

Costs. 221. The costs of any such application and of any proceedings arising thereout or incidental thereto shall be in the discretion of the court.

Execution of decree against legal representative of a deceased person.

222. (1) If the decree is against a party as the legal representative of a deceased person, and is for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property in the hands or under the control of the party against whom the decree is made.

(2) If no such property can be found, and the judgment-debtor fails to satisfy the court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

[§8, 53 of 1980.]

(3) An application to execute a decree against the judgment-debtor as provided in subsection (2) shall be made, by petition supported by affidavit of the judgment-creditor setting out the material facts, to which application the judgment-debtor shall be made respondent. The court shall after inquiry, if satisfied that the decree should be executed against the judgment-debtor personally, grant such application.

Seizure and sale to be effected under order of court.

223. For the purpose of effecting the required seizure and sale in any case the Fiscal must be put in motion by application for execution of decree to the court which made the decree sought to be enforced.

Application therefor.

224. The application for execution of the decree shall be in writing, signed by the applicant or his registered attorney, and shall contain the following particulars:—

- (a) the number of the action;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any, and what, adjustment of the matter in dispute has been made between the parties subsequently to the decree;

(f) whether any, and what previous applications have been made for execution of the decree, and with what result, including the dates and amounts of previous levies, if any;

(g) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;

(h) the amount of costs, if any, awarded;

(i) the name of the person against whom the enforcement of the decree is sought;

(j) the mode in which the assistance of the court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

225. (1) Upon the application for execution of the decree being made, the court shall satisfy itself by reference, if necessary, to the record of the action in which the decree or order sought to be executed was passed, that the application is substantially in conformity with the foregoing directions, and that the applicant is entitled to obtain execution of the decree or order which is the subject of the application. If the court is not satisfied in these respects it shall refuse to entertain the application, unless and until amended in the particulars in which the court considers it faulty and defective, and with the view to its being so amended the court shall point out these particulars to the applicant:

Court to satisfy itself as to conformity of application.

When application should be refused by the court.

Provided that the court may make the requisite amendment then and there, if it is consented to by the applicant and is such as to admit of being conveniently so affected; and

Provided further that every such amendment shall be attested by the signature of the Judge making it.

(2) In the event of the court refusing to entertain the application, the order of refusal, stating the date both of the application and of the order, and the name of the applicant, and specifying the grounds of refusal, shall be endorsed on the application, and the same shall be filed of record in the action.

Writ of execution.

(3) If the court is satisfied in the respects above indicated, it shall direct a writ of execution to issue to the Fiscal in the form No. 43 in the First Schedule.

Duties of Fiscal on receiving writ.

226. (1) Upon receiving the writ, the Fiscal or his deputy, or other officer, shall within forty-eight hours after delivery to him of the same, if the debtor shall be a person residing within five miles of the office of the Fiscal or Deputy Fiscal—or if residing beyond five miles, within an additional forty-eight hours for every five miles or part thereof—repair to his dwelling house or place of residence and there require him, if present, to pay the amount of the writ.

(2) If by reason of the debtor's absence no demand for the payment is made, or, in the event of any such demand, when made not being complied with, the Fiscal shall forthwith proceed to seize and sell, or otherwise realize in money, such unclaimed property of the judgment-debtor as may be pointed out and surrendered to him for the purpose by the judgment-debtor, or in default thereof such property of the judgment-debtor as may be pointed out by the judgment-creditor, or such property as is specified in the writ according to the rules next hereinafter contained :

Provided that when the debtor is out of Sri Lanka it shall not be necessary to require him to pay the amount of the writ before the execution is carried into effect.

Mode of Seizure

Seizure of movable property in possession of debtor to be manual.

227. If the property sought to be seized and sold, or otherwise realized in satisfaction of the decree to be executed is movable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 218, the seizure shall be manual.

The Fiscal, Deputy Fiscal, or other officer may at his discretion permit the owner or possessor of the property or the writ-holder to take charge of the property until the time of sale, on giving security to the satisfaction of such officer that he will in the meantime safely and securely keep the same ; or such officer may upon the necessary expenses therefor being advanced or secured to him by the debtor or the writ-holder, keep the property in his own custody or in the custody of one of his subordinates, or cause the same to be removed to some fit place of security.

Disposal of property seized until sale.

If such security is not given or such expenses are not advanced or secured, the Fiscal, Deputy Fiscal, or other officer shall make a special return thereof to the court, and shall not be responsible for the due custody of the property so seized.

The expenses of keeping the property in such custody or of removing the same when certified by the Fiscal shall, if not paid by the debtor, be a first charge on the proceeds of the property seized or sequestered, provided that the court may, if it thinks fit, reduce the amount of expenses so certified as aforesaid :

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the Fiscal may sell it at once.

Proviso as to perishable property.

228. If the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the instrument shall be seized and brought into court and held subject to the further orders of the court.

As to attachment of negotiable instrument.

229. In the case of—

- (i) a debt not secured by a negotiable instrument,
- (ii) a share in the capital of any public company or corporation,
- (iii) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any court, or in the custody of a public officer,

Seizure of debts, shares, and movable property not in possession of debtor and not deposited in court to be by written notice of prohibition.

the sequestration or seizure shall be made by a written notice signed by the Fiscal, prohibiting—

- (a) in the case of the debt, the creditor from recovering the debt, and the debtor from making payment thereof until the further order of the court from which the writ of execution authorizing the seizure issues;
- (b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
- (c) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be affixed to some conspicuous part of the court-house, and another copy of the same shall be delivered or sent by post, in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other movable property (except as aforesaid) to the person in possession of the same.

Judgment-debtor's debtor may be summoned, or execution may issue against him.

230. (1) A debtor prohibited under clause (a) of the last preceding section may, upon the *ex parte* application of the judgment-creditor, be summoned by the court to show cause, on a day fixed in the summons, why he should not pay to the judgment-creditor the debt due from him to the judgment-debtor, or so much thereof as may be sufficient to satisfy the judgment. If such debtor does not dispute the debt due or claimed to be due from him, and fails within such time as may be allowed him by the court to pay into court the amount due from him to the judgment-debtor, or an amount equal to the judgment, or if he does not appear upon summons, then the court may order execution to issue, and it may issue accordingly, to levy the amount due from such debtor, or so much thereof as may be sufficient to satisfy the judgment.

(2) The costs of any application and of any proceedings arising from, or incidental

to, any such application as aforesaid shall be in the discretion of the court.

231. Payment made by, or execution levied upon, such debtor in manner provided in the last preceding section shall be a valid discharge to him as against the judgment-debtor to the amount paid or levied, although such proceeding may be set aside or the judgment in respect of which any payment or levy is made may be reversed.

Payment by him to be a discharge as against judgment-debtor.

232. (1) If the property is deposited in, or in the custody of, any court or public officer, the seizure shall be made by a notice to such court or officer, requesting that such property and any interest or dividend becoming payable thereon may be held subject to the further orders of the court from which the writ of execution authorizing the seizure issues :

Seizure of property deposited in any court.

Provided that, if such property is deposited in, or is in the custody of, a court, any question of title or priority arising between the judgment-creditor and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such court.

Question of title or priority.

(2) Upon such notice being received by any court a memorandum thereof shall be made in the journal of the action in which or to the credit of any party to which, the money is deposited, or is in the custody of the court.

Explanation.—Money in an appropriate bank account to the credit of an action, or to the credit of any party to an action, is within the meaning of this section, money deposited in, or in the custody of, the court in which the action is.

233. The notice necessary to effect seizure under section 229 and 232 may be signed and served by the Fiscal under the authority of the writ of execution alone.

Notice by Fiscal.

234. (1) If the property is a decree for money passed in favour of the judgment-debtor by the court which passed the decree sought to be executed, the seizure shall be

Seizure of a money decree in favour of judgment-debtor.

made by an order of the court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

(2) If the property is a decree for money passed by any other court, the seizure shall be made by a notice in writing to such court signed by the Registrar of the court which passed the decree sought to be executed, requesting the former court to stay the execution of its decree until such notice is cancelled by the court from which it was sent. The court receiving such notice shall stay execution accordingly, unless and until—

- (a) the court which passed the decree sought to be executed cancels the notice; or
- (b) the holder of the decree sought to be executed applies to the court receiving such notice to execute its own decree.

On receiving such application the court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

Seizure of any other decrees.

235. In the case of all other decrees the seizure shall be made by an order of the court which passed the decree sought to be executed to the holder of the decree sought to be seized, prohibiting him from transferring or charging the same in any way, and when such decree has been passed in any other court, also by sending to such court a like notice in writing to abstain from executing the decree sought to be seized until such notice is cancelled by the court from which it was sent. Every court receiving such notice shall give effect to the same until it is so cancelled.

Alienation by debtor subsequent to seizure void as against claims enforceable under seizure.

236. When a seizure of any negotiable instrument, debt, share, money, decree or any other movable property has been effected and made known in manner hereinbefore provided, any private alienation of the property seized, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend or delivery of the share to the judgment-debtor during

the continuance of the seizure, shall be void as against all claims enforceable under the seizure.

237. (1) If the property is immovable, the seizure shall be made by a notice signed by the Fiscal prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift, or otherwise.

Seizure of immovable property to be by written notice of prohibition.

(2) The notice shall specify the parties to the action, the judgment-debtor, the dates of judgment and seizure, and the name, situation, and boundaries of the land seized, and shall be proclaimed at some place on or adjacent to such property by beat of tom-tom or other customary mode, and a copy of the notice shall be affixed by the Fiscal to a conspicuous part of the property and of the court-house and of the Fiscal's office. But in no case shall the Fiscal enter upon actual possession of the immovable property so seized, or receive the rents and profits thereof, unless expressly directed so to do by order made under Chapter L.

Publication of such notice.

238. When a seizure of immovable property is effected under a writ of execution and made known as provided by section 237 and notice of the seizure is registered before the 1st day of January, 1928, in the book formerly kept under section 237 or is registered on or after the 1st day of January, 1928, under the 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.

Effect of publication of seizure and registration of notice of seizure.

239. If the amount decreed with costs and all charges and expenses resulting from the seizure of any property is paid into court, or if satisfaction of the decree is otherwise made through the court, or if the decree is set aside or reversed, an order shall be issued on the application of any person interested in the property, for the withdrawal of the seizure.

When seizure must be ordered to be withdrawn.

List to be made of property seized.

240. As soon as any property shall be seized by the Fiscal, Deputy Fiscal, or other officer, a list of such property shall forthwith be made and signed by himself or the person seizing the same, and shall be given to the judgment-debtor and to any person claiming to be in possession of the property seized, and copies thereof shall be also deposited in the Fiscal's office and annexed to the return to the writ.

Claims to Property seized

Claims to property seized to be reported by Fiscal and investigated by court.

241. In the event of any claim being preferred to, or objection offered against the seizure or sale of, any immovable or movable property which may have been seized in execution of a decree or under any order passed before decree, as not liable to be sold, the Fiscal or Deputy Fiscal shall, as soon as the same is preferred or offered, as the case may be, report the same to the court which passed such decree or order; and the court shall thereupon proceed in a summary manner to investigate such claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he were a party to the action :

Provided always that when any such claim or objection is preferred or offered in the case of any property so seized outside the local limits of the jurisdiction of the court which passed the decree or order under which such seizure is made, such report shall be made to, and such investigation shall thereupon be held by, the court of the district or division within the local limits of which such seizure was made, and the proceedings on such report and investigation with the order thereon shall, at the expiry of the appealable time, if no appeal has been within that time taken therefrom, but if an appeal has been taken, immediately upon the receipt by such court of the judgment or order in appeal, be forwarded by such court to the court which passed the decree or order, and shall be and become part of the record in the action ;

Provided, further, that in every such case the court to which such report is made shall be nearer to the place of seizure than, and of co-ordinate jurisdiction with, the court which passed the decree or order.

242. The claim or objection shall be made at the earliest opportunity, and if the property to which the claim or objection applies shall have been advertised for sale, the sale may (if it appears to the court necessary) be postponed for the purpose of making the investigation mentioned in section 241 :

Claim to be made at earliest opportunity.

Provided that no such investigation shall be made if it appears to the court that the making of the claim or objection was designedly and unnecessarily delayed with a view to obstruct the ends of justice.

243. The claimant or objector must on such investigation adduce evidence to show that at the date of the seizure he had some interest in, or was possessed of, the property seized.

Claimant to adduce evidence.

244. If upon the said investigation the court is satisfied that, for the reason stated in the claim or objection such property was not, when seized, in the possession of the judgment-debtor, or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the court shall release the property wholly, or to such extent as it thinks fit, from seizure and make such order as to payment of fees and charges already incurred by the Fiscal as it may deem fit.

Discretion of court to release the property claimed.

245. If the court is satisfied that the property was, at the time it was seized, in possession of the judgment-debtor as his own property, and not on account of any other person or was in the possession of some other person, in trust for him, or in the occupancy of a tenant or other person paying rent to him, the court shall disallow the claim.

When may court disallow the claim.

246. If the court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the sequestration or seizure, it may do so subject to such mortgage or lien.

Court may continue seizure subject to mortgage or lien.

Action by party claiming right.

247. The party against whom an order under section 244, 245, or 246 is passed may institute an action within fourteen days from the date of such order to establish the right which he claims to the property in dispute, or to have the said property declared liable to be sold in execution of the decree in his favour; subject to the result of such action, if any, the order shall be conclusive.

Punishment as well as damages may be awarded for groundless claim.

248. Whenever it shall appear to a competent court, and be so found and declared in any judgment pronounced by it in any action instituted by or against any person claiming any property pointed out or seized in execution, that such claim is altogether groundless, and wilfully preferred only to defeat or delay the execution, every such claimant shall, in addition to his liability to pay costs and damages, be liable to a fine not exceeding fifty rupees, and such fine shall be recovered as a fine imposed by a court in a criminal case.

Seizure of partnership property for debt of partner, other partner may apply for release.

249. When a Fiscal has seized property of a partnership before or after its dissolution, upon a writ of execution against the interest therein of any partner made by virtue of an execution against his individual property, any other partner or former partner having an interest in the property may, at any time before the sale, apply to the court from which the writ of execution issued, upon an affidavit showing the facts, for an order directing the Fiscal to release the property and to deliver it to the applicant.

Undertaking to be given by applicant.

250. Upon such an application the applicant must give an undertaking, with at least two sureties, approved by the Judge, to the effect that he will account to the purchaser upon the sale to be made by virtue of the execution of the interest of the judgment-debtor in the property seized, in like manner as he would be bound to account to an assignee of such an interest; and that he will pay to the purchaser the balance which may be found due upon the accounting, not exceeding a sum specified in the undertaking, which must be not less than the value of the interest of the judgment-debtor in the property seized by the Fiscal as fixed by the Judge.

251. Where property of a partnership has been released upon an undertaking as prescribed in the last two sections, if the execution by virtue of which the levy was made is set aside or is satisfied without a sale of the interest levied upon, the undertaking enures to the benefit of each judgment-creditor of the same judgment-debtor then having an execution in the hands of the Fiscal having authority to levy upon that interest, as if it had been given to obtain a release from a seizure made by virtue of such an execution.

Undertaking, to whose benefit it enures.

252. Where property of a partnership has been so released, the interest of the judgment-debtor therein may be sold by the Fiscal, and the purchaser upon the sale acquires all that interest as if he was an assignee thereof.

Interest of judgment-debtor may be sold.

Of the Sale and Disposition of the Property seized: (1) Of Sales Generally

253. If the property seized is coin or currency notes the Fiscal shall deal with it in the manner hereinafter directed in respect of money received by the Fiscal on the sale of property sold at the execution sale.

Coin or currency notes seized how dealt with.

254. When the property seized is a decree of court the judgment-creditor at whose instance the seizure is made shall be deemed the assignee thereof under assignment as of the date of the seizure, made by the person against whom he is executing the writ of execution, so far as that person's interest extends, and he may realize the decree in the manner hereinafter provided for the execution of a decree by an assignee thereof.

How may decree of court, seized be realized.

255. In the case of all other property seized by the Fiscal he shall proceed to the sale thereof in the manner following:—

Procedure in case of other property seized by Fiscal.

I.—In all cases of movable property the Fiscal or Deputy Fiscal shall cause notice of sale thereof to be given by beat of tom-tom or in such other manner as to secure publicity thereto, both at the place of sale and also where the seizure shall have been made, and such notice shall not be less than three days and not exceeding fourteen days before the day of sale, unless the time be enlarged by any order of court, and shall specify, as fairly and accurately as under the circumstances is reasonably practicable—

Notice of sale: I.—For movable property.

- (a) the property to be sold ;
- (b) the action in which, and
- (c) the place, and
- (d) day, and
- (e) hour at which the sale is to take place ;
- (f) the amount of money for the levy of which the writ issued.

II.—For immovable property. [§36, Law 20 of 1977.]

II.—In all cases of immovable property the like notice of sale shall be given as is hereinbefore required in sales of movable property, and the Fiscal, Deputy Fiscal, or other officer shall also cause to be made three copies of the notice of sale in the language of the court, and, where the language of the court is also Tamil, three translations into that language, one of each of which he shall cause to be posted at the court-house whence the execution issued, in some conspicuous part of the town or village in which the land is situate, and on some conspicuous spot on the property for sale, each of which publications shall be made ten days at the least before such sale takes place.

Advertisement where property exceeds five thousand rupees in value. [§37, Law 20 of 1977.]

256. Whenever the property seized under one writ shall exceed the value of five thousand rupees, the Fiscal, Deputy Fiscal or other officer shall, in addition to the notice hereinbefore required, advertise the sale thereof, enumerating briefly the goods for sale, the nature and situation of the land, and the time and place of the sale, in a local daily newspaper or in such other manner as the court may direct having regard to the value of the property and other relevant circumstances ; and no such sale shall take place until it shall have been so advertised once at least twenty days prior to the sale. It shall be lawful to the execution-creditor or debtor to require the publication of such sale to be made in any newspaper to be named by him, and all costs and charges attending such advertisements, particulars of which shall be always given by the Fiscal with his return, shall be paid in advance by the party requiring such publication.

Proceedings at the sale.

258*. Every sale shall be held by an officer of the Fiscal, or some other person duly authorized by the Fiscal or Deputy Fiscal by writing under his hand.

When the proceeds do not exceed the sum of seven thousand five hundred rupees, the Fiscal or Deputy Fiscal shall recover a fee of three *per centum* on the proceeds actually recovered on return thereof made to the court in respect of every sale and resale of movable property, and two *per centum* on the proceeds of sale of immovable property belonging to the debtor.

When the proceeds, whether of movable or immovable property, exceed that sum, the Fiscal or Deputy Fiscal shall recover a fee of one hundred and fifty rupees and of five rupees for every thousand rupees of the proceeds over and above the said sum of seven thousand five hundred rupees.

And in every case after the seizure of property and publication of sale thereof, in which the sale shall be postponed or stayed at the request or with the concurrence of the party suing out the writ, the Fiscal or Deputy Fiscal shall recover half of the above fees on the estimated value of such property from the party at whose instance the writ shall be stayed, and in default of immediate payment thereof the Fiscal shall certify the amount of such fees to the court whence the execution issued :

Provided, however, that such fee shall never exceed fifty rupees or the actual expenditure already incurred by the Fiscal towards carrying out the sale, whichever sum shall be the larger. The fees recovered under this section shall be brought to account and appropriated in such manner as the Secretary to the Treasury shall from time to time direct.

259. (1) If at any time prior to the sale of immovable property seized in execution the judgment-debtor can satisfy the court that there is reason to believe that the amount of the decree and of any unsatisfied judgment then in force against him may be raised by mortgage, or lease, or private sale of such property, or some part thereof, or of any other immovable property of the judgment-debtor, the court may on his application postpone the sale of such property for such period as it thinks proper to enable him to raise the amount, and shall make such order as to the payment of fees and charges due to the Fiscal as it may deem fit.

Court may in certain cases postpone sale.

* Section 257 is repealed by Law No. 20 of 1977.

(2) In such case the court shall grant a certificate to the judgment-debtor, authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 238, to make the proposed mortgage, lease, or sale :

Provided that all moneys payable under such mortgage, lease, or sale shall be paid into court and not to the judgment-debtor ;

Provided also that no mortgage, lease, or sale under this section shall become absolute until it has been confirmed by the court.

persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of such co-sharer.

265. The Fiscal or other officer conducting any sale of immovable property under this Chapter may, before accepting any bid at such sale, satisfy himself as to the bona fides of the bidder, and his ability to pay down the amount of deposit required ; and in the event of his not being so satisfied may refuse to accept any such bid, and shall continue the sale as if no such bid had been made.

Fiscal to satisfy himself as to bona fides of bidder.

266. 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. And the like course shall be observed in respect of any subsequent sale rendered necessary by failure in payment of the purchase amount.

Deficiency on resale to be paid by first purchaser on Fiscal's certificate.

267. If at the sale of immovable property the highest bidder on being declared the purchaser shall not forthwith pay down the amount of deposit required, and give good and sufficient security to the satisfaction of the Fiscal, Deputy Fiscal, or other officer for the payment of the residue, the next highest bidder may be thereupon declared the purchaser, and required to make such deposit and security as aforesaid ; and in the same manner the other bidders in rotation ; and each person failing to make such deposit and to give security as aforesaid may be held liable to pay the difference between the amount of his offer and the sum finally settled at the sale, and the Fiscal, on non-payment thereof by such persons respectively within one week after demand made by him upon them in writing,

On highest bidder not making deposit, next highest may be declared purchaser ; difference to be paid by highest bidder on Fiscal's certificate.

Deposit by purchaser.

260. On every sale of immovable property under this Chapter the person declared to be the purchaser shall pay immediately after such declaration, in every case where the price does not exceed one hundred rupees, the full amount of, but in every other case a deposit of twenty-five per centum on the amount of his purchase money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again for sale.

Payment in full.

261. Where the price exceeds one hundred rupees the balance amount of the purchase money shall be paid by the purchaser on or before the thirtieth day after the sale of the property, or if the thirtieth day be a public holiday, then on the first office day after the thirtieth day.

Default in payment, consequence of.

262. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to, and shall go in reduction of the claim of, the judgment-creditor, and the property shall be resold, and the defaulting purchaser shall forfeit all claim to the property and to any part of the sum for which it may subsequently be sold.

Fresh notification on resale.

263. Every resale of immovable property in default of payment of the purchase money within the period allowed for such payment shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

Bid by a co-sharer.

264. When the property sold in execution of a decree is a share of undivided immovable property, and two or more

shall certify the amount of the said difference in each case to the court whence the execution issued :

Provided, however, that in case of default of the highest bidder, instead of declaring the next highest bidder purchaser, the officer holding the sale may forthwith put up the property for sale anew, or adjourn the sale, in which latter case the property shall again be advertised as before.

Forfeiture of deposit.

268. If the price for which the property is finally sold at the second or any subsequent sale is not less than that of the first sale, then the money deposited by the purchaser at the first and other sales which preceded the final sale shall be paid to the execution-creditor in satisfaction *pro tanto* of the judgment; and in the event of such judgment being so satisfied, and any surplus remaining, such surplus shall, after deducting any expenses consequent on the sale, be paid to the judgment-debtor.

Differences realized to augment the purchase money.

269. The differences between the biddings of any person failing to make the deposit and give the security required by section 267 and the sum finally settled at any such sale and between the amount of the final sale and those of previous sales shall, when realized, be paid by the Fiscal into the Government Agent's office in augmentation of the purchase money of the final sale.

The amount certified by Fiscal to be recovered as by execution of decree.

270. The amount certified by the Fiscal to be payable to him for half fees under the provisions of section 258 and the amounts of the differences certified by the Fiscal and directed to be reported to the court by sections 266 and 267 shall, in the case of such half fees at the instance of the Fiscal and in the case of such differences respectively at the instance either of the Fiscal, or of the judgment-creditor, or of the judgment-debtor, be recoverable from the persons declared in those sections to be liable to pay the same, in the same way as if the certificate were a decree for money passed by the court to which it is returned against those persons; and the cost (to be fixed by the court) of any notice, publication, or proclamation required under any of the provisions of this Ordinance to be given or made by the Fiscal by beat of

Cost of notice, publication, or proclamation.

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.

271. No officer having any duty to perform in connection with any sale under this Chapter shall either by himself or another bid for, acquire, or attempt to acquire any interest in any property sold at such sale.

No officer conducting sale to bid.

272. (1) A holder of a decree in execution of which property is sold may, with the previous sanction of and subject to such terms as to credit being given him by the Fiscal and otherwise as may be imposed by the court, bid for or purchase the property.

Holder of decree may bid or purchase.

(2) When a decree-holder purchases, the purchase money and the amount due on the decree may, if the court thinks fit, be set off against one another, and the court in execution of whose decree the sale is made may enter up satisfaction of the decree in whole or in part accordingly.

And purchase money may be set off against decree.

273. In all cases the sale of immovable property shall be conducted on the spot, unless the court shall otherwise direct, or unless on application in writing to the Fiscal or his deputy the parties shall consent to its being conducted elsewhere.

Place of sale of immovable property.

(2) Of Sales of Movable Property

274. If the property to be sold is a negotiable instrument or a share in any public company or corporation, the court may direct the Fiscal, instead of selling it by public auction, to make the sale of such instrument or share through a broker at the market rate of the day.

Sale of a negotiable instrument or a share in any public company.

275. (1) In the case of other movable property, the price shall be paid at the time of sale, and in default of payment the property shall forthwith be again put up for sale.

Sale of other movable property.

(2) On payment of the purchase money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

What may vitiate sale.

276. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale unless substantial damage has been caused to the person impeaching the sale thereby.

Delivery to purchaser.

277. When the property sold is a negotiable instrument or other movable property of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery where third party is in possession.

278. When the property sold is any movable property to which the judgment-debtor is entitled, subject to a right of possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of unsecured debt or share.

279. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public company or corporation, the assignment thereof shall be made by a certificate of sale in favour of the purchaser signed by the Fiscal, who shall forthwith, by a written notice, prohibit the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary, or other proper officer of the company from permitting any such transfer or making any such payment to any person except the purchaser.

Endorsement of negotiable instrument or share certificate.

280. (1) If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company or corporation is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect :—

“ A. B. by C. D., Judge of the District Court of (or as the case may be), in an action by E. F. against A. B.”

(2) Until the transfer of such instrument or share the court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed as aforesaid, shall be as valid and effectual for all purposes as if the same had been made, or executed, or signed by the party himself.

281. 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 he may direct; and such property shall vest accordingly.

In case of other movable property court may make vesting order.

(3) *Of Sales of Immovable Property*

282. (1) The Fiscal shall report to the court every sale of immovable property made by him or under his direction within ten days after the same shall have been made. And no sale of immovable property shall become absolute until thirty days have elapsed subsequent to the receipt of such report, and until such sale has been confirmed by the court.

Sale not absolute until after thirty days and confirmation by court:

(2) The decree-holder, or any person whose immovable property has been sold under this Chapter, or any person establishing to the satisfaction of the court an interest in such property, may apply by petition to the court to set aside the sale on the ground of a material irregularity in publishing or conducting it; but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the court that he has sustained substantial injury by reason of such irregularity, and unless the grounds of the irregularity shall have been notified to the court within thirty days of the receipt of the Fiscal's report.

and may be set aside for material irregularity.

(3) In every such application the purchaser shall be made respondent to the petition.

283. (1) If no such application as is mentioned in the last preceding section is made within the thirty days, or if such

Order confirming the sale.

application is made and the objection disallowed, the court shall at any time after the expiration of the thirty days, on the application of the decree-holder or of the purchaser, pass an order confirming the sale as regards the parties to the suit and the purchaser :

Provided that no order confirming the sale shall be made if it appear to the court that the judgment-debt was satisfied at the time that the writ of execution issued.

Order setting aside the sale.

(2) If such application is made, and if the objection is allowed, the court shall pass an order setting aside the sale.

When purchaser may apply to set aside sale.

284. The purchaser at any such sale may apply to the court by petition on summary procedure to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the court may, on such application, make such order as it thinks fit :

Provided that both the judgment-debtor and the decree-holder are made respondents to the petition.

When purchaser may get back his purchase money.

285. (1) When a sale of immovable property is set aside under sections 282, 283, or 284, when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is for that reason deprived of it, the purchaser shall be entitled to receive back his purchase money from any person to whom the purchase money has been paid.

(2) An order for the repayment of the said purchase money may be made by the court on any application under sections 282, 283 or 284, provided that the person against whom the order is directed is party thereto, and such order may be enforced against such person under the rules provided by this Ordinance for the execution of a decree for money.

Conveyance to purchaser.

286. If the court shall have confirmed the sale and the purchaser shall have paid the full amount of the purchase money according to the conditions of sale, and shall have supplied the Fiscal or Deputy Fiscal with stamps of the proper amount

required by law for the conveyance of the land sold to him (which stamps he shall be bound to supply when he pays the purchase money in full), and if the sale was not effected in execution of a decree specifically directing the sale, then the Fiscal or Deputy Fiscal shall forthwith make out and execute a conveyance in duplicate of the property according to the form No. 56 in the First Schedule, or such other form, or expressed in such terms, as the court may deem expedient, which conveyance shall be binding and of force, though not executed before a notary public.

The Fiscal or Deputy Fiscal shall deliver the original to the purchaser and transmit the duplicate to the Registrar of Lands for the district in which the land is situate, in like manner as now is or shall be required to be done by notaries in respect of deeds executed before them; and the Fiscal or Deputy Fiscal shall be entitled to recover for such conveyance—

- (a) when the amount of purchase shall be under thirty rupees, a fee of fifty cents ;
- (b) when it shall exceed thirty rupees, a fee of one rupee ;
- (c) when it shall exceed one hundred rupees, a fee of one rupee and fifty cents ;
- (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.

But if the sale was effected in execution of a decree specifically directing the sale, then the conveyance shall be made in conformity with the directions of the court contained in the decree :

Provided, however, that to all conveyances made by the Fiscal to complete a sale effected in execution of a decree of court, in the event of there being no

Conveyance to contain sufficient map of the premises.

[§2, 32 of 1957.]

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, if the purchaser so requires but not otherwise, be annexed a sufficient map exhibiting, when possible, some permanent physical feature of the ground; and the purchaser shall pay in advance the expense of preparing it in addition to the fee prescribed for the conveyance. Such diagram or map shall be prepared by a competent surveyor licensed by the Fiscal or Deputy Fiscal for that purpose, and such surveyor shall be an officer of the Fiscal within the meaning of section 325, and shall for the purposes of the Penal Code be deemed to be a public servant.

Court may order delivery of possession to purchaser.

287. (1) When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the seizure of such property, and a conveyance in respect thereof has been made to the purchaser under section 286, the court shall on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person bound by the decree who refuses to vacate the same.

Order how to be enforced.

(2) An order for delivery of possession made under this section may be enforced as an order falling under head (C) section 217, the purchaser being considered as judgment-creditor.

Mode of delivery where property is in occupancy of person entitled to occupy.

288. When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a conveyance in respect thereof has been made to the purchaser under section 286, the court shall order delivery thereof to be made by affixing a notice of the sale having taken place, in the language of the court, and, where the language of the court is also Tamil, in that language, in some conspicuous place on the property, and proclaiming to the occupant by beat of tomtom, 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.

289. The right and title of the judgment-debtor or of any person holding under him or deriving title through him to immovable property sold by virtue of an execution is not divested by the sale until the confirmation of the sale by the court and the execution of the Fiscal's conveyance. But if the sale is confirmed by the court and the conveyance is executed in pursuance of the sale, the grantee in the conveyance is deemed to have been vested with the legal estate from the time of the sale.

Right and title of judgment-debtor not divested by sale till confirmation, and execution of Fiscal's conveyance.

290. The Fiscal, on the day of the sale, or at any time thereafter until the confirmation of the sale by the court and the execution of the Fiscal's conveyance may at his discretion, and if provided with the necessary funds therefor by the purchaser or by the judgment-creditor, or debtor, himself or by his agent duly authorized in writing enter into possession of the immovable property sold by virtue of the execution, and retain possession of the same until the confirmation of the sale by the court and the execution of the conveyance in pursuance thereof.

Fiscal may enter property sold.

291. The person in possession of immovable property sold by virtue of an execution may, until the confirmation of the sale by the court and the execution of the Fiscal's conveyance, use and enjoy the same as follows, without being chargeable with committing waste :—

Person in possession may use and enjoy until confirmation of sale.

- (1) He may use it and enjoy it in like manner and for the like purposes as it was used and enjoyed before the sale, doing no permanent injury to the property.
- (2) He may make the necessary repairs to a building or other erection thereupon. But this provision does not permit an alteration in the form or structure of the building or other erection.
- (3) He may use and improve the land in the ordinary course of husbandry, and may collect, gather, harvest,

and store the crops and produce thereof, but shall not be entitled to them.

- (4) He may apply any wood or timber on the land to the necessary reparation of a fence, building, or other erection which was thereupon at the time of the sale.

On confirmation and execution of conveyance, Fiscal to deliver possession to grantee.

292. On the sale being confirmed by the court and the conveyance executed in pursuance of the sale, the Fiscal or person in possession of the immovable property sold shall forthwith give possession of the same, together with all the crops and produce (if any) collected, gathered, harvested, and stored subsequent to the sale, to the grantee in the conveyance; and if the sale is not confirmed, the Fiscal or his agent shall forthwith, if in possession, restore the judgment-debtor or any person holding under him to possession of the immovable property together with all the crops and produce (if any) collected, gathered, harvested, and stored whilst the Fiscal or his agent was in possession.

Judgment-debtor may be restrained from waste.

293. If at any time before the execution of the Fiscal's conveyance the judgment-debtor, or any other person in possession of the property sold, commits, or threatens to commit, or makes preparations for committing waste thereupon, the court from which execution issued may, upon the application of the purchaser or his agent or attorney, and proof by affidavit of the facts, grant, without notice, an order restraining the wrongdoer from committing waste upon the property.

Punishment for committing waste.

294. If the person against whom such an order is granted commits waste in violation thereof after the service upon him of the order, the court, upon proof by affidavit of the facts, may grant an order requiring him to show cause at a time and place therein specified why he should not be punished for a contempt.

And for disobeying order.

295. If upon the return of the order to show cause it satisfactorily appears that the person required to show cause has violated the former order, the court may punish him in manner provided by law for the punishment of contempts of court.

Moneys paid to, and realized by, the Fiscal

296. Whenever any person, whether acting for himself or as an attorney-at-law for any other person, has occasion to pay any sum of money into any court to the credit of any case, he shall deposit such sum of money to the credit of such case in the appropriate bank account.

Mode of payment to court by attorneys-at-law and other persons. [§39, Law 20 of 1977]

297. (1) Whenever the Fiscal receives or realizes a sum of money in the course of the execution of a decree or otherwise, he shall issue a receipt for such sum to the person making payment, and shall forthwith deposit such sum of money to the credit of such case in the appropriate bank account.

Mode of payment to court by Fiscal. [§39, Law 20 of 1977]

(2) In this and the preceding section "appropriate bank account" means the bank account of the court to whose credit or under whose authority such money is paid, received, or realized.

Arrest and Imprisonment

298. (1) Where, after the issue of a writ for the execution of a decree for the payment of money, the court is satisfied on the application of the judgment-creditor, after such inquiry as the court may deem necessary, that the judgment-debtor—

Issue of warrant for arrest of debtor in execution of decree for money.

- (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 Sri Lanka under circumstances affording reasonable probability that the judgment-creditor will thereby be obstructed or delayed in the execution of the decree; or
- (c) has, on or after the date of the institution of the action in which the writ of execution was issued, concealed, transferred or removed his property or any part thereof with intent to defraud the judgment-creditor or with intent to obstruct or delay the execution of the decree, or has, on or after such

date, committed with the like intent any act of bad faith in relation to his property; or

- (d) has been guilty of any act whereby any creditor, other than the judgment-creditor at whose instance the writ of execution was issued, has been given any undue, unreasonable or fraudulent preference; or
- (e) has, at any time since the date of the decree, had sufficient means to pay the amount of the decree, or any part of that amount, and has refused or neglected to pay such amount or part thereof; or
- (f) being a trustee or person acting in any other fiduciary capacity, has, when ordered to pay by a court, made default in the payment of any sum in his possession or under his control,

the court may, subject to the other provisions of this Chapter, issue a warrant for the arrest of the judgment-debtor and for his production in court with a view to his committal to jail in execution of the decree.

(2) A decree for the payment of costs only shall, for the purposes of the application of the provisions of subsection (1), be deemed to be a decree for the payment of money.

Issue of notice on debtor as alternative to warrant.

299. The court may, in its discretion, instead of issuing a warrant under section 298, issue a notice on the judgment-debtor calling upon him to show cause, on a date to be specified in the notice, why he should not be committed to jail in execution of the decree referred to in that section.

Application for warrant to be made by petition and affidavit.

300. Every application under section 298 shall be made by petition supported by affidavit; and it shall not be necessary to name the judgment-debtor as respondent to any such application.

No arrest for sum under Rs. 1,500. [§40, Law 20 of 1977.]

301. No warrant under section 298 or notice under section 299 shall be issued in any case in which the sum awarded in the

decree inclusive of interest, if any, up to the date of the decree but exclusive of any further interest and of costs, is less than one thousand five hundred rupees.

302. No warrant under section 298 or notice under section 299 shall be issued where the judgment-debtor is a woman; and no woman shall be arrested or committed to jail in execution of any decree for the payment of money or of costs.

Woman not liable to arrest in execution.

303. Where a judgment-debtor to whom a notice under section 299 has been issued fails to appear on the day specified in the notice, the court may issue a warrant for his arrest.

Warrant to issue where debtor fails to appear on notice.

304. Subject to the provisions of Chapter XXIII, a judgment-debtor for whose arrest a warrant has been issued under section 298 or section 303 may be arrested at any hour, and on any day, and in any place, and shall thereupon, as soon as practicable, be brought before the court.

Execution of warrant of arrest.

305. Where a judgment-debtor who has been arrested on a warrant pays the amount of the decree in execution of which he is arrested, and the costs of the arrest, to the officer arresting him, such officer shall at once release him from custody.

Officer effecting arrest to release debtor on payment of amount of decree and costs of arrest.

306. Where a judgment-debtor is brought before the court after arrest on a warrant or appears in court in pursuance of a notice issued under section 299, and either—

Discharge of debtor where amount of decree and costs of arrest paid into court.

- (a) pays into court the amount of the decree and, if he has been brought before the court under a warrant, the costs of the arrest, or
- (b) gives security for the payment of the same to the satisfaction of the judgment-creditor,

the court shall release him from arrest or discharge him from such notice, as the case may be. If such payment is not made or if such security is not given, the court shall call upon the judgment-debtor to show cause why he should not be committed to jail.

Debtor who has no cause to show to be committed to jail.

307. Where the judgment-debtor, on being called upon to show cause under section 306, has no cause to show, the court shall commit him to jail.

Debtor who has cause to show to be discharged or committed to jail after inquiry.

308. Where the judgment-debtor, on being called upon to show cause under section 306, proves to the satisfaction of the court—

- (a) that any material allegation of fact, made in the affidavit of the judgment-creditor or given in evidence before the court prior to the issue of the warrant or notice, in consequence of which such warrant or notice was issued, was untrue or incorrect; or
- (b) that for any other reason the warrant or notice should not have been issued, or was irregularly issued in the first instance;

he shall, if under arrest, be released or, if he has appeared on notice, be discharged from such notice; but if he fails or is unable to furnish such proof the court shall commit him to jail:

Provided that if, on the date on which the judgment-debtor is brought or appears before the court, the court is satisfied that a warrant for the arrest of the judgment-debtor may be issued on any ground other than that on which the warrant or notice was issued in the first instance, the court may commit the judgment-debtor to jail.

Written statement to be filed by debtor who desires to show cause.

309. Where a judgment-debtor contends that any material allegation of fact, made in the affidavit of the judgment-creditor or given in evidence before the court prior to the issue of the warrant or notice, is untrue or incorrect, he shall file in court a written statement specifying which of the allegations in such affidavit or in such evidence is impugned as untrue or incorrect; and where a judgment-debtor contends that the warrant or notice should not have been issued or was irregularly issued, he shall file in court a written statement of the grounds on which such contention is based.

310. (1) Where the judgment-debtor desires to show cause why he should not be committed to jail, the court may appoint a date for an inquiry and may, pending such inquiry, order the judgment-debtor to be detained in prison or take sufficient security from him that he will appear in court when called upon.

Debtor to be committed to jail or to give security for appearance pending inquiry.

(2) A judgment-debtor who is not detained in prison pending the inquiry may be arrested on a warrant issued by the court at any time for the purposes of such inquiry or with a view to his committal to jail.

(3) The inquiry referred to in subsection (1) may be adjourned from time to time by order of the court.

311. Where a judgment-debtor is committed to jail, the court shall issue a warrant substantially in the form No. 61 in the First Schedule.

Issue of warrant of committal to jail.

312. Where a judgment-debtor has been released after arrest on a warrant or discharged from a notice under section 306 or section 308, no further proceedings shall be taken as 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.

Debtor discharged under section 306 or section 308 not to be rearrested.

313. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the court, and, where the writ is to be executed in another district, such further sum as the Judge thinks sufficient to cover the expenses of his transport to the court issuing the writ.

Sufficient interim subsistence money to be deposited before arrest.

314. And when a judgment-debtor is committed to jail in execution of a decree, the court shall fix for his subsistence such monthly allowance as he may be entitled to at rates to be fixed by order of Government from time to time, as occasion shall require.

Subsistence allowance during imprisonment to be fixed on commitment.

315. (1) The monthly allowance fixed by the court shall be supplied to the Fiscal by the party on whose application the

Allowance to be paid monthly in advance.

decree has been executed by monthly payments in advance before the first day of each month.

(2) The first payment shall be made for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail.

(4) Any additional sum for the payment of which an order is made under this section shall be supplied to the Fiscal by the party on whose application the decree has been executed, in the manner and at the time specified in the order of the court.

316. Sums of money disbursed by the decree-holder under section 315 or section 315A shall be deemed to be costs in the action :

Disbursements by decree-holder to be deemed costs.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed ;

Provided further, that where at the time of the discharge of the judgment-debtor from jail there remains any unexpended balance out of the sum so disbursed, such balance shall be repaid by the Fiscal to the decree-holder and shall not be deemed to be costs in the action.

317. (1) The judgment-debtor shall be discharged from jail—

When debtor entitled to be discharged from jail.

315A. (1) Where a judgment-debtor who has been committed to jail is, with the approval of the Commissioner 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 section 314 for the subsistence of that judgment-debtor is insufficient to meet the cost of such special diet, examination or treatment, the court may by order, on application made by the Fiscal, and after hearing such representations as may be made by the party on whose application the decree has been executed and such other evidence as the court may deem necessary—

- (a) vary the monthly allowance fixed under section 314, and specify the period during which the allowance so varied shall be payable, or
- (b) fix such additional sum as may, in the opinion of the court, be necessary to meet the cost of such examination or treatment in hospital and all expenses incidental thereto or connected therewith, and may specify in that order the time and manner of payment of such additional sum.

- (a) on the decree being fully satisfied ; or
- (b) at the request of the person on whose application he has been imprisoned ; or
- (c) on such person omitting to pay the allowance as hereinbefore directed ; or
- (d) if the judgment-debtor be declared an insolvent, and an order in insolvency is made by the District Court protecting him from arrest ; or
- (e) when the term of his imprisonment as limited by section 318 is fulfilled :

(2) Any order made by the court under subsection (1) may at any time be varied or cancelled by the court by a further order, on application made by the Fiscal or by the party on whose application the decree has been executed, and after such inquiry as the court may deem necessary.

Provided that in the first, second, third, and fourth cases mentioned in this subsection the judgment-debtor shall not be discharged without the order of the court.

(3) The provisions of section 315 shall apply to the monthly allowance as varied under this section, in like manner as those provisions apply to the monthly allowance originally fixed by the court.

(2) A judgment-debtor discharged under this section is not thereby discharged from his debt, but he cannot be rearrested under the decree in execution of which he was imprisoned.

Power to vary allowance or order additional payments.

Limit of imprisonment. **318.** No person shall be imprisoned in execution of a decree for a longer period than six months.

Endorsement on the warrant. **319.** The Fiscal shall endorse upon the warrant of arrest the day on and the manner in which it was executed, and if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay; or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the court.

(B)

DECREES FOR DELIVERY OF MOVABLE PROPERTY

Application for execution of decree for delivery of movable property, how to be made. **320.** If the decree is for any specific movable or for any share in a specific movable, application to the court for execution of the decree by seizure and delivery may be made by the judgment-creditor in the manner and according to the rules prescribed for execution of decrees under head (A) so far as the same are applicable; and if the court on such application is satisfied that the judgment-creditor is entitled to obtain execution of the decree, it shall direct a writ of execution to issue to the Fiscal in the form No. 62 in the First Schedule.

Fiscal to procure delivery thereunder. **321.** (1) Upon receiving the writ the Fiscal or his officer shall as soon as reasonably may be repair to the dwelling house or place of residence of the judgment-debtor, and there showing him the writ shall demand delivery of the movable or, if practicable, the share thereof specified therein, and on his failing to comply with his demand, the Fiscal or his officer shall, if possible, seize the said specific movable or share thereof, and deliver the same to the judgment-creditor or to the person authorized by him to receive it.

Procedure on default. (2) If the judgment-debtor fails to comply with the Fiscal's demand, and if the Fiscal is unable to obtain for the judgment-creditor delivery of the specific movable or share thereof mentioned in the writ, then the court upon being satisfied of these facts may, on application made to it by the judgment-creditor by petition, to which the

judgment-debtor is made respondent, direct a writ of execution by seizure and sale of the judgment-debtor's property, or a warrant for the arrest of the judgment-debtor, or both, to issue to the Fiscal.

322. The amount of money directed to be levied in the writ of execution by seizure and sale issuing under the preceding section shall be the amount of pecuniary loss as nearly as the court can estimate it, which is occasioned to the judgment-creditor by reason of the judgment-debtor's default in making delivery of the specific movable or share thereof according to the terms of the decree, and which the court shall award by way of compensation to the judgment-creditor by the order directing the writ to issue; and the execution of this writ, and of the warrant of arrest issuing under the same section, shall be effected according and subject to the rules prescribed for the writ of execution and warrant of arrest issued for the enforcement of decrees falling under head (A).

Amount to be levied and manner of execution.

(C)

DECREES FOR POSSESSION OF IMMOVABLE PROPERTY

323. If the decree or order is for the recovery of possession of immovable property or any share thereof by the judgment-creditor, or if it directs the judgment-debtor to yield or deliver up possession thereof to the judgment-creditor, application to the court for execution of the decree may be made by the judgment-creditor in the manner, and according to the rules, prescribed for execution of decrees under head (A), so far as the same are applicable; and if the court on such application is satisfied that the judgment-creditor is entitled to obtain execution of the decree, it shall direct a writ of execution to issue to the Fiscal in the form No. 63 in the First Schedule.

Application for execution of decree for delivery of immovable property, how to be made.

324. (1) Upon receiving the writ the Fiscal or his officer shall as soon as reasonably may be repair to the ground, and there deliver over possession of the property described in the writ to the judgment-creditor or to some person appointed by him to receive delivery on his behalf, and if

Form of writ.

Fiscal how to proceed thereunder.

need be by removing any person bound by the decree who refuses to vacate the property :

Provided that as to so much of the property, if any, as is in the occupancy of a tenant or other person entitled to occupy the same as against the judgment-debtor, and not bound by the decree to relinquish such occupancy, the Fiscal or his officer shall give delivery by affixing a copy of the writ in some conspicuous place on the property and proclaiming to the occupant by beat of tom-tom, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property ; and

Provided also that if the occupant can be found, a notice in writing containing the substance of such decree shall be served upon him, and in such case no proclamation need be made.

(2) The cost (to be fixed by the court) of such proclamation shall in every case be prepaid by the judgment-creditor.

Resistance to Execution of Proprietary Decrees

Procedure in event of resistance to execution of writ or delivery of property. [§41, Law 20 of 1977.]

325. (1) Where in the execution of a decree for the possession of movable or immovable property the Fiscal 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 or ousted by the judgment-debtor or any other person in taking complete and effectual possession thereof, and in the case of immovable property, where the judgment-creditor has been so hindered or ousted within a period of one year and one day, the judgment-creditor may at any time within one month from the date of such resistance or obstruction or hindrance or ouster, complain thereof to the court by a petition in which the judgment-debtor and the person, if any, resisting or obstructing or hindering or ousting shall be named respondents. The court shall thereupon serve a copy of such petition on the parties named therein as respondents and require such respondents to file objections, if any, within such time as they may be directed by court.

(2) When a petition under subsection (1) is presented, the court may, upon the application of the judgment-creditor made by motion *ex parte*, direct 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 or ousted therefrom, as the case may be, by the judgment-debtor or other person, and calling upon all persons claiming to be in possession of the whole or any part of such property by virtue of any right or interest and who object to possession being delivered to the judgment-creditor to notify their claims to court within fifteen days of the publication of the notice.

(3) The Fiscal shall make publication by affixing a copy of the notice in the language of the court, and, where the language of the court is also Tamil, in that language, in some conspicuous place on the property and proclaiming in the customary mode or in such manner as the court may direct, the contents of the notice. A copy of such notice shall be affixed to the court-house and if the court so orders shall also be published in any daily newspaper as the court may direct.

(4) Any person claiming to be in possession of the whole of the property or part thereof as against the judgment-creditor may file a written statement of his claim within fifteen days of the publication of the notice on such property, setting out his right or interest entitling him to the present possession of the whole property or part thereof and shall serve a copy of such statement on the judgment-creditor. The investigation into such claim shall be taken up along with the inquiry into the petition in respect of the resistance, obstruction, hindrance or ouster complained of, after due notice of the date of such investigation and inquiry has been given to all persons concerned.

326. (1) On the hearing of the matter of the petition and the claim made, if any, the court, if satisfied—

Punishment of person obstructing. [§10, 53 of 1980.]

(a) that the resistance, obstruction, hindrance or ouster complained of was occasioned by the judgment-debtor or by some person at his instigation or on his behalf ;

(b) that the resistance, obstruction, hindrance or ouster 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 on account of some person other than the judgment-debtor, is frivolous or vexatious; or

(c) that the claim made, if any, has not been established,

shall direct the judgment-creditor to be put into or restored to the possession of the property and may, in the case specified in paragraph (a), in addition sentence the judgment-debtor or such other person to imprisonment for a period not exceeding thirty days.

[§41, Law 20 of 1977.]

(2) Where any claim is established only to a share of any property, it shall be competent to the court in any order made under the preceding subsection to direct that the judgment-creditor be put into or restored to possession of the share of the property to which no claim has been established.

[§41, Law 20 of 1977.]

(3) 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 reissue of writ as the court shall deem meet.

If resistance be made by bona fide claimant in possession, court to dismiss the petition. [§41, Law 20 of 1977.]

327. Where the resistance or obstruction or hindrance or ouster is found by court to have been occasioned by any person other than the judgment-debtor, claiming in good faith to be in possession of the whole of such property on his own account or on account of some person other than the judgment-debtor by virtue of any right or interest, or where the claim notified is found by the court to have been made by a person claiming to be in possession of the whole of such property on his own account or on account of some person other than the judgment-debtor, by virtue of any right or interest, the court shall make order dismissing the petition.

328. 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, within fifteen days of such dispossession, apply to the court by petition in which the judgment-creditor shall be named respondent complaining of such dispossession. The court shall thereupon serve a copy of such petition on such respondent and require such respondent to file objections, if any, within fifteen days of the service of the petition on him. Upon such objections being filed or after the expiry of the date on which such objections were directed to be filed, the court shall, after notice to all parties concerned, hold an inquiry. Where the court is satisfied that the person dispossessed was in possession of the whole or part of such property on his own account or on account of some person other than the judgment-debtor, it shall by order direct that the petitioner be put into possession of the property or part thereof, as the case may be.

Court shall investigate dispute if bona fide claimant be dispossessed in effecting the execution. [§41, Law 20 of 1977.]

329. No appeal shall lie from any order made under section 326 or section 327 or section 328 against any party other than the judgment-debtor. Any such order shall not bar the right of such party to institute an action to establish his right or title to such property.

Effect of order made under section 326 or section 327 or section 328. [§ 41, Law 20 of 1977.]

330. Any subsequent resistance or obstruction to the execution of the writ or hindrance to the possession or ouster of the judgment-creditor within a year and a day of the delivery of possession —

How subsequent obstruction to be dealt with. [§11, 53 of 1980.]

(a) by the judgment-debtor or any other respondent to the petition under section 325, or

(b) where a notice under subsection (2) of section 325 has been duly published, by any person whatsoever,

shall be punishable as a contempt of court.

(D)

DECREES FOR EXECUTION OF CONVEYANCE
OR TRANSFER OF PROPERTYApplication for
enforcement of
decree for
execution of
any
conveyance,
how to be
made.

331. If the decree is for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and apply to the court by petition, not naming a respondent, to have the said draft served on the judgment-debtor.

Service of the
draft
conveyance on
judgment-
debtor.

332. (1) The court shall thereupon cause the draft and a copy of the petition to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto, shall be made within such time (mentioning it) as the court fixes in this behalf, and will come on before the court to be considered and determined on a day to be named in the notice for that purpose.

(2) The decree-holder may also tender a duplicate of the draft to the court for execution, supplying a stamp of the proper amount if a stamp is required by law.

(3) On proof of such service the court, or such officer as it appoints in this behalf, shall on the day appointed for the consideration of objections, if no objections are made, proceed to execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree, and execute the decree so altered.

Objections to
draft.

But in the event of the judgment-debtor or any other party on that day objecting to the draft so served, provided the objections have been stated in writing and filed within the time fixed therefor, the court shall proceed to hear and determine such objections, and shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

Execution of
the conveyance
by the court.

333. The execution of a conveyance or the endorsement of a negotiable instrument by the court under the last preceding section

may be in the following form: "C. D., Judge of the court of (as the case may be), for A. B., in an action by E. F. against A. B."; or in such other form as the Supreme Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same, and such conveyance shall be binding and of force though not executed before a notary public. And the court shall deliver the original of such conveyance to the decree-holder, and shall transmit the duplicate to the Registrar of Lands for the district in which the land is situate, in like manner as now is or shall be required to be done by notaries in respect of deeds executed before them.

333A. In sections 331, 332, and 333 the expression "conveyance" includes "contract or other document".

Meaning of
conveyance in
sections 331,
332, and 333.

(E) & (F)

MANDATORY AND RESTRAINING DECREES

334. When a decree or order falling under either of the heads (E) or (F) has been passed, and the judgment-debtor has had an opportunity of obeying the decree or order, but has wilfully failed to obey it, application to the court for execution or enforcement of the decree or order may be made by the judgment-creditor by petition to which the judgment-debtor shall be made respondent; and which shall set out the damage, if any, caused to the judgment-creditor by the disobedience of the judgment-debtor to the decree or order.

Application for
enforcement of
mandatory
decrees, how to
be made.

And if the court on the hearing of such application is satisfied that the judgment-creditor is entitled to obtain execution or enforcement of the decree or order, it shall direct a writ of execution by seizure and sale of the judgment-debtor's property, or a warrant for the arrest of the judgment-debtor, or both, to issue to the Fiscal.

Court may
issue writ of
execution by
seizure and
sale.

335. The amount of money directed to be levied on the writ of execution issuing under the preceding section shall be the amount of pecuniary loss, if any, as nearly as the court can estimate it, which is

Amount to be
levied under
writ.

occasioned to the judgment-creditor by reason of the judgment-debtor's default in obeying the decree or order, and which the court shall award by way of compensation to the judgment-creditor by the order directing the writ to issue. And the execution of this writ and of the warrant of arrest issuing under the same section shall be effected according, and subject, to the rules prescribed for the writ of execution and warrant of arrest issued for the enforcement of decrees falling under head (A).

GENERAL PROVISIONS

Discretion of court to issue execution.

336. The court may in its discretion refuse to issue execution at the same time against the person and property of the judgment-debtor in cases when the judgment-creditor is entitled to apply for both simultaneously.

When subsequent application may be made for execution of decree partly satisfied. [§12, 53 of 1980.]

337. (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 affirming the same ; or
- (b) where the decree or any subsequent order directs the payment of money or the delivery of property to be made on 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 decree.

(2) Nothing in this section shall prevent the court from granting an application for execution of a decree after the expiration of the said term of ten years, where the judgment-debtor has by fraud or force prevented the execution of the decree at some time within ten years immediately before the date of the application.

[§12, 53 of 1980.]

(3) Subject to the provisions contained in subsection (2), 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 the decree is obtained.

338. (1) If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their legal representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and those claiming under the deceased. The application for this purpose shall be made by petition to which the co-decree-holders or their representatives as well as the judgment-debtor shall be respondents.

Application by one of several decree-holders for execution of the decree for the benefit of all.

(2) If the court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

(3) For the purposes of this Chapter— [§42, Law 20 of 1977.]

- (a) "estate" means the gross value of the estate of the deceased ; and
- (b) "legal representative" means an executor or administrator or in the case of an estate below the value of twenty thousand rupees, the next of kin who have adiated the inheritance :

Provided, however, that in the event of any dispute arising as to who is the legal representative, the provisions of section 397 shall, *mutatis mutandis*, apply.

339. (1) If a decree is transferred by assignment in writing or by operation of law from the decree-holder to any other person, the transferee may apply for its execution by petition, to which all the parties to the action or their representatives shall be made respondents, to the court which passed it, and if on that application that court thinks fit, the transferee's name may be substituted

Application by assignee of a decree for execution thereof, how to be made.

for that of the transferor in the record of the decree, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that where the decree has been transferred by operation of law, the transferor need not be made respondent to the petition ;

Provided also that where a decree against several persons has been transferred to one of them, it shall not be executed against the others.

(2) In the case where one decree of court is seized in execution of another decree, the judgment-creditor of the second decree is in the situation of assignee of the judgment-creditor of the decree which is seized, provided the latter person is identical with the judgment-debtor of the decree in execution of which the seizure is made.

Transferee bound by equities.

340. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Legal representative of deceased debtor, how made liable,

341. (1) If the judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the court which passed it, by petition, to which the legal representative of the deceased shall be made respondent, to execute the same against the legal representative of the deceased.

and extent of liability.

(2) Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of ; and for the purpose of ascertaining such liability, the court executing the decree may on the application of the decree-holder compel the said representative to produce such accounts as it thinks fit.

Fiscal may adjourn sale.

342. The Fiscal may in his discretion adjourn a sale :

Provided that the date to which the sale is adjourned is published in the same manner as was the original notice of sale ; and

Provided also that he report to the court in his return to the writ of execution, or sooner, the cause for which the adjournment was made.

343. (1) The court may for sufficient cause stay execution proceedings at any stage thereof, and make order for adjournment of a sale.

Stay of proceedings and adjournment of sale by court.

(2) The application to the court to stay proceedings shall be made by petition, to which all persons interested in the matter of the execution shall be made parties, and no such order shall be made until after payment of all Fiscal's fees then due.

344. All questions arising between the parties to the action in which the decree was passed, or their legal representatives, and relating to the execution of the decree, shall be determined by order of the court executing the decree, and not by separate action.

All questions arising in execution to be determined by order of court and not by separate action.

345. (1) If cross decrees between the same parties for the payment of money be produced to the court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

Procedure where there are cross decrees between the parties.

(2) If the two sums be equal, satisfaction shall be entered up on both decrees.

Explanation 1.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same court.

Explanation 2.—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation 3.—This section does not apply unless—

(a) the decree-holder in one of the actions in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both actions, and

(b) the sums due under the decrees are definite and unconditional.

Illustrations

- (a) A holds a decree against B for one thousand rupees. B holds a decree against A for the payment of one thousand rupees in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross decree under this section.
- (b) A and B, co-plaintiffs, obtain a decree for one thousand rupees against C; and C obtains a decree for one thousand rupees against B. C cannot treat his decree as a cross decree under this section.
- (c) A obtains a decree against B for one thousand rupees. C, who is a trustee for B, obtains a decree on behalf of B against A for one thousand rupees. B cannot treat C's decree as a cross decree under this section.

348. Whenever a person has before the passing of a decree in an original action become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable in the same manner as a decree may be executed against a judgment-debtor, upon application made by the judgment-creditor to the court for that purpose by a petition to which the person sought to be made liable as surety shall be named respondent.

Execution against surety.

349. (1) If any money payable under a decree is paid out of court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, he shall certify such payment or adjustment to the court whose duty it is to execute the decree.

Decree-holder to certify payment to the court.

Procedure where parties recover different amounts under same decree.

346. (1) When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

(2) When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

(2) The judgment-debtor may also by petition inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree-holder to show cause on a day to be fixed by the court why such payment or adjustment should not be recorded as certified. And if after due service of such 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.

Proceedings where one year has elapsed from date of decree.

347. In cases where there is no respondent named in the petition of application for execution, if more than one year has elapsed between the date of the decree and the application for its execution, the court shall cause the petition to be served on the judgment-debtor, and shall proceed thereon as if he were originally named respondent therein :

(3) No such payment or adjustment shall be recognized by any court unless it has been certified as aforesaid.

350. (1) Money, which in the course of an action or in satisfaction of a decree has been paid into and received by the court shall be paid to the person entitled to the same, on his *ex parte* application.

Concurrence and preference. [543, Law 20 of 1977.]

Provided that no such service shall be necessary if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed or from the date of the last order against the party, against whom execution is applied for, passed on any previous application for execution.

(2) Where—

- (a) before money realized in execution of a decree, other than money received or seized by the Fiscal from the judgment-debtor in payment of the amount of the writ before the sale in execution of any

property belonging to him or being current coin or currency notes seized by the Fiscal, is paid to the decree-holder in the action in which the execution issued, or

- (b) before money other than money realized in execution of a decree is paid to 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 entered by the same or another court ; or
- (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 shall first be paid to the persons, if any, entitled to receive payment preferentially, and 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.

(3) Before the court makes order under the preceding subsection, notice shall be given to the parties to the action and all persons whose claims have been notified to court under that subsection that the court will on a day to be specified in the notice proceed to hear and determine the claims to the money in court.

(4) 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 continue to hold the money or any part thereof pending the decision of the separate action.

351. Where property not in the custody of any court has been seized in execution of decrees of more courts than one, the court which shall receive or realize such property and shall determine any claim thereto and any objection to the seizure thereof shall be the court of highest grade, or, where there is no difference in grade between such courts, the court under whose decree the property was first seized.

Where the same property is seized in execution of decrees of more courts than one.

352. (1) Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have prior to the realization, applied to the court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons :

Where several decree-holders are entitled to share rateably in proceeds of a sale of debtor's property.

Provided that, when any property is sold which is subject to a mortgage or charge, or for any other reason remains subject to a mortgage or charge notwithstanding the sale, the mortgagee or incumbrancer shall not as such be entitled to share in any proceeds arising from such sale.

(2) If all or any portion of the money realized in execution of a decree is in the distribution made under the last preceding section paid to a person not entitled to receive the same, any person who is so entitled may sue such person to compel him to refund the money.

Share of such proceeds paid to wrong person may be recovered by action by person entitled.

353. Every order made by a court, in any action or proceeding between parties, for payment of money not being a fine, shall have the effect of a decree for the payment of money, and on default of payment according to its terms shall be enforceable upon the application of the party at whose instance it was made in like manner as a decree for money.

Order for payment of money enforced as a decree.

354. In the event of an order being made by the civil court under the provisions of this Ordinance for the payment of a fine,

Fine imposed by civil court how to be levied.

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.

CHAPTER XXIII

OF SERVICE OF PROCESS

Writs or warrants to be usually issued to the Fiscal for execution. [§44, Law 20 of 1977.]

355. Writs or warrants to levy money, or to take any person in arrest, or to detain any person in custody, or to deliver possession of property, shall usually be directed to the Fiscal of the court issuing the writ or warrant; but any such writ or warrant may be issued to any grama seva niladhari, constable or officer of police. And where any such writ or warrant is issued by the Supreme Court, the Court of Appeal, or by any court within the local limits of whose jurisdiction the party against whom it is issued does not actually and voluntarily reside, or carry on business, or personally work for gain, or is not possessed of property sufficient to satisfy the same, such writ or warrant shall be issued to the Fiscal of a court within the jurisdiction of which such party does actually and voluntarily reside or carry on business, or personally work for gain, or is possessed of such property.

To whom may all processes of court not being writs or warrants be directed. [§45, Law 20 of 1977.]

356. All processes of court not being writs, or warrants directed to the Fiscal or other person for execution, and all notices and orders required by this Ordinance to be given to or served upon any person, shall, unless the court otherwise directs, be issued for service to the Fiscal of the court issuing such processes, notices, or orders under a precept of that court as is hereinbefore provided for the case of the summons to the defendant in an action. And the provisions of this Ordinance from section 59 to section 70, both inclusive, relative to the service of such summons shall apply, so far as is practicable, to the service of such processes, notices, and orders. Whenever it becomes necessary to serve any such processes outside the local limits of the jurisdiction of the court issuing them, it shall be competent

to such court to issue such processes, notices and orders for service to the Fiscal of any other court of like jurisdiction within the local limits of the jurisdiction of which such processes, notices and orders have to be served.

Fiscal to execute and serve processes of court.

357. It shall be the duty of every Fiscal, upon receiving any writ, or warrant, or precept directed to him by any court, by himself or by his officers, to execute such writ or warrant, and to serve every process, notice, or order conveyed to him under such precept according to the exigency of the writ, warrant, or precept.

358. All proceedings for attachment, contempt, or otherwise against a Fiscal or Deputy Fiscal for neglect or refusal to serve process or to comply with any order or direction of the court in connection therewith shall, where such Fiscal or Deputy Fiscal is the Fiscal or Deputy Fiscal of a court other than that of the court issuing such process, order, or direction, be referred by such court to the court to which such Fiscal or Deputy Fiscal is attached, and shall be dealt with by the latter court as if such neglect or refusal related to its own process or orders.

Proceedings against Fiscal for contempt, &c. [§46, Law 20 of 1977.]

359. It shall be the duty of every grama seva niladhari, constable, or officer of police, upon receiving any writ or warrant or precept directed to him by any court, to execute such writ or warrant and to serve every process, notice, or order conveyed to him under such precept according to the exigency of the writ, warrant, or precept in any place within the district or division in which such grama seva niladhari, constable, or officer is empowered to act.

Grama seva niladhari or constable to execute or serve processes in his own limits only.

360. It shall be competent to any Fiscal to whom any writ, warrant, or precept has been directed under the foregoing sections, and to the Fiscal's officer to whom the Fiscal may have entrusted such writ, warrant, or precept for execution, to endorse thereon the name of any grama seva niladhari, constable, or officer of police; and such endorsement shall operate in the case of a grama seva niladhari, constable or officer of police to constitute the person whose name is endorsed an officer of the Fiscal for the purpose of executing such writ, or warrant, or precept.

Endorsement of process by Fiscal. [§47, Law 20 of 1977.]

Duty of every Fiscal to assist. [§48, Law 20 of 1977.]

361. Every Fiscal and Fiscal's officer shall, and every grama seva niladhari, constable, or officer of police shall, within the local limits in which he is empowered to act, afford his aid and assistance to anyone charged under the foregoing sections with the duty of executing any writ or warrant, or of serving any process, notice, or order of court.

Every writ or process to be valid for the whole of Sri Lanka. [§ 49, Law 20 of 1977]

362. Every mandate, writ, warrant, precept, or other process issuing from the Supreme Court, the Court of Appeal, or from any District Court or Family Court or Primary Court shall have full force and validity in every place throughout Sri Lanka; and every person charged under the foregoing sections with the duty of executing any such process shall be protected thereby from civil liability for loss or damage caused by, or in the course of, or immediately consequential upon, the execution of such process by him, or in the case of the Fiscal by his officers, except when the loss or damage for which the claim is made is attributable to any fraud, gross negligence, or gross irregularity of proceeding, or gross want of ordinary diligence or abuse of authority on the part of the person executing such process:

Provided that no action shall be maintainable against any person charged as aforesaid with the duty of executing any such process in respect to his execution thereof, unless previous notice in writing distinctly setting forth the grounds of such action shall have been given to him by or on behalf of the plaintiff one month at least before the commencement of such action, and unless such action shall be brought within nine months after the cause of action shall have arisen;

And provided further, that it shall be lawful for the person to whom such notice of action has been given at any time before the commencement of such action to tender amends to the party aggrieved, and if the same be refused to plead such tender, at the same time paying into court for the use of the plaintiff the amount so tendered, and if the court by its judgment in the action shall hold that the amount so tendered and paid into court is sufficient amends for the party

aggrieved, the decree shall be passed in favour of the plaintiff for such amount, but he shall be condemned to pay all costs.

363. The seizure or sale of property, which does not belong to the person whose property is authorized by a writ of levy to be seized and sold, shall not be deemed to be an act done by or in the course of, nor an immediate consequence of, the execution of such writ within the meaning of the first paragraph of the last preceding section. But no person charged as aforesaid shall be liable in damages for any such seizure or sale, if the same shall be shown to have been effected under the bona fide belief that the property did belong to the person whose property is authorized to be seized or sold.

What acts not within last section.

364. Unless otherwise in this Ordinance enacted the precept of the court to the Fiscal directing the service of any process, order, or notice, or other document, not amounting to a writ to levy money, or to take any person in arrest, or to detain any person in custody, or to deliver possession of property shall be in the form No. 17 in the First Schedule.

Form of precept.

365. Process in civil cases, whether at the suit of the State or individuals, shall not be served or executed between the period of sunset and sunrise, nor on a public holiday, nor on any minister of religion, a bhikku or other priest or religious functionary while performing his functions in any place of public worship nor upon any individual of any congregation during the performance of public worship at any such place.

When process may not be served. [§ 50, Law 20 of 1977.]

366. The outer door of any dwelling house shall not be forced open in order to seize the person under civil process issued at the suit of a private individual, excepting such person shall have escaped or shall have been rescued after having been duly arrested.

Outer door not to be forced.

367. If the person executing any process under this Ordinance, directing or authorizing seizure of movable property, has obtained entrance into a house or other building, he may unfasten and open the door of any room in which he has reason to believe any such property to be.

In effecting seizure of movable property inner door may be opened.

Person executing process always to have writ with him or copy.

368. The person employed in carrying into effect any process of execution against either person or property shall always have with him the writ, warrant, or mandate of execution, or a copy of the same authenticated by the Fiscal or Deputy Fiscal, which shall, if required, be produced and shown to the party against whom, or against whose property, it is sought to be put in force.

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

369. In all civil cases where process of execution may issue against the person of a party, it shall be necessary, in order to constitute an arrest, that the body of the person to be arrested shall be actually seized or touched by the officer executing the process, unless such person express his acquiescence in the arrest without being so seized or touched.

Fiscal's return of writ or precept.

370. (1) Every Fiscal or Deputy Fiscal shall, on the receipt of any process, note thereon the day he received the same, and on the service or execution thereof the date and mode of such service or execution.

(2) When the writ of execution or precept for service has been carried into effect, or on the day appointed in the writ or precept for the return thereof, whichever date shall first occur, the Fiscal or Deputy Fiscal shall return the writ or precept to the court from which it issued with his report of what has been done under it.

Report to be accompanied by affidavit to be attached as an exhibit.

371. The report of the Fiscal or Deputy Fiscal constituting his return to the writ of execution or to the precept for service of any process shall be fair written and shall state concisely the mode in which the process has been served, or the steps which have been taken to effect service; and shall be accompanied by an affidavit made by the officer charged with the duty of executing the process, which affidavit shall set out the facts of the service effected or of the endeavour made by the officer to effect the service. The process and the affidavit shall be attached to the report as exhibits, and shall be referred to therein by means of a distinguishing letter or other mark put upon them, each initialled and dated by the Fiscal.

372. The Fiscal or Deputy Fiscal, or other person specially appointed by the Minister in charge of the subject of Justice in that behalf, is hereby authorized to administer the oath or affirmation which is requisite to the making of the affidavit in the last section mentioned. And every officer who makes a false statement of fact in any such affidavit commits (in addition to any offence of which under the provisions of the Penal Code he may by so doing be guilty) an offence which is punishable as contempt of court.

Power of Fiscal or other person to administer oath therefor.

PART II

OF SUMMARY PROCEDURE

CHAPTER XXIV

OF SUMMARY PROCEDURE

373. Every application to the court, or action, of summary procedure shall be instituted upon a duly stamped written petition presented to court by the applicant.

Summary procedure by petition. [§51, Law 20 of 1977.]

374. The petition shall be distinctly written upon good and suitable paper, and shall contain the following particulars:—

Form of petition. [§52, Law 20 of 1977.]

- (a) the name of the court and date of presenting the petition;
- (b) the name, description, and place of abode of the petitioner or petitioners;
- (c) the name, description, and place of abode of the respondent or respondents;
- (d) a plain and concise statement of the facts constituting the ground of the application and its circumstances, and of the petitioner's right to make it. Such statement shall be set forth in duly numbered paragraphs;
- (e) a prayer for the relief or order which the petitioner seeks.

375. If the application is instituted in the course of, or as incidental to, a pending action, whether of regular or summary procedure, the petition shall be headed with

If incidental to an action, petition to be entitled therein.

a reference to its number in the court, and the names of the parties thereto, and shall be filed as part of the record of such action, and all proceedings taken and orders made on such petition shall be duly entered in the journal required to be kept by section 92.

Affidavits and exhibits to be attached to petition.

376. With the petition, and so far as conveniently can be attached thereto, shall be exhibited such affidavits, authenticated copy records, processes, or other documentary evidence as may be requisite to furnish prima facie proof of the material facts set out or alleged in the petition, or the court may in its discretion permit or direct the petitioner to adduce oral evidence before the court for this purpose, which shall be taken down by the court in writing.

If grounds are sufficient, order may be nisi, or interlocutory.

377. If the court is satisfied on the evidence exhibited or adduced that the material facts of the petition are prima facie established or 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
- (b) an interlocutory order appointing a day for the determination of the matter of the petition, and intimating that the respondent will be heard in opposition to the petition if he appears before the court for that purpose on the day so appointed.

Order as to costs.

378. In the alternative (a) of section 377 the order *nisi* may comprise an order against the respondent, or any of the respondents, to pay the costs of the petitioner.

Form of order.

379. In either of the alternatives (a) and (b) of section 377 the order made shall be put into writing, and shall contain a prefatory recital of the petition, and of the exhibits and other evidence adduced in support thereof. And a copy of the order together with a copy of the petition shall be

served upon the respondent by the Fiscal in the manner and subject to the rules hereinbefore prescribed for the service of the summons in a regular action.

Service on respondent.

380. If the court is not satisfied on the evidence exhibited or adduced that the material facts of the petition are prima facie established or is of opinion that on the footing of those facts the petitioner is not entitled to the relief which he asks, then in either case the court shall refuse the petition.

If grounds are insufficient, petition to be refused.

381. The petition, with its exhibits, adduced evidence, and the order made thereon, shall be filed in court whether the order is in the alternative (a) or (b) of section 377, or is an order refusing the petition.

Petition and order thereon to be filed.

382. If on the day appointed in an order made under section 377 for the determination of the matter of the petition, the petitioner does not appear before the court either in person or by his registered attorney 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.

Non-appearance of petitioner on day appointed.

383. (1) If on such day the petitioner appears, and the respondent does not appear, and if the court is satisfied by the affidavit of the serving officer, stating the fact of the service, or by oral evidence, that the order has been duly served upon the respondent in time reasonably sufficient to enable him to appear, then if the order is an order *nisi* made under (a) of section 377, the court shall make it absolute, and shall pass no other order adverse to the respondent; but otherwise it shall make such order within the prayer of the petition as it shall consider right on the facts proved:

When court may make order nisi absolute.

Provided, however, that in the latter case the court shall make no order to pay costs against the respondent, except in cases where the prayer of the petition expressly asks for the costs of the application, and the court thinks it fit that the respondent should pay them.

(2) Nothing in this section shall prevent the court from dismissing the petition at this stage in the absence of the respondent, if it sees reason to think that the order ought not to have issued in the first instance.

Proceedings where both parties appear.

384. If on such day both the petitioner and the respondent appear, the proceedings on the matter of the petition shall commence by the respondent in person, or by his registered attorney, stating his objections, if any, to the petitioner's application; and the respondent shall then be entitled to read such affidavits or other documentary evidence as may be admissible, or by leave of the court to adduce oral evidence in support of his objections, or to rebut and refute the evidence of the petitioner:

Provided that no affidavit or other documentary evidence shall be so read without express leave of court, unless a copy of the document shall have been served on the petitioner or his registered attorney at least forty eight hours before the day when the matter of the petition comes on to be heard and determined; and the oral evidence shall be taken down in writing by the Judge.

Right to reply.

385. In the event of the respondent stating objections to the application, and not otherwise, and after the respondent's evidence, if any, shall have been read or given, the petitioner shall be entitled by way of reply to comment upon the respondent's case.

Additional evidence when admitted.

386. When the respondent's evidence has been taken, it shall be competent to the court, on the request of the petitioner, to adjourn the matter to enable the petitioner to adduce additional evidence; or, if it thinks necessary, it may frame issues of fact between the petitioner and respondent, and adjourn the matter for the trial of these issues by oral testimony. And on the day to which the matter is so adjourned, the additional evidence shall be adduced, and the issues tried in conformity with, as nearly as may be, the rules hereinbefore prescribed for the taking of evidence at the trial of a regular action.

387. The court, after the evidence has been duly taken and the petitioner and respondent have been heard either in person or by their respective attorneys-at-law or recognized agents, shall pronounce its final order in the matter of the petition in open court, either at once or on some future day, of which notice shall be given in open court at the termination of the trial. Final order.

388. (1) The final order so pronounced may be endorsed on the order *nisi* or on the interlocutory order, as the case may be. Endorsement 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":

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*.

(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.

389. No appeal by a respondent shall lie against any final order which has been made, in the case of the respondent's non-appearance, on the footing of either an order *nisi* or an interlocutory order in the matter of a petition; but it shall be competent to the court, within a reasonable time after the passing of such order, to entertain an application in the way of summary procedure instituted by any respondent against whom such order has been made, to have such final order set aside upon the ground that the applicant had been prevented from appearing after notice of the order *nisi* or interlocutory order by reason of accident or misfortune, or that such order *nisi* or interlocutory order had never been served upon him. And if the ground of such application is duly established to the satisfaction of the court, as against the original petitioner, the court Final order made on non-appearance of respondent, not appealable, but may be set aside.

may set aside the final order complained of upon such terms and conditions as the court shall consider it just and right to impose upon the applicant, and upon the final order being so set aside, the court shall proceed with the hearing and determination of the matter of the original petition as from the point at which the final order so set aside was made.

394. (1) If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the court may cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record and proceed with the action.

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.

Parties to an action of summary procedure.

390. In an application, or action, of summary procedure the persons, petitioning or respondent, are the parties to the action.

Journal in an action of summary procedure.

391. On the institution of an application of summary procedure which is not made in, or incidental to, any already pending action, the court shall commence and keep a journal entitled as of the matter of the application, according to the rules prescribed in section 92, and this journal so kept shall be the record of the matter of the application.

(2) For the purposes of this Chapter—

[§53, Law 20 of 1977.]

“estate” means the gross value of the estate of the deceased; and

“legal representative” means an executor or administrator, or in the case of an estate below the value of twenty thousand rupees, the next of kin who have adiated the inheritance.

395. In case of the death of a sole plaintiff or sole surviving plaintiff the legal representative of the deceased may, where the right to sue survives, apply to the court to have his name entered on the record in place of the deceased plaintiff, and the court shall thereupon enter his name and proceed with the action.

On death of sole plaintiff, legal representative may be substituted.

PART III

INCIDENTAL PROCEEDINGS

CHAPTER XXV

OF THE CONTINUATION OF ACTIONS AFTER ALTERATION OF A PARTY'S STATUS

On death of a party action does not abate if right to sue survives.

392. The death of a plaintiff or defendant shall not cause the action to abate if the right to sue on the cause of action survives.

On death of one out of more plaintiffs or defendants than one, if right to sue survive to or against the rest, action to proceed.

393. If there be more plaintiffs or defendants than one and any of them dies, and if the right to sue on the cause of action survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the court shall, on application in the way of summary procedure, make an order to the effect that the action do proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

396. If no such application be made to the court by any person claiming to be the legal representative of the deceased plaintiff, the court may pass an order that the action shall abate, and award to the defendant the costs which he may have incurred in defending the action, to be recovered from the estate of the deceased plaintiff; or the court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff or for proceeding with the action in order to a final determination of the matter in dispute, or for both those purposes.

If no application is made by legal representative action may be declared to abate.

397. In the event of any dispute arising as to who is the legal representative of a deceased plaintiff, it is competent to the court either to stay the action until the question has been decided in another action, or to decide at once, as between the parties

In case of dispute, court to decide who is legal representative.

before it, who shall be admitted to be such legal representative for the purpose of prosecuting the action. And this question shall in such case be dealt with and tried by the court as an issue preliminary to the trial of the merits of the action.

Of substitution of legal representative of deceased defendant.

398. (1) If there be more defendants than one, and any of them die before decree and the right to sue on the cause of action does not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives, the plaintiff may make an application to the court, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead. The court shall thereupon, on being satisfied that there are grounds therefor, enter the name of such representative on the record in the place of such defendant, and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the action, and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the action:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

(2) The legal representative of a deceased defendant may apply to have himself made a defendant in place of a deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon.

Action not abated by marriage of female party.

399. (1) The marriage of a female plaintiff or defendant shall not cause the action to abate, but the action may, notwithstanding, be proceeded with to judgment; and where the decree is against a female defendant, it may thereupon be executed against her alone.

(2) If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

400. The bankruptcy or insolvency of a plaintiff in any action which his assignee might maintain for the benefit of his creditors shall not bar the action, unless such assignee declines to continue the action and to give security for the costs thereof, within such time as the court may order.

Effect of bankruptcy of plaintiff.

401. If the assignee neglects or refuses to continue the action and to give such security within the time so ordered, the defendant may apply for the dismissal of the action on the ground of the plaintiff's bankruptcy or insolvency, and the court may dismiss the action and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

When assignee does not continue action.

402. If a period exceeding twelve months in the case of a District Court or Family Court, or six months in a Primary Court, elapses subsequently to the date of the last entry of an order or proceeding in the record without the plaintiff taking any steps to prosecute the action where any such step is necessary, the court may pass an order that the action shall abate.

When court itself may order action to abate.

403. When an action abates or is dismissed under this Chapter, no fresh action shall be brought on the same cause of action.

No fresh action to be brought where action has abated; but court may set aside order.

But the plaintiff or the person claiming to be the legal representative of a deceased or insolvent plaintiff may, within such period of time as may seem to the court under the circumstances of the case to be reasonable, apply for an order to set aside the order for abatement or dismissal; and if it be proved that he was prevented by any sufficient cause from continuing the action the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Continuation of action in other cases of assignment of party's interest.

404. In other cases of assignment, creation, or devolution of any interest pending the action, the action may, with the leave of the court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come, either in addition to or in substitution for the person from whom it has passed, as the case may require.

Applications under this Chapter how to be made.

405. The application under section 398 may be made *ex parte*, but in all other applications for the exercise of the discretion of the court under this Chapter all the parties to the action, not being the applicants, or such of them as may be affected by the order sought, must be made respondents on the face of the application.

CHAPTER XXVI

OF THE WITHDRAWAL AND ADJUSTMENT OF ACTION

Withdrawal and adjustment of action.

406. (1) If, at any time after the institution of the action, the court is satisfied on the application of the plaintiff—

- (a) that the action must fail by reason of some formal defect, or
- (b) that there are sufficient grounds for permitting him to withdraw from the action or to abandon part of his claim with liberty to bring a fresh action for the subject-matter of the action, or in respect of the part so abandoned,

the court may grant such permission on such terms as to costs or otherwise as it thinks fit.

(2) If the plaintiff withdraw from the action, or abandon part of his claim, without such permission, he shall be liable for such costs as the court may award, and shall be precluded from bringing a fresh action for the same matter or in respect of the same part.

(3) Nothing in this section shall be deemed to authorize the court to permit one of several plaintiffs to withdraw without the consent of the others.

407. In any fresh action instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of prescription or limitation in the same manner as if the first action had not been brought.

Permission to bring fresh action not to affect prescription.

408. If an action be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the action, such agreement, compromise, or satisfaction shall be notified to the court by motion made in presence of, or on notice to, all the parties concerned, and the court shall pass a decree in accordance therewith, so far as it relates to the action, and such decree shall be final, so far as relates to so much of the subject-matter of the action as is dealt with by the agreement, compromise, or satisfaction.

Adjustment of actions out of court.

CHAPTER XXVII

OF PAYMENT OF MONEY INTO COURT

409. The defendant in any action brought to recover a debt or damage may, at any stage of the action, deposit in court such sum of money as he considers a satisfaction in full of the plaintiff's claim.

Payment of money into court.

410. Notice in writing of the deposit shall be given by the defendant to the plaintiff, and the amount of the deposit shall (unless the court otherwise directs) be paid out of court to the plaintiff on his application.

Notice thereof.

411. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Interest on deposit not allowed to plaintiff after notice.

412. If the plaintiff accepts such amount only as satisfaction in part of his claim, he may prosecute his action for the balance; and if the court eventually decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the action incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where plaintiff accepts payment in part satisfaction of his claim.

Procedure where plaintiff accepts payment in full satisfaction of his claim.

413. If the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the court a statement to that effect, embodied in a motion for judgment, and the court shall pass judgment accordingly, and in directing by whom the costs of each party are to be paid the court shall consider which of the parties is most to blame for the litigation.

Illustrations

- (a) A owes B one hundred rupees. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into court. B accepts it in full satisfaction of his claim, but the court should not allow him any costs, the litigation being presumably groundless on his part.
- (b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into court. B accepts it in full satisfaction of his claim. The court should also give B his costs of action, A's conduct having shown that the litigation was necessary.
- (c) A owes B one hundred rupees, and is willing to pay him that sum without action. B claims one hundred and fifty rupees, and sues A for that amount. On the plaint being filed, A pays one hundred rupees into court, and disputes only his liability to pay the remaining fifty rupees. B accepts the one hundred rupees in full satisfaction of his claim. The court should order him to pay A's costs.

Money must be actually paid.

414. When a defendant by his answer or any party to an action by petition professes to pay money into court, or when a defendant by his answer sets up a tender of any sum of money before action brought, the answer or the petition shall not be received or filed by the court unless either the sum of money so professed to have been paid into court, or so alleged to have been tendered, is actually paid into court, or the requisite steps for the purpose are taken by the defendant or other party, as the case may be.

This Chapter to apply to any party.

415. The enactments of this Chapter shall apply, *mutatis mutandis*, to the case of payment of money into court made by any party to the action in satisfaction of the claim of any other party.

CHAPTER XXVIII

OF SECURITY FOR COSTS

416. If at the institution, or at any subsequent stage, of an action, it appears to the court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing outside Sri Lanka, the court may in its discretion, and either of its own motion or on the application of any defendants, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Security for costs where plaintiff resident out of Sri Lanka. [§54, Law 20 of 1977.]

417. If at the institution, or at any subsequent stage, of an action, it appears to the court that the defendant, or (where there are more defendants than one) that any defendant, is residing outside Sri Lanka, 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.

Security for costs where defendant resident out of Sri Lanka. [§54, Law 20 of 1977.]

418. (1) In the event of such security not being furnished within the time so fixed, the court shall dismiss the action, unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 406, or show good cause why such time should be extended, in which case the court may extend it.

If security not furnished when ordered, action may be dismissed.

(2) When an action is dismissed under this section the plaintiff may within thirty days, and after due notice in writing to the defendant, apply for an order to set the dismissal aside, and if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs, or otherwise as it thinks fit, and shall appoint a day for proceeding with the action.

Dismissal may be set aside.

419. Whoever leaves, or is about to leave, Sri Lanka under such circumstances as to afford reasonable probability that he

What amounts to residing out of Sri Lanka. [§55, Law 20 of 1977.]

will not be forthcoming whenever he may be called upon to pay costs, shall be deemed to be residing outside Sri Lanka within the meaning of section 416 or 417.

Provided that, under special circumstances, the commission may be directed to any person whom the court issuing the commission thinks fit to appoint.

CHAPTER XXIX

OF COMMISSIONS

A.—COMMISSIONS TO EXAMINE WITNESSES

Commission to examine sick person, &c., within jurisdiction.

420. Any court may in any action issue a commission for the examination on interrogatories or otherwise, and on oath or affirmation, of persons resident within the local limits of its jurisdiction who are from sickness or infirmity unable to attend the court, or of women who, according to the customs and manners of the country, ought not to be compelled to appear in public.

To whom may commission issue.

421. The commission for the examination of a person who resides within the local limits of the jurisdiction of the court issuing the same may be issued to any person whom the court thinks fit to execute the same.

Commission to examine in other cases.

422. (1) Any court may in any action issue a commission for the examination of—

- (a) any person resident beyond the local limits of its jurisdiction ;
- (b) persons who are about to leave such limits before the date on which they are required to be examined in court ; and
- (c) civil and military officers of Government who cannot in the opinion of the Judge attend the court without detriment to the public service ; and
- (d) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public.

To whom may commission issue.

(2) Such commission shall ordinarily be issued to any court, except the Supreme Court, the Court of Appeal and the High Court, within the local limits of whose jurisdiction such person resides, and which can most conveniently execute the same :

When may court issue commission to examine person outside Sri Lanka.

423. When any court to which application is made for the issue of a commission for the examination of a person residing at any place not within Sri Lanka is satisfied that his evidence is necessary, the court may issue such commission.

Court to execute the commission.

424. Every court receiving a commission for the examination of any person shall examine him pursuant thereto.

Return thereof.

425. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order ; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) be recorded in the action.

426. Evidence taken under a commission shall not be read as evidence in the action without the consent of the party against whom the same is offered, unless—

Evidence taken under commission when admissible.

- (a) the person who gave the evidence is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined ; or is a person whom the court, in accordance with the customs and manners of the country, sees reason to exempt from personal appearance in court ; or
- (b) the court in its discretion, for good cause to be assigned by it, dispenses with the proof of any of the circumstances mentioned in the last preceding section and authorizes the evidence of any person being read as evidence in the action, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Foreign courts to which provisions apply. [§56, Law 20 of 1977.]

427. The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by the courts of any foreign country recognized by the Government of Sri Lanka.

(2) The report of the commissioner or commissioners in each case within (B) and (C), and the evidence taken by a commissioner (but not the evidence without the report) shall be evidence in the action; but the court, or, with the permission of the court, any of the parties to the action, may examine the commissioner personally in open court touching any of the matters referred to him, or mentioned in his report, or as to the manner in which he has made the investigation or conducted his proceedings.

Commissioner may be examined personally.

B.—COMMISSIONS FOR LOCAL INVESTIGATIONS

Commission to make local investigation.

428. In any action or proceeding in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, and the same cannot be conveniently conducted by the Judge in person, the court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report to the court.

433. Before issuing any commission under this Chapter the court may order such sum (if any) as it thinks reasonable for the expenses of the commission, to be paid into court by the party at whose instance or for whose benefit the commission is issued.

Court may order payment into court of expenses.

Return thereof.

429. The commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, subscribed with his name, to the court.

434. Any commissioner appointed under this Chapter shall have authority to administer an oath or affirmation, and may, unless otherwise directed by the order of appointment—

Powers of commissioners.

C.—COMMISSIONS TO EXAMINE ACCOUNTS

Commission to examine accounts.

430. In any action in which an examination or adjustment of accounts is necessary, the court may issue a commission to such person as it thinks fit, directing him to make such examination.

(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;

Court to furnish instructions.

431. The court shall furnish the commissioner with such part of the proceedings of the action and such detailed instructions as appear necessary, and the instructions shall distinctly specify whether the commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

(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.

GENERAL PROVISIONS

Evidence taken on commission shall be filed and recorded in the action.

432. (1) The commission in every case within this Chapter shall be entitled as in the action, whether of regular or summary procedure, in which it issued, and on its return shall, with all the proceedings, evidence, and documents, if any, taken therein, be filed and recorded as of that action.

435. The provisions of this Ordinance relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Chapter, whether the commission in execution of which they are so required has been issued by a court situate within, or by a court situate beyond, the limits of Sri Lanka.

Provisions of this Ordinance as to witnesses to apply.

Parties should appear before commissioner.

436. Whenever a commission is issued under this Chapter the court shall direct that the parties to the action shall appear before the commissioner in person or by their recognized agents or registered attorneys.

If the parties do not so appear, the commissioner may proceed *ex parte*.

AFFIDAVITS

Evidence on affidavit.

437. Whenever any order has been made by any court for the taking of evidence on affidavit, or whenever evidence on affidavit is required for production in any application or action of summary procedure, whether already instituted or about to be instituted, an affidavit or written statement of facts conforming to the provisions of section 181 may be sworn or affirmed to by the person professing to make the statement embodied in the affidavit before any court or Justice of the Peace or Commissioner for Oaths within the local limits of whose jurisdiction he is at the time residing, and the fact that the affidavit appears to be entitled in an action in a competent court shall be sufficient authority to such court or Justice of the Peace or Commissioner to administer the oath or affirmation.

Affidavit to be duly entitled and to be signed by the declarant.

438. Every affidavit shall be entitled as in the court and action in which it is to be used, and shall be signed by the declarant in the presence of the court, Justice of the Peace, or Commissioner before whom it is sworn or affirmed.

Case of illiterate person.

439. In the event of the declarant being a blind or illiterate person, or not able to understand writing in the language of the court, the affidavit shall at the same time be read over or interpreted to him in his own language, and the jurat shall express that it was read over or interpreted to him in the presence of the court, Justice of the Peace, or Commissioner, and that he appeared to understand the contents; and also that he made his mark or wrote his signature in the presence of the court, Justice of the Peace, or Commissioner. And when a mark is made instead of a signature, the person who writes the marksman's name against the mark shall also sign his name and address in the presence of the court, Justice of the Peace, or Commissioner.

Alteration of affidavit.

440. Every affidavit must be fairly written, and must exhibit no erasures or blotting or blanks; if any alteration is needed to be made in the original writing before it is sworn or affirmed to, every excision of a word, or letter, or figure shall be made by so drawing a line through it as to leave the word, letter, or figure still legible; and every added word, letter, or figure shall be added by interlineation, not by superposition or alteration; and every excision and interlineation shall be initialled by the Judge, Justice of the Peace, or Commissioner before whom the affidavit is affirmed or sworn.

CERTIFIED COPIES

[§57, Law 20 of 1977.]

440A. (1) Where a party to any proceedings in a civil court requires for the purpose of such proceedings a certified copy of any complaint or statement made to a police officer, or an inquirer, whether in the course of any investigation or otherwise, or of any plan, or sketch prepared by a police officer, or an inquirer, on information furnished by any person or persons, such party shall, upon the payment by such party to the appropriate authority of the usual charges, be entitled to obtain a certified copy of such complaint, statement, plan or sketch, as the case may be; and the court, upon application made in that behalf, may direct the appropriate authority to issue such certified copy.

Issue of certified copies of statements or complaints made to, or of plans or sketches prepared by, police officers or inquirers and the production of such certified copies. [§58, Law 20 of 1977.]

(2) Notwithstanding anything to the contrary in any other law, a certified copy of any complaint, statement, plan or sketch obtained under the preceding subsection by a party to any proceedings in a civil court, may, without the police officer or inquirer to whom the complaint or statement was made, or by whom the plan or sketch was prepared being called as a witness, be produced in such proceedings by such party in proof of the fact that the complaint or statement was made, or that the information on which the plan or sketch was prepared was furnished to such police officer or inquirer by any person or persons, if the person by whom the complaint or statement was made or every person who furnished the information on which the plan or sketch was prepared has deposed to the fact of

having made such complaint or statement or of having furnished such information, as the case may be :

Provided however, that the court may of its own motion, or upon application made by any party to such proceedings, require the production of the book in which such complaint or statement was first recorded or the original of such plan or sketch, as the case may be, or require that the person to whom such complaint or statement was made, or by whom such plan or sketch was prepared, be summoned as a witness.

(3) In the preceding subsections—

“appropriate authority”—

- (a) in relation to any information or statement recorded in an information book, kept by an officer in charge of a police station, means such officer ;
- (b) in relation to any plan or sketch prepared by a police officer attached to a police station, means the officer in charge of that police station ; and
- (c) in relation to any information or statement recorded in an information book kept by an inquirer for any area or any plan or sketch prepared by an inquirer for any area means the inquirer for such area ;

“inquirer” and “police officer” shall have the same meaning as in the Code of Criminal Procedure Act.

PART IV

ACTIONS IN PARTICULAR CASES

CHAPTER XXXI*

ACTIONS BY OR AGAINST THE STATE, OR MINISTERS, DEPUTY MINISTERS, OR PUBLIC OFFICERS

Actions by or against the State. [§60, Law 20 of 1977.]

456. (1) All actions by or against the State shall be instituted by or against (as the case may be) the Attorney-General.

(2) In actions by the State instituted by the Attorney-General, instead of inserting in

the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words “the Attorney-General”.

(3) Attorney-General does not in this section include the Solicitor-General, the Additional Solicitor-General, a Deputy Solicitor-General, or any State Counsel.

457. In any action to which the State is a party, all processes of court issuing against the State shall be served upon the Attorney-General. Service of process.

458. The court, in fixing the day for the Attorney-General to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and may extend the time at its discretion. Attorney-General to have reasonable time to appear.

459. Where the defendant is a public officer, the court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the court that the summons may be most conveniently so served. Service on public officer.

460. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel; and the court upon such application may extend the time for so long as appears to be requisite. Public officer may apply for time to answer.

461. No action shall be instituted against the Attorney-General as representing the State or against a Minister, Deputy Minister, or public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of one month next after notice in writing has been delivered to such Attorney-General, Minister, Deputy Minister, or officer (as the case may be), or left at his office, stating the cause of action and the name and place of abode of the person intending to institute the action and the relief which he claims; and the plaint in such action must contain a statement that such notice has been delivered or left. Attorney-General, Minister, Deputy Minister, and public officer entitled to notice.

* Chapter XXX—Sections 441 to 455 (both inclusive)—is repealed by Law No. 20 of 1977.

Procedure where no notice has been given under section 461. [§61, Law 20 of 1977.]

461A. (1) Where no notice as required by section 461 has been given prior to the institution of the action, and objection is taken prior to or in the answer that no such notice has been given, the court shall stay further proceedings of the action for a period of one month and may order the plaintiff to pay the defendant such costs as it thinks fit. Where proceedings are stayed under this subsection, the date immediately following the period of one month after the date of the institution of such action shall be deemed to be the date of institution of the action where such date is material for the purpose of determining whether the action is prescribed or not, and such action shall thereafter be proceeded with after such notice has been duly given.

(2) Where after the giving of such notice as required by section 461, the plaintiff 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 if a postponement or adjournment is occasioned in consequence thereof, the court may award such costs as it thinks fit.

(3) No such action as is referred to in section 461 shall be dismissed only for the reason that no notice prior to the institution of action had been given as required by the said section or that a statement that such notice of action has been duly delivered or left has not been averred in the plaint.

Writ against person or property in such action.

462. No writ against person or property shall be issued against the Attorney-General in any action brought against the State or in any action in which the Attorney-General is substituted as a party defendant under section 463.

When Attorney-General may intervene.

463. If the Attorney-General undertakes the defence of an action against a Minister, Deputy Minister, or public officer, the Attorney-General shall apply to the court, and upon such application the court shall substitute the name of the Attorney-General as a party defendant in the action.

464. If such application is not made by the Attorney-General on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in an action between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Where Attorney-General does not intervene action to proceed as private party against private party.

465. In an action against a Minister, Deputy Minister, or public officer in respect of such act as aforesaid, the court shall exempt the defendant from appearing in person when he satisfies the court that he cannot absent himself from his duty without detriment to the transaction of any business of Parliament, or Cabinet of Ministers, or to the public service.

Minister, Deputy Minister, or public officer need not appear in person.

CHAPTER XXXIII*

ACTIONS BY AND AGAINST CORPORATIONS AND COMPANIES

470. In actions by or against any corporation, or by or against a board or other public body, or any company authorized to sue or be sued, the name and the style of the corporation, board, public body, or company, or of the officer (if any) in whose name any such corporation, board, public body, or company is authorized to sue and be sued, as the case may be, may be inserted as the name of the plaintiff or defendant; and the plaint or answer may be subscribed on behalf of the corporation, board, public body, or company by any member, director, secretary, manager, or other principal officer thereof who is able to depose to the facts of the case; and in any case in which such corporation, board, public body, or company is represented by a registered attorney, shall be subscribed by such registered attorney.

Action by or against a corporation or company.

471. When the action is against a corporation, or against a board or other public body, or a company authorized to sue and be sued in the name of an officer or of a trustee, except in cases where a particular mode of service is directed by law, the summons may be served—

Service on corporation or company.

(a) by leaving it at the registered office (if any) of the corporation, board, public body, or company; or

* Chapter XXXII—Sections 466 to 469 (both inclusive)—is repealed by Law No. 20 of 1977.

(b) by giving it to the secretary or other principal officer of the corporation, board, public body or company ;

and the court may in such summons or by special order require the personal appearance of such secretary or other principal officer of the corporation, board, public body, or company who may be able to answer material questions relating to the action.

CHAPTER XXXIV

ACTIONS BY AND AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS

Actions against trustees, executors, and administrators.

472. In all actions concerning property vested in a trustee, executor, or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent persons so interested ; and it shall not ordinarily be necessary to make them parties to the action. But the court may, if it thinks fit, order them, or any of them, to be made such parties.

All executors, &c., should be made parties.

473. When there are several trustees, executors, or administrators, they shall all be made parties to an action by or against one or more of them :

Provided that executors who have not proved their testator's will, and trustees, executors, and administrators beyond the local limits of the jurisdiction of the court, need not be made parties.

Executors and administrators liable in costs.

474. In every action brought by an executor or administrator in right of his testator or intestate, such executor or administrator shall, unless the court shall otherwise order, be liable to pay costs to the defendant in case of judgment being entered for the defendant, and in all other cases, in which he would be liable if such plaintiff were suing in his own right upon a cause of action accruing to himself ; and the defendant shall have judgment for such costs, and they shall be recovered accordingly.

Husband of executrix not to be made party.

475. Unless the court directs otherwise, the husband of a married executrix or administratrix shall not be a party to an action by or against her in her representative capacity.

CHAPTER XXXV

ACTIONS BY AND AGAINST MINORS AND PERSONS UNDER OTHER DISQUALIFICATION

476. Every action by a minor shall be instituted in his name by an adult person who in such action shall be designated in the plaint the next friend of the minor, and may be ordered personally to pay any costs in the action as if he were the plaintiff. Action by minor.

477. Every application to the court on behalf of a minor (other than an application under section 487) shall be made in his name by his next friend or his guardian for the action, and shall be so expressed to be made on the face of the application. Next friend and guardian ad litem.

478. (1) If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the registered attorney or other person by whom it was presented. Procedure where no next friend.

(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.

479. Where the defendant to an action is a minor, the court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the action for such minor, and generally to act on his behalf in the conduct of the case. Court may appoint guardian ad litem.

480. Every order made in an action or on any application before the court in or by which a minor is in any way concerned or affected without such minor being represented by a next friend or guardian for the action, as the case may be, may be discharged on application made on summary procedure for the purpose ; and, if the registered attorney 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 registered attorney, provided he was duly made a respondent to the application. No order to affect minor not represented.

Who may act as next friend.

481. (1) Any person being of sound mind and full age may be appointed next friend of a minor, provided his interest is not adverse to that of such minor and he is not a defendant in the action.

(2) Such appointment shall be made after application by way of summary procedure supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor, and to such application the defendant shall be made respondent. And on the occasion of any such application being made the minor should appear personally in court unless prevented by good cause, such as extreme youth or illness.

On cause shown court may remove next friend.

482. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him or if he does not do his duty, or, pending the action, ceases to reside within Sri Lanka, or for any other sufficient cause, application may be made on summary procedure on behalf of the minor or by a defendant for his removal; and the court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Retirement of next friend.

483. (1) Unless otherwise ordered by the court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be on summary procedure supported by affidavit, showing the fitness of the person proposed, and also that he has no interest adverse to the minor, and to such application the defendant shall be made respondent.

Death or removal of next friend.

484. On the death or removal of the next friend of a minor further proceedings shall be stayed until the appointment of a next friend in his place.

Appointment of new next friend.

485. If the registered attorney 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.

486. A minor plaintiff, or a minor not a party to an action on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the action or application.

Minor's right of election on coming of age.

487. (1) If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

Discharge of next friend on minor's election to proceed with action.

(2) The title of the action or application shall, upon such order being made, be altered so as to read thenceforth thus: "A. B., late a minor, by C. D., his next friend, but now of full age".

488. If he elects to abandon the action or application he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the action or application, on repayment of the costs incurred by the defendant, or respondent, or which may have been paid by his next friend.

Procedure on election of sole plaintiff to abandon on payment of costs.

489. Any application under section 487 or section 488 may be made *ex parte*; and the affidavit of facts upon which it is based must satisfy the court that the late minor has attained his full age.

Application to be *ex parte*.

490. (1) A minor co-plaintiff on coming of age, and desiring to repudiate the action, must apply to have his name struck out as co-plaintiff; and the court, if it finds that he is not a necessary party, shall dismiss him from the action on such terms as to costs or otherwise as it thinks fit.

Procedure on election of a co-plaintiff to repudiate.

(2) The next friend as well as the defendant, shall be served with the petition of application as respondent, and it must be proved by affidavit that the late minor has attained his full age; the costs of all parties of such application and of all or any proceedings theretofore had in the action shall be paid by such persons as the court directs.

If the late minor be a necessary party to the action, the court may direct him to be made a defendant.

that of the minor, but neither a plaintiff nor a married woman can be so appointed.

Procedure when ex-minor applies to have action dismissed as unreasonable or improper.

491. (1) If any minor on attaining majority can prove to the satisfaction of the court that an action instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply by way of summary procedure to have the action dismissed.

496. If the guardian for the action of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the court may remove him and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Court may remove guardian *ad litem*.

(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.

497. If the guardian for the action dies pending such action, or is removed by the court, the court shall appoint a new guardian in his place.

Death of guardian.

Minor may in person sue for wages.

492. Nothing in the foregoing sections shall affect the right of any minor to prosecute any proceedings in a Primary Court for any money which may be due to him for wages or piecework, or for work as a servant, artificer, or labourer, in the same manner as if he were of full age.

498. When the enforcement of a decree or order is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the action of such minor shall be appointed by the court, on an application of summary procedure duly made for this purpose, and the decree-holder shall then serve on such guardian notice of such application.

Procedure for execution of decree against minor heir.

Application for appointment of guardian *ad litem*.

493. (1) An order for the appointment of a guardian for the action may be obtained upon application on summary procedure in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the action adverse to that of the minor, and that he is a fit person to be so appointed.

499. No sum of money or other thing shall be received or taken by a next friend or guardian for the action on behalf of a minor at any time before decree or order, unless he has first obtained the leave of the court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

When court may allow next friend funds for suit.

(2) On the occasion of such an application being made, the minor ought to appear personally in court unless prevented by good cause, such as extreme youth or illness, from doing so.

500. (1) No next friend or guardian for the action shall, without the leave of the court, enter into any agreement or compromise on behalf of a minor with reference to the action in which he acts as next friend or guardian.

Next friend may not compound action without leave of court.

When officer of court may be appointed.

494. When there is no other person fit and willing to act as guardian for the action, the court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor.

(2) Any such agreement or compromise entered into without the leave of the court shall be voidable against all parties other than the minor.

Co-defendant may be appointed.

495. A co-defendant of sound mind and of full age may be appointed guardian for the action, if he has no interest adverse to

501. (1) The provisions contained in this Chapter shall, *mutatis mutandis*, apply in the case of persons of unsound mind and mentally deficient persons, adjudged to be so under the provisions of this Ordinance or under any law for the time being in force.

This Chapter to apply to persons of unsound mind and mentally deficient persons. [§13, 53 of 1980.]

(2) For the purposes of this section, "persons of unsound mind and mentally deficient persons", mean persons who have been so adjudged under the provisions of this Ordinance or under any law for the time being in force, or where there has been no such adjudication, persons of whom the court is satisfied, after inquiry, to be of unsound mind or mentally deficient and incapable of managing their own affairs.

Explanation.—In this Chapter the expression "commanding officer" means the officer in actual command for the time being of any ship, regiment, corps, detachment, or naval, military, or air depot to which the party belongs.

504. Any person authorized by such party to prosecute or defend an action in his stead may prosecute or defend it in person in the same manner as such party could do if present; or he may appoint an attorney-at-law to prosecute or defend the action on behalf of such party.

Agent may sue or defend in person.

505. Processes served upon any person authorized by any party under section 503, or upon any attorney-at-law appointed as aforesaid by such person to act for or on behalf of such party, shall be as effectual as if they had been served on the party in person or on his registered attorney; and no process in the action shall be served upon such party personally without express order of court.

Service of process in such cases.

506. (1) When any naval, military, or air officer or any sailor, soldier, or airman is a defendant, a copy of the summons shall be sent by the Fiscal to his commanding officer for the purpose of being served on him.

Copy of summons may be sent to commanding officer for service.

(2) The officer to whom such copy is sent shall cause it to be served on the person to whom it is addressed, if practicable, and shall return it to the Fiscal with the written acknowledgment of such person endorsed thereon.

(3) If from any cause the copy cannot be so served, it shall be returned to the Fiscal by whom it was sent, with information of the cause which has prevented the service.

507. (1) If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, or naval, military, or air station, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

Warrant of arrest may likewise be delivered for execution.

(2) The commanding officer shall, if the person named therein is by law liable to arrest, back the warrant or other process with his signature, and shall in the case of a

Majority, what is.

502. For the purposes of this Chapter, a minor shall be deemed to have attained majority or full age on his attaining the age of twenty-one years, or on marriage, or on obtaining letters of *venia aetatis*.

CHAPTER XXXVI

ACTIONS BY AND AGAINST PERSONS IN THE NAVAL, MILITARY, OR AIR SERVICE

Actions by or against persons in the naval, military, or air force.

503. (1) When any officer in the naval, military, or air service or any sailor, soldier, or airman actually serving the Government in the capacity of a member of a naval, military, or air force is a party to an action, and cannot obtain leave of absence for the purpose of prosecuting or defending the action in person, he may authorize any person to sue or defend in his stead.

Authority to agent.

(2) The authority shall be in writing, and shall be signed by the party in the presence of—

- (a) his commanding officer, or of the next subordinate officer if the party be himself the commanding officer; or
- (b) where the party is serving in naval, military, or air force staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in court.

(3) When so filed, the counter-signature shall be sufficient proof that the authority was duly executed, and that the party by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the action in person.

warrant of arrest cause such person, if within the limits of his command, to be arrested and delivered to the officer so charged.

CHAPTER XXXVII

ACTIONS OF ACCOUNT

Actions of account.

508. When the claim which is made in the plaint, or is set up in the answer, is such that the action cannot be disposed of, or a complete and final decree made in the matter thereof between the parties without the taking of accounts, or the making inquiry into facts, or the demarcation of land, or the realization of assets, as the case may be, it shall be competent to the court to adjudicate piecemeal upon the matters in issue, and in such adjudications to make interlocutory decrees or orders of a final character between the parties at hearings had by successive adjournments; and, in particular, to take any accounts, and to make an inquiry into facts separately from the remaining matter of the action on a day to be appointed for the purpose, and to issue the necessary directions or commissions for the demarcation of land or realization of assets, and to adjourn the hearing from time to time for further orders or directions, or for final determination, to such dates as may be necessary or convenient to enable the accounts to be taken, the inquiries made, and the demarcation of land or realization of assets, as the case may be, to be effected, in the interval.

Interlocutory order for taking accounts, &c.

509. In any such case the order of adjournment for the purpose of the accounts being taken, inquiries made, or commissions or directions issued, must adjudicate (either by consent or upon admissions of the parties, or upon other sufficient evidence) upon so much of the rights of, or of the fiduciary relations between, the parties, which are at issue in the action, as may suffice to give rise to the liability of the respective parties affected by the order to account, or may serve to render the inquiries, directions, or commissions thereby directed proper and necessary.

Form and scope of order.

510. Every order directing an account to be taken, or giving leave to a party to falsify or to surcharge an account, shall appoint a

day for the filing of the 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.

511. The account directed to be taken, before it is filed, must be verified on oath or affirmation by the accounting party. Objections to the account may be filed by any party concerned in the right taking of the accounts and may be directed as well to adding new entries or enhancing existing entries on the debit side of the accounting party, as to falsifying the account given by him in any particular. And the trial of the issues arising out of the objections to the account shall conform, as nearly as may be, in regard to the order and method of proceeding and the taking of evidence, to the rules hereinbefore laid down for the trial of a regular action.

The taking of the accounts.

512. The day for filing the account directed to be taken, and the times for filing the objections thereto, and for the hearing and determination of the issues arising thereout, shall respectively be fixed with a due regard to the circumstances of the matter and the situation of the parties therein, so that reasonable opportunity may be afforded to the accounting party to make out his account, to the opposing party to examine the same and to satisfy himself in respect to its correctness, and to all parties to prepare for trial.

Reasonable care to be taken in appointing the days for the purpose.

513. In the event of the accounting party not duly filing his account, and not satisfying the court that there is just cause for his default, the court shall proceed with the hearing of the matter of the account and adjudicate upon the same on the day appointed therefor by finding the actual state of the account directed to be taken upon such materials as may be furnished by the opposing party:

Procedure where accounting party makes default.

Provided, nevertheless, that any reasonable extension of time which may be bona fide required by any party, either for filing accounts or objections thereto, or for

preparing for trial, may be granted by the court on such terms as it may think proper, if such extension of time be applied for at the earliest possible moment, upon materials showing good and sufficient ground, and upon notice to the other parties concerned.

What provisions apply when an order is made in an action for an inquiry.

514. When an order is made in an action for an inquiry into facts, the foregoing rules shall, *mutatis mutandis*, apply to the making of the order, the filing of the state of facts and of the objections thereto, or counterstate of facts, and to the trial of the issues arising thereout respectively, so nearly as reasonably may be.

Adjournment of the hearing until after the accounts, &c., shall have been taken.

515. When the hearing of an action is adjourned for the intermediate taking of accounts, making of inquiries, or execution of commissions, or of other directory orders, the interval of adjournment shall be adjusted with immediate reference to the proceedings prescribed by the foregoing rules for such interlocutory matter, so as to allow of its being conveniently completed before the resumption of the hearing so adjourned. And the order for adjournment shall include or comprehend the orders and directions requisite under these rules for the taking of the accounts or executing the other matters for which the adjournment is made:

Provided, nevertheless, that any reasonable extension of the time of adjournment which may seem to the court necessary, or which may be bona fide required by any party, in consequence of extension of time being granted for, or of delay in, or prolongation of, the proceedings of the interlocutory matters, or upon other good and sufficient ground shown by proper evidence, may be ordered by the court either on the day to which the hearing is adjourned, or upon any other day, provided reasonable notice of the application to the court for the extension of the time of adjournment be afforded to all parties.

CHAPTER XXXVIII

TESTAMENTARY ACTIONS

Deposit of the will of deceased. [§64, Law 20 of 1977.]

516. (1) When any person shall die leaving a will in Sri Lanka, the person in whose keeping or custody it shall have been

deposited, or who shall find such will after the testator's death, shall produce the same to the District Court of the district in which such depository or finder resides, or to the District Court of the district in which the testator shall have died, as soon as reasonably may be after the testator's death. And he shall also make oath or affirmation, or produce an affidavit (form No. 81, First Schedule) verifying the time and place of 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 Sri Lanka.

The will so produced shall be numbered and initialled by the Probate Officer and deposited and kept in the record room of the District Court.

(2) In this section, "Probate Officer" means the Registrar of the District Court and includes any other officer generally or specially authorized by the court to exercise powers and perform the duties of a Probate Officer in testamentary proceedings.

517. Any person liable to produce any will to any court under the provisions of the last preceding section, who shall wilfully omit to produce such will, or to furnish the information thereby required, shall be guilty of an offence, and liable to a fine not exceeding one thousand rupees.

Penalty on neglect.

518. (1) When any person shall die leaving a will under or by virtue of which any property in Sri Lanka is in any way affected, any person appointed executor therein may apply to the District Court of the district within which he resides, or within which the testator resided at the time of his death, or within which any land belonging to the testator's estate is situate, to have the will proved and to have probate thereof issued to him; also any person interested, either by virtue of the will or otherwise, in having the property of the testator administered, may apply to such court to have the will proved and to obtain grant to himself of administration of the estate with copy of the will annexed.

Who may apply for probate or administration. [§65, Law 20 of 1977.]

(2) If any person who would be entitled to administration is absent from Sri Lanka, a grant of letters of administration with or without the will annexed, as the case may require, may be made to the duly constituted attorney of such person.

Probate or administration compulsory where value of estate is or over twenty thousand rupees. [§2, 24 of 1969.]

519. (1) Upon any such application being made, and, in every case in which the estate of the testator amounts to or exceeds in value twenty thousand rupees, whether any such application shall have been made or not, it shall be obligatory on the court to, and the court shall, issue probate of the will to the executor or executors named therein; or if there is no executor resident in Sri Lanka competent and willing to act, the court shall issue letters of administration with or without the will annexed, as the case may require, to some person who by the provisions of the last preceding section is competent to apply for the same, or to some other person who, in the opinion of the court, by reason of consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, is a proper person to be appointed administrator; and in every such case letters of administration may be limited or not in manner hereinafter provided, as the court thinks fit.

(2) The grant of such letters shall be subject to the rules and regulations hereinafter provided with regard to such grants in other cases; and in the judgment by which such grant is made the court shall adjudicate upon the facts which constitute the grounds of the appointment.

[§66, Law 20 of 1977.]

(3) For the purpose of this Chapter "estate" shall mean the gross value of the estate of the deceased.

When Public Trustee may be appointed. [§67, Law 20 of 1977.]

520. Where there is no person fit and proper in the opinion of the court to be appointed administrator in manner in the last preceding section provided, or no such person is willing to be so appointed, and not in any other case, the court shall appoint the Public Trustee such administrator.

Requirements when Public Trustee applies for letters of administration. [§68, Law 20 of 1977.]

520A. (1) Whenever the Public Trustee applies for letters of administration, it shall be sufficient if the petition presented for the grant of such letters states—

- (a) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner;
- (b) the names and addresses of the surviving next of kin of the deceased, if known;
- (c) the full and true particulars of the property left by the deceased as far as he has been able to ascertain the same;
- (d) particulars of the liabilities of the estate, if known.

(2) The Public Trustee shall not be required to file accounts of the property of the deceased unless the court otherwise directs.

521. In every case in which it is found necessary, whether by reason of such executor as aforesaid not applying for probate, or by reason of there being no executor resident in Sri Lanka competent and willing to act, or by reason of no person who is competent under section 518 to apply for letters of administration so applying, that any such person as is in section 519 mentioned, should be appointed administrator, the court shall take from such person security for the due administration of the estate in manner in section 538 mentioned, and it shall not in any case be competent for the court to dispense with such security under the provisions of section 541.

Security. [§69, Law 20 of 1977.]

522. Whenever the Public Trustee has obtained probate in respect of a will or grant of letters of administration in respect of the estate of a deceased person, he shall as far as practicable, comply with the provisions of this Chapter relating to the administration of estates:

Duties of Public Trustee relating to the administration of estates. [§70, Law 20 of 1977.]

Provided that the Public Trustee shall not be required—

- (a) to take any oath as executor or administrator;
- (b) to furnish any bond or security, but shall be subject to the same liability and dues as if he had given such bond or security;

- (c) to make payment or secure the payment of assessed estate duty prior to his undertaking the administration of the estate, but shall eventually make such payment as required by the Estate Duty Ordinance or the Estate Duty Act, as the case may be ;
- (d) to affix stamps on any document at or about the time of the making of such document ; but shall eventually make such payment as required by the Stamp Ordinance ;
- (e) unless the court otherwise directs, to tender final accounts.

identified by affidavit, with the will as an exhibit thereto, or by parol testimony at the time the application is made.

(3) Every person making or intending to make, an application to a District Court under this section to have the will of a deceased person proved, which will is deposited in another District Court, is entitled to procure the latter court to transmit the said will to the court to which application is to be made, for the purpose of such application. Also the application must be supported by sufficient evidence either in the shape of affidavits of facts, with the will as an exhibit thereto, or of oral testimony, proving that the will was duly executed according to law, and establishing the character of the petitioner according to his claim.

Application to be made on affidavits.

To whom grant in either case should be made.

523. In the case of a conflict of claims to have the will proved and probate or grant of administration issued, the claim of an executor or his attorney shall be preferred to that of all others, and the claim of a creditor shall be postponed to the claim of a residuary legatee or devisee under the will. And in the like case of a conflict of claims for grant of administration where there is intestacy, the claim of the widow or widower shall be preferred to all others, and the claim of an heir to that of a creditor :

[§71, Law 20 of 1977.]

Provided, however, that the court may for good cause supersede the claim of the widow or widower.

Mode of application and proof in case of a will.

524. (1) Every application to the District Court to have the will of a deceased person proved shall be made on petition by way of summary procedure, which petition shall set out in numbered paragraphs the relevant facts of the making of the will, the death of the testator, the heirs of the deceased to the best of the petitioner's knowledge, the details and situation of the deceased's property, and the grounds upon which the petitioner is entitled to have the will proved ; the petition shall also show whether the petitioner claims as creditor, executor, administrator, residuary legatee, legatee, heir, devisee, or in any and what other character.

(2) If the will is not already deposited in the District Court in which the application is made, it must either be appended to the petition, or must be brought into court and

(4) The petitioner shall tender with the petition— [§72, Law 20 of 1977.]

- (a) the declaration of property referred to in section 30 of the Estate Duty Ordinance or in section 24 of the Estate Duty Act, as the case may be, in triplicate with a certified copy of the will for transmission by court to the Commissioner-General of Inland Revenue ;
- (b) draft order *nisi* ;
- (c) the requisite stamps for the order *nisi* and service thereof ;
- (d) draft notice of order *nisi* in the form No. 84A in the First Schedule ;
- (e) proof of payment of the estimated charges to cover the cost of advertising the notice of order *nisi* in a local newspaper as hereinafter provided ; and
- (f) the consent in writing of such respondents as consent to his application.

525. (1) If the petitioner has no reason to suppose that his application will be opposed by any person, he may file with his petition an affidavit to that effect, and may omit to name any person in his petition as respondent.

Affidavit of no opposition.

[§73, Law 20 of 1977.]

(2) The petitioner shall tender with the petition—

- (a) the declaration of property referred to in section 30 of the Estate Duty Ordinance or in section 24 of the Estate Duty Act, as the case may be, in triplicate with a certified copy of the will for transmission by court to the Commissioner-General of Inland Revenue;
- (b) draft order absolute;
- (c) the requisite stamps for such order absolute;
- (d) draft notice of order absolute in the form No. 84B in the First Schedule; and
- (e) proof of payment of the estimated charges to cover the cost of advertising the notice of order absolute in a local newspaper as hereinafter provided.

Court if satisfied with proof, to make order nisi declaring will proved.

526. Upon the application being made, if the court is of opinion that the evidence adduced is sufficient to afford prima facie proof of the due making of the will and of the character of the petitioner, it shall make an order nisi declaring the will to be proved, which order shall be served upon the respondent, if any, and upon such other person as the court shall think fit to direct, and shall come on for final hearing and disposal on a day to be named therein.

Order nisi to direct probate.

527. If the applicant claims as the executor or one of the executors of the will, and asks that probate may be issued to him, the order nisi shall declare that he is executor, and shall direct the issue of probate to him accordingly.

Grant of administration with copy of will annexed.

528. If the applicant claims in any other character than that of executor, and asks that the administration of the deceased's property be granted to him, then the order nisi shall include a grant to the applicant of a power to administer the deceased's property according to the will, with a copy of the will annexed.

When court may make order absolute in the first instance.

529. (1) In the case of an application for probate if no respondent is named in the petition, the court may in its discretion make the order absolute in the first instance.

(2) The notice of such order absolute shall be in the form No. 84B in the First Schedule and shall be advertised in the manner provided in section 532.

[§74, Law 20 of 1977.]

Mode of application and proof for grant of administration in absence of a will. [§75, Law 20 of 1977.]

530. (1) When any person shall die without making a will or where the will cannot be found, every application for grant of administration of his property may be made to the District Court of the district within which the applicant resides, or within which the deceased resided at the time of his death or within which any land belonging to the deceased's estate is situate. Every such application shall be made on petition by way of summary procedure, which petition shall set out in the numbered paragraphs prescribed by section 524, the relevant facts of the absence of the will, the death of the deceased, and the heirs of the deceased to the best of the petitioner's knowledge; the petitioner shall also show the character in which the petitioner claims and the facts which justify his doing so. The application shall also be supported by sufficient evidence, to afford prima facie proof of the material allegations in the petition, and shall name the next of kin of the deceased as respondents.

(2) (a) The petitioner shall tender with the petition—

- (i) the declaration of property referred to in section 30 of the Estate Duty Ordinance or in Section 24 of the Estate Duty Act, as the case may be, in triplicate for transmission by court to the Commissioner-General of Inland Revenue.
- (ii) draft order nisi;
- (iii) the requisite stamps for the order nisi and service thereof;
- (iv) draft notice of order nisi in the form No. 84A in the First Schedule; and

- (v) proof of payment of the estimated charges to cover the cost of advertising the notice of order nisi in a local newspaper as hereinafter provided.

(b) The petitioner may also tender with the petition the consent in writing of such respondents as consent to his application.

Court declaring petitioner's status to make order nisi for issue of grant.

531. Upon the application for grant of administration being made, if the court is of opinion that the material allegations of the petition are proved, it shall make an order nisi declaring the petitioner's status accordingly, and making the grant prayed for, which order shall be served upon the respondent and upon such other persons as the court shall think fit to direct, and shall come on for final hearing and disposal on a day to be named therein.

Court to forward declaration made by the petitioner to the Commissioner-General of Inland Revenue. [§76, Law 20 of 1977.]

531A. (1) The court shall, upon receipt of the declaration referred to in section 30 of the Estate Duty Ordinance, or in section 24 of the Estate Duty Act, as the case may be, forthwith forward to the Commissioner-General of Inland Revenue two copies of such declaration, and where the will has been filed, one copy of the will.

(2) The Assessor shall, within one year after the receipt by him of such particulars as may be necessary to assess the estate duty payable in respect of the estate of the deceased, determine the person or persons by whom the whole or part of such duty is payable and assess the estate duty payable in respect of the estate.

(3) On the payment of the estate duty assessed under the preceding subsection or on such security as the Commissioner-General of Inland Revenue may deem sufficient being furnished for the payment of such estate duty, such Commissioner-General shall issue a certificate to that effect.

(4) Whenever it appears to an Assessor that the amount which any person is liable to pay as estate duty has been assessed under subsection (2) at less than the appropriate amount, the Assessor may make an additional assessment of the amount which such person is in the opinion of the Assessor liable to pay:

Provided that no such additional assessment shall be made after the expiry of two years from the date of grant of probate or letters of administration.

(5) Nothing in this section shall prevent the Assessor from acting under any such provisions of the Estate Duty Ordinance or of the Estate Duty Act, as the case may be, as are not inconsistent with the provisions of this section.

(6) In this section "Assessor" has the same meaning as in the Estate Duty Ordinance or in the Estate Duty Act, as the case may be.

531B. Notwithstanding the provisions of section 55 of the Estate Duty Ordinance, or of section 42 of the Estate Duty Act, as the case may be, the court may grant probate or letters of administration upon provisional certificate. [§76, Law 20 of 1977.]

Court to grant probate or letters of administration upon provisional certificate. [§76, Law 20 of 1977.]

532. In all cases of application for the grant of the administration of the deceased's property, whether with or without a will, the court shall, whether a respondent is named in the petition or not, direct notice of the order nisi in the form No. 84A in the First Schedule to be advertised twice in a local newspaper before the day of final hearing, the newspaper to be selected by the court with the object that the notice of the order nisi should come to the knowledge of all persons interested in the administration of the deceased's property:

Notice of order nisi to be advertised. [§77, Law 20 of 1977.]

Provided that the court may in its discretion direct such other mode of advertisement in lieu of such publication as to it seems sufficient.

533. If on the day appointed for final hearing, or on the day to which it may have been duly adjourned the respondent or any person upon whom the order nisi has been directed to be served, or any person then appearing to be interested in the administration of the deceased's property, satisfies the court that there are grounds of objection to the application, such as ought to be tried on viva voce evidence, then the court shall frame the issues which appear to

At final hearing on objection, court shall frame issues.

arise between the parties, and shall direct them to be tried on a day to be then appointed for the purpose under section 386.

When order nisi shall be made absolute; and

534. If at the final hearing, or on the determination of the issues thus framed, it shall appear to the court that the prima facie proof of the material allegations of the petition has not been rebutted, then the order nisi shall be made absolute, and probate or grant of administration with the will annexed, or grant of administration only, as the case may be, shall issue accordingly, subject to the conditions hereinafter prescribed. If, on the other hand, it shall then appear to the court that the prima facie proof of any material allegations in the petition has been rebutted, the order nisi shall be discharged, and the petition dismissed. And in the event of the respondent or objector having at such hearing or trial of issues established his right to have probate or grant of administration of the deceased's estate issued to him instead of to the petitioner, then the court shall further make an order to that effect in his favour:

When discharged.

Provided, however, that the dismissal of the petition shall not be a bar to a renewal of the application by the petitioner as long as grant either of probate of the deceased's will, or of administration of his property, shall not have been made, either on the occasion of this application or subsequently thereto, to some other person than the petitioner.

Procedure where a corporation is appointed executor under a will. [§78, Law 20 of 1977.]

534A. (1) Where a corporation is appointed executor under a will either alone or jointly with another person, the court may grant probate to such corporation either solely or jointly with such other person as the case may require, and the corporation may act as executor accordingly.

(2) Letters of administration may be granted to any corporation either solely or jointly with another person and the corporation may act as administrator accordingly.

(3) Any officer, authorized for the purpose by such corporation, may swear affidavits, take the oath of office, give security, and do any other act or thing,

which the court may require, on behalf of the corporation and the acts of such officer shall be binding on the corporation.

535. At any time after the filing of a petition in a District Court, asking to have the will of a deceased person proved, or that the grant of probate thereof or of administration of a deceased person's property be made, and before the final hearing of the petition, it shall be competent to any person interested in the said will or in the said deceased person's property or estate, though not a respondent on the face of the petition, to intervene, by filing in the same court a *caveat* against the allowing of the petitioner's claim or a notice of opposition thereto, and any order nisi which may be made upon such petition shall be served upon such objector as if he had been originally named a respondent in the petition.

Who may file a caveat.

Effect thereof.

536. In any case where probate of a deceased person's will has issued on an order absolute in the first instance, or a grant of administration of a deceased person's property has been made, it shall be competent to the District Court to recall the said probate or grant of administration, and to revoke the grant thereof, upon being satisfied that the will ought not to have been held proved, or that the grant of probate or of administration ought not to have been made; and it shall also be competent to the District Court to recall the probate or grant of administration at any time upon being satisfied that events have occurred which render the administration thereunder impracticable or useless.

Power of District Court to recall or revoke probate or grant of administration.

537. All applications for the recall or revocation of probate or grants of administration shall be made by petition, in pursuance of the rules of summary procedure hereinbefore prescribed; and no such application shall be entertained unless the petitioner shows in his petition that he has such an interest in the estate of the deceased person as entitles him in the opinion of the court to make such application.

Applications therefor to be by petition.

538. (1) In every case where an order absolute has been passed by a District Court declaring any person entitled to have issued to him probate of a deceased person's will, or grant of administration of a deceased person's property, it shall be the duty of the said person, executor, or administrator, in

Inventory and valuation.

whose favour such order is made, to take the oath of an executor or administrator according to the form prescribed in the First Schedule and thereafter to file in court, within a time to be appointed therefor in the order, an inventory of the deceased person's property and effects, with a valuation of the same, such inventory and valuation to be verified on oath or affirmation by the said executor or administrator in the form No. 92 in the said Schedule, and where the court requires it to enter into a bond with two good and sufficient sureties in the form No. 90 in the said Schedule, for the due administration of the deceased person's property.

Security.

(2) The bond so entered into shall render the sureties responsible in any suit brought for the administration of the deceased person's property for all deficiencies, depreciation, or loss of that property attributable to the default of their principal, and liable to make good the same to the same extent and in like manner as if the said default were their own, subject, however, to the conditions of the bond in that behalf.

[§79, Law 20 of 1977.]

(3) Where a banking, insurance or other corporation approved by the court stands surety, no other surety shall be necessary, nor shall a mortgage or hypothecation of the property be required.

Limited probate and administration.

539. It is competent to the District Court to make a grant of probate or a grant of administration, limited either in respect to its duration, or in respect to the property to be administered thereunder, or to the power of dealing with that property which is conveyed by the grant, in the following cases :—

- (a) When the original will of the deceased person has been lost since the testator's death, but a copy has been preserved, probate of that copy may be granted, limited until the original be brought into court.
- (b) In the like event, and with the like limitation, if no copy has been preserved, probate of a draft will may be granted, or if in addition no draft is available, then probate of the contents or of the substance and effect of the will, so far as they can be established by evidence, may be granted.

(c) When the original will is in the hands of some person residing out of Sri Lanka, who cannot be compelled to give it up to the executor, and if the executor produces a copy, then probate of that copy may be granted, limited until the original be brought into court. If, however, the will has been duly proved out of Sri Lanka, probate may be granted to the executor on a proper exemplification of the foreign probate without any limitation in the grant.

(d) If the sole executor of a will resides, or if there are more executors than one and all the executors reside, out of Sri Lanka, or such of the executors as reside in Sri Lanka decline to act, then the court may grant administration with copy of the will annexed to any person within Sri Lanka, as attorney of the executor or of the executors, who shall be appointed for that purpose by power of attorney, the grant so made being limited for the use and benefit of the principal until the executor or one of the executors comes in and obtains probate for himself. If the document admitted to proof in this case be a copy of or substitute for the original, on account of the original itself not being forthcoming by reason of one of the just-mentioned causes, the grant shall further be limited until the original is brought into court :

Provided also, that if the person applying for the grant is not the attorney of all the executors, where there are more than one, the grant of administration shall not be made to him until the remaining executors have declined to act.

(e) In the case of a will, and there being no executor within Sri Lanka willing to act, grant of administration with copy of the will annexed may be made to the attorney of an absent residuary legatee, or heir, limited until the

principal shall come in and obtain administration for himself; or in the like case, the grant may be made to the guardian of a minor residuary legatee, within Sri Lanka, limited during the minority, or to the manager of the estate of a residuary legatee who is of unsound mind, within Sri Lanka, limited during the unsoundness of mind.

- (f) In the case of intestacy, grants of administration of the deceased person's property may be made, limited in like manner to the guardian of a minor heir or to the manager of the estate of an heir who is of unsound mind.
- (g) The court may grant probate or administration limited to any particular property or for any particular purpose, in any case where it considers that a larger grant is unnecessary.

In all the foregoing cases, the material and relevant facts necessary to justify the court in making the limited grant must be set out in the petition of application, and must be established by prima facie evidence before the order is made, as is prescribed in sections 524 and 530.

[§80, Law 20 of 1977.]

Administration pendente lite.
[§81, Law 20 of 1977.]

539A. 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.

Limited letters for sale of property of estate.
[§81, Law 20 of 1977.]

539B. (1) Notwithstanding the provisions of section 55 of the Estate Duty Ordinance or of section 42 of the Estate Duty Act, as the case may be, 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.

(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; and
- (d) any other stipulation the court may in the circumstances deem fit to impose.

(3) Before making an order for grant of letters under this section the Commissioner-General of Inland Revenue and the respondents to the original petition for probate or letters of administration shall be given notice of the application and they or any other person interested in the estate shall be heard in opposition unless they or any of them shall have signified their assent to such sale.

540. If no limitation is expressed in the order making the grant, then the power of administration, which is authenticated by the issue of probate, or is conveyed by the issue of a grant of administration, extends to every portion of the deceased person's property, movable and immovable, within Sri Lanka, or so much thereof as is not administered, and endures for the life of the executor or administrator or until the whole of the said property is administered, according as the death of the executor or administrator, or the completion of the administration, first occurs.

Power of administration when not limited.

541. In all cases of the issue of probate security shall not be required, unless for some special reason the court deems that security is absolutely necessary for the protection of the estate; and in cases where

Court may dispense with security.

the grant of administration is limited in regard to the dealing with the property which is the subject thereof, it shall be within the discretion of the court to dispense with the giving of the bond under section 538; and in all cases the court may limit the amount secured by the bond to the value of the movable property, which appears to the court likely to come into the hands of the administrator and to be liable to misappropriation:

Provided that every order, dispensing with the bond or limiting the amount to be secured thereby in cases of administration or requiring security in cases of probate, shall adjudicate upon the facts upon which the court intends it to rest;

[§82, Law 20 of 1977.] Provided further that in all cases of the issue of probate or grant of administration to a sole beneficiary under a will or the sole heir in the case of intestacy or where all the heirs being *sui juris* consent thereto, security shall not be required.

Person dying intestate, death to be reported by next of kin. [§2, 24 of 1969.]

542. When any person shall die in Sri Lanka 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 Sri Lanka amounting to or exceeding in value twenty thousand rupees, within one month of the date of his death to report such death to the court of the district in which he shall have so died, and at the same time to make oath or affirmation or produce an affidavit verifying the time and place of such death, and stating if such is the fact that the intestate has left property within the jurisdiction of that or any other, and in that event what, court, and the nature and value of such property.

Penalty for neglect.

543. Every person made liable to report any death under, or to furnish any information required by, section 542, who shall wilfully omit to report such death or to furnish such information within the time therein prescribed therefor, shall be guilty of an offence, and liable to a fine not exceeding one thousand rupees.

Who may apply for administration in case of intestacy. [§83, Law 20 of 1977.]

544. In any case where a person is so reported to have died intestate, any person interested in having the estate of such intestate administered may apply to such

court for grant to himself of letters of administration; and the court shall have power, having regard, where there is a conflict of claims, to the provisions of section 523, to appoint such person administrator.

545. In case no such person shall apply for letters of administration, and it appears to the court necessary or convenient to appoint some person to administer the estate or any part thereof, it shall be lawful for the court in its discretion, and in every such case where the estate amounts to or exceeds in value twenty 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, and all the provisions of sections 519 to 521, both inclusive, shall apply, so far as the same can be made applicable, to any such appointment.

In event of no application, court may appoint some person to administer the estate.

Compulsory, where the value of the estate is twenty thousand rupees or over. [§2, 24 of 1969.]

546. If any person shall die leaving property in Sri Lanka, the Judge of the court of any district in which such property shall be situate shall, on the facts being verified to his satisfaction and it being made to appear that there is not resident, within the local limits of his jurisdiction, some next of kin or other person entitled to administration of the estate of the person so dying, issue letters *ad colligenda* in the form No. 91 in the First Schedule to one or more responsible persons to take charge of such property until the same shall be claimed by some executor or administrator lawfully entitled to administer the same.

Issue of letters *ad colligenda*.

547. No action shall be maintainable for the recovery of any property, movable or immovable, in Sri Lanka belonging to or included in the estate or effects of any person dying testate or intestate in or out of Sri Lanka within twenty years prior to the date of institution of the action, where such estate or effects amount to or exceed in value the sum of twenty thousand rupees unless grant of probate or letters of administration shall first have been issued. In the event of any such property being transferred in any manner other than under the provisions of subsection (1) of section 539b of this Ordinance or under section 28 of the Estate Duty Ordinance or section 22

No action maintainable to recover property of testator or intestate of over twenty thousand rupees unless probate or administration has been taken out. [§84, law 20 of 1977.]

of the Estate Duty Act, as the case may be, without such probate or administration being so first taken out, every transferor or transferee of such property shall be guilty of an offence, and in addition to any penalty imposed under this Ordinance, it shall be lawful for the State to recover from such transferor and transferee or either of them, such sum as would have been payable to defray estate duty. The amounts so recoverable shall be a first charge on the estate or effects of such testator or intestate in Sri Lanka or any part of such estate or effects, and may be recovered by action accordingly.

Probate when executor is appointed for limited purpose.

548. When a person is appointed executor of a will for a particular purpose only of the will, and not executor of the will generally, probate will be granted to him limited for that purpose only.

Fresh grant, when allowed.

549. When a sole executor or a sole surviving executor to whom probate has been granted, or a sole administrator or a sole surviving administrator to whom a grant of administration has been made, dies leaving a part of the deceased's property unadministered, then a fresh grant of administration may be made in respect of the property left unadministered according to the rules hereinbefore prescribed for a first grant.

Rectification of errors in grant.

550. Errors in names and descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly.

Compensation of executors and administrators.

551. Compensation shall be allowed to executors and administrators by way of commission as well on property not sold but retained by the heirs, as on property sold by such executors and administrators, at such rate not exceeding three *per centum*, and on cash found in the estate and on property specially bequeathed, at such rate not exceeding one and a half *per centum*, as the court shall, after taking into consideration the circumstances of each particular case with reference to the trouble incurred by such executors or administrators, determine. In no case shall a larger sum than five thousand rupees be allowed to any executor or administrator as such compensation,

unless it shall be made apparent to the court that such unusual trouble has fallen upon him as to entitle him, in the opinion of the court, to receive further remuneration.

Compensation of several executors.

552. Each executor or administrator shall be entitled to the full compensation allowed by law to a sole executor or administrator, unless there are more than three, in which case the compensation to which three would be entitled shall be apportioned among them all according to the services rendered by them respectively, and a like apportionment shall be made in all cases where there shall be more than one executor or administrator. But where the will provides a specific compensation for an executor or administrator, he shall not be entitled to any allowance other than that so provided, unless he files in court a written renunciation of the specific compensation.

Filing of the account, and payment into court. [§85, Law 20 of 1977.]

553. Every executor and administrator shall file in the District Court, on or before the expiration of twelve months from the date upon which probate or grant of administration issued to him, or within such further time as the court may allow, a true and final account of his executorship or administration, as the case may be, verified on oath or affirmation, with all receipts and vouchers attached, and may at the same time pay into court any money which may have come to his hands in the course of his administration to which any minor or minors may be entitled.

Executor or administrator who fails to administer within the year liable for interest.

554. If any executor or administrator shall fail to pay over to the creditors, heirs, legatees, or other persons the sums of money to which they are respectively entitled, within one year after probate or administration granted, such executor or administrator shall be liable to pay interest out of his own funds for all sums which he shall retain in his own hands after that period, unless he can show good and sufficient cause for such detention.

When a certificate of heirship may be applied for. [§86, Law 20 of 1977.]

554A. When any person shall die without leaving a will and leaving an estate under twenty thousand rupees in value, any heir of the deceased shall be entitled to apply to the District Court of the district within which he resides, or within which the deceased resided at the time of his death, or

within which any property of the deceased's estate is situate, for a certificate that he is an heir of the deceased.

petitioner has failed to establish his claim the order *nisi* shall be discharged, and the petition dismissed :

Mode of application.
[§86, Law 20 of 1977.]

554B. The application shall be made on petition by way of summary procedure setting out the relevant facts of the absence of the will, the death of the deceased, the value of the estate and the heirs of the deceased to the best of the petitioner's knowledge, and the grounds upon which the petitioner claims to be an heir.

Provided that it shall be open to any of the respondents at such hearing of issues to establish his right to be an heir of the deceased and to have a certificate of heirship issued to him, whether the petition is dismissed or not.

CHAPTER XXXVIII

[§87, Law 20 of 1977.]

INSOLVENT TESTAMENTARY ESTATES

554F. The estate of a deceased person shall be deemed to be insolvent—

When the estate of a deceased person is deemed to be insolvent.
[§87, Law 20 of 1977.]

- (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 realizing 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.

554G. (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—

Where estate insolvent, applicant for probate, &c., to take steps to have it so declared.
[§87, Law 20 of 1977.]

- (a) the names of all persons who to the best of the petitioner's knowledge and belief have claims against the estate ;

The application shall be supported by sufficient evidence by way of affidavit to afford prima facie proof of the material allegations in the petition, and shall name the next of kin of the deceased as respondents.

Court if satisfied with proof to make order nisi.
[§86, Law 20 of 1977.]

554C. If the court is of opinion that the material allegations of the petition are proved, it shall make an order *nisi* declaring the petitioner's heirship, which order shall be served on the respondents and upon such other persons as the court shall think fit to direct, and shall come on for final hearing and disposal on a day to be named therein.

At final hearing on objection court shall frame issues.
[§86, Law 20 of 1977.]

554D. If on the day appointed for final hearing, or on the day to which it may have been adjourned, the respondent or any person upon whom the order *nisi* has been directed to be served, or any person then appearing to be interested in the administration of the deceased's property, satisfies the court that there are grounds of objection to the application, such as ought to be tried on viva voce evidence, then the court shall frame the issues which appear to arise between the parties, and shall try the same forthwith or on a day to be appointed for the purpose.

When order nisi shall be made absolute and when discharged.
[§86, Law 20 of 1977.]

554E. If at the final hearing or on the determination of the issues thus framed, it shall appear to the court that the prima facie proof of the material allegations of the petition has not been rebutted, then the order *nisi* shall be made absolute, and a certificate of heirship shall issue accordingly to the petitioner. 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 and that the

- (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.

(2) In 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.

Where estate insolvent, executor or administrator to take steps to have it so declared. [§87, Law 20 of 1977.]

554H. (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 shall 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 section.

(2) In such petition all persons named in the original petition for grant of probate or letters shall be made respondents.

Creditor, &c., may also apply for adjudication of estate as insolvent. [§87, Law 20 of 1977.]

554J. (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 section 554G shall, *mutatis mutandis*, apply to such application.

(2) The applicant for probate or letters or the executor or administrator of the estate, shall in addition be made respondent to such application.

Order nisi declaring estate insolvent. [§87, Law 20 of 1977.]

554K. 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 the form No. 93A in the First Schedule.

When order nisi to be served. [§87, Law 20 of 1977.]

554L. A copy of the testamentary insolvency order *nisi* shall be served on each of the respondents named therein and notice of such order *nisi* in the form No. 93B in the First Schedule 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 section 532.

554M. Any person 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 Chapter XXIV, either dismiss the petition or make the testamentary insolvency order *nisi* absolute.

Person interested may intervene. [§87, Law 20 of 1977.]

554N. The testamentary insolvency order absolute shall be in the form No. 93C in the First Schedule, and 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.

Order absolute to be advertised. [§87, Law 20 of 1977.]

554P. 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 realize his security upon such conditions as the court, having regard to the provisions of the Insolvency Ordinance, shall order.

Actions and execution proceedings to be stayed after such order nisi. [§87, Law 20 of 1977.]

554Q. 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.

When court may appoint fit person to administer estate. [§87, Law 20 of 1977.]

554R. Where a testamentary insolvency order shall have been made, the estate shall be distributed in accordance with the following provisions :—

How insolvent estate to be distributed. [§87, Law 20 of 1977.]

- (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.

Powers and obligations of executors and administrators. [§87, Law 20 of 1977.]

554S. An executor or administrator of an insolvent estate shall have the same powers and be subject to the same obligations as the assignee of an insolvent appointed under the Insolvency Ordinance.

Administration of estates not to be stayed due to appeal. [§87, Law 20 of 1977.]

554T. 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 Court of Appeal shall make order to the contrary.

[§87, Law 20 of 1977.]

CHAPTER XXXVIII

FOREIGN PROBATES

Sealing of foreign probates or letters of administration. [§87, Law 20 of 1977.]

554U. Where a Court of Probate or other authority in a foreign country has either before or after the 15th day of December, 1977, granted probate or letters of administration in respect of the estate of a deceased person, probate or letters so granted may, on being produced to, and a copy thereof deposited with, a competent court, be sealed with the seal of that court and thereupon shall be of like force and effect and have the same operation in Sri Lanka as if granted by that court.

Conditions to be fulfilled before sealing. [§87, Law 20 of 1977.]

554V. The court shall, before sealing the probate or letters of administration under this Chapter, be satisfied—

- (a) that the testamentary duty has been paid or secured in respect of so much, if any, of the estate as is liable to testamentary duty in Sri Lanka; and
- (b) in the case of letters of administration, that security has been given in a sum sufficient in

amount to cover the property, if any, in Sri Lanka to which the letters of administration relate;

and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person.

554W. The court may also if it thinks fit on the application of any creditor require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Sri Lanka. Security for payment of debts. [§87, Law 20 of 1977.]

554X. A duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of such court shall have the same effect as the original. Duplicate or copy of probate or letters of administration. [§ 87, Law 20 of 1977.]

554Y. The sealing of probate or letters of administration under this Chapter shall not affect the liability of an executor or administrator— Liabilities of executors and administrators. [§87, Law 20 of 1977.]

(a) to file within the time appointed by court an inventory of the deceased person's property and effects situated in Sri Lanka with valuation of same as required by section 538;

(b) to file, on or before the expiration of twelve months from the date of such sealing, a true and final account, as regards the deceased's property and effects situated in Sri Lanka, of his executorship or his administration, as the case may be, verified on oath or affirmation, with all receipts or vouchers attached as required by section 553; and

(c) to be compelled to make a judicial settlement of his account as executor or administrator, with respect to the deceased's property situated in Sri Lanka, under the provisions of Chapter LV.

554Z. For the purpose of all estates to which this Chapter applies— Resealing court deemed to be court issuing probate or letters of administration. [§87, Law 20 of 1977.]

(a) all references in this Ordinance to any court as being the court from which grant of probate or letters of

administration issued shall be construed as references to the court by which probate or letters of administration have been sealed under this Chapter and all references to the granting of probate or letters of administration or to an order absolute declaring a person entitled to such grant shall be construed as referring to the sealing of probate or letters of administration under this Chapter ;

- (b) all references in the Stamp Ordinance to the grant of probate or letters of administration shall be deemed to include a reference to the sealing of probate or letters of administration under this Chapter, and all references to probate or letters of administration shall be deemed to include a reference to any probate or letters of administration or to any duplicate or certified copy thereof sealed under this Chapter.

British Courts
Resealing
Rules deemed
to be in force.
[§87, Law 20 of
1977.]

554AA. Notwithstanding the repeal of the British Courts Probate (Resealing) Ordinance*, the British Courts Resealing Rules, 1939, shall be deemed to be and to continue in force for the purposes of this Chapter as if the said Ordinance had not been repealed, and may be amended, varied, altered or rescinded by rules made under Article 136 of the Constitution.

Interpretation
[§87, Law 20 of
1977.]

554BB. In this Chapter—

"competent court" means—

- (a) the District Court of Colombo ; or
- (b) the District Court within the local limits of whose jurisdiction—
- (i) the estate or any part of the estate in Sri Lanka of the deceased person is situate ; or
- (ii) the executor or administrator or the attorney of the executor or administrator of that part of

the estate of the deceased person which is being administered outside Sri Lanka is resident ;

"Court of Probate" means any court or authority by whatever name designated having jurisdiction in matters of probate ; and

"probate" and "letters of administration" include any instrument having in any foreign country the same effect which under the law of Sri Lanka is given to probate and letters of administration respectively.

CHAPTER XXXVIII

GENERAL AND TRANSITIONAL PROVISIONS [§87, Law 20, of 1977.] IN TESTAMENTARY MATTERS

554CC. The provisions of the Stamp Ordinance shall apply to, and in relation to, every application, order or other document in testamentary proceedings and the executor or administrator, as the case may be, shall be personally liable for the payment of such stamp duty. The amount so paid by way of stamp duty shall be recoverable by the executor or administrator as a first charge on the estate of the deceased after the grant of probate or letters of administration.

Stamp duty to be first charge on the estate of the deceased. [§87, Law 20 of 1977.]

554DD. Where any person has prior to the 15th day of December, 1977, died in Sri Lanka leaving an estate and testamentary proceedings had not been commenced in respect of such estate before the 15th day of December, 1977, such proceedings may be instituted under the provisions of this Ordinance.

Transitional provisions. [§87, Law 20 of 1977.]

CHAPTER XXXIX

ACTIONS RELATING TO PERSONS OF UNSOUND MIND

555. The expression "person of unsound mind" as used in this Ordinance shall, unless the contrary appears from the

Definition of "person of unsound mind."

* Repealed by the Administration of Justice Law, No. 44 of 1973.

context, mean every person found by due course of law to be of unsound mind and incapable of managing his affairs.

District Court to institute inquiry.

556. (1) Whenever any person who is possessed of property is alleged to be a person of unsound mind, the District Court within whose jurisdiction such person is residing may, upon such application as is hereinafter mentioned, institute any inquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

Application for, how to be made.

[§88, Law 20 of 1977.]

(2) Application for such inquiry may be made on petition in the way of summary procedure by any relative of the person alleged to be of unsound mind, or by a Superintendent of Police, or at the instance of the Attorney-General, or if the property of the person alleged to be of unsound mind consists in whole or in part of land, or of any interest in land, by the Government Agent of the district in which it is situate.

When may petition be dismissed.

557. When the District Court on such application being made to it is not satisfied by affidavit or other evidence that such inquiry as aforesaid ought to be instituted, it shall dismiss the petition.

Procedure on court being satisfied that inquiry ought to be instituted.

558. When the District Court on any such application being made to it is satisfied by affidavit or other sufficient evidence that such inquiry as aforesaid ought to be instituted, it shall pass an order to that effect and then appoint a time and place for holding the inquiry.

Proceeding in such case.

559. As soon as such order shall have been passed, the District Court shall cause a copy of the petition and of the order made thereon to be served upon the person alleged to be of unsound mind. If it shall appear that the person alleged to be of unsound mind is in such a state that personal service on him would be ineffectual, the court may direct such substituted service of the petition and order as it shall think proper. The court may also direct a copy of such petition and order to be served upon any specified relative of the person alleged to be of unsound mind.

560. The District Court may also at any time before or pending the inquiry, require the person alleged to be of unsound mind to attend at such convenient time and place as it may appoint, for the purpose of being personally examined by the court or by any person from whom the court may desire to have a report of, or testimony as to, the mental capacity and condition of such person alleged to be of unsound mind. The court may likewise make an order authorizing any person or persons therein named to have access to the person alleged to be of unsound mind for the purpose of a personal examination.

Person alleged to be of unsound mind may be required to attend.

561. The District Court, if it think fit, may appoint two or more persons to act as assessors to the court in the said inquiry.

Assessors.

562. The issue to be tried on such inquiry shall be whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his affairs.

Issue.

563. The trial of this issue shall be effected by viva voce examination and cross-examination of witnesses, as nearly as may be as is hereinbefore directed for the trial of the matter of an ordinary civil action; and the inquiry, whether held in court or in a private house, shall be public.

Trial of issue to be public.

564. The person alleged to be of unsound mind shall be present at the inquiry and shall take part as a party defendant therein either by his registered attorney 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.

Person of unsound mind to be present.

Any relative of the person alleged to be of unsound mind may also, if the court thinks fit, appear and take part in the inquiry on behalf of the person alleged to be of unsound mind.

565. Upon the completion of the inquiry, the court shall adjudicate whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his affairs. And at the same time the court may make such order as to the

Adjudication on the issue.

Costs.

payment of the cost of the inquiry by the person upon whose application it was made, or by the person alleged to be of unsound mind, if he be adjudged to be of sound mind, or out of his estate, if he be adjudged of unsound mind and incapable of managing his affairs, or otherwise, as it may think proper.

When petition to be dismissed after inquiry.

566. When a person has been adjudged not to be of unsound mind and not incapable of managing his affairs, the court shall dismiss the petition.

Manager to be appointed.

567. When a person has been adjudged to be of unsound mind and incapable of managing his affairs, the District Court shall appoint a manager of the estate. Any near relative of the person of unsound mind or any other suitable person may be appointed manager.

Guardian of person.

568. Whenever a manager of the estate of a person of unsound mind is appointed by the District Court, the court shall appoint a fit person to be guardian of the person of the person of unsound mind. The manager may be appointed guardian :

Provided always that the heir-at-law of the person of unsound mind shall not in any case be appointed guardian of his person.

Allowance to manager or guardian.

569. If the person appointed to be manager of the estate of a person of unsound mind, or the person appointed to be guardian of the person of a person of unsound mind, shall be unwilling to discharge the trust gratuitously, the court may fix such allowance or allowances to be paid out of the estate of the person of unsound mind as, under the circumstances of the case, may be thought suitable.

Duties of guardian.

570. The person appointed to be guardian of the person of a person of unsound mind shall have the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the court, either at the time when the guardian is appointed or afterwards, on an application made by such guardian by petition in the way of summary procedure, for the maintenance of the person of unsound mind and of his family.

571. Every manager of the estate of a person of unsound mind appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a person of unsound mind ; and may collect and pay all just claims, debts, and liabilities due to or by the estate of the person of unsound mind. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immovable property for any period exceeding five years, without an order of the District Court previously obtained.

Powers of manager.

Restrictions on manager's powers.

572. (1) Every person appointed by the District Court to be manager of the estate of a person of unsound mind shall, within a time to be fixed by the court, deliver in court an inventory of the immovable property belonging to the person of unsound mind, and of all such movable property, sums of money, goods, and effects as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the court annually, within three months of the close of the year, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

Inventory.

Account.

(2) If any relative of the person of unsound mind, or the Attorney-General, by petition to the court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the court may summon the manager and inquire summarily into the matter and make such order thereon as it shall think proper.

573. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the person of unsound mind or of the estate shall be paid into the kachcheri on account of the estate, and shall be dealt with thereafter in such manner as is prescribed by law in the case of suitors' deposits.

Excess over expenditure, to be paid into kachcheri.

574. It shall be lawful for any relative of a person of unsound mind to sue for an account from any manager, appointed under this Ordinance, or from such person after his removal from office or trust, or

Relative may sue for account.

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.

think fit, to be applied for the maintenance of the person of unsound mind and his family.

Manager or guardian how to be removed. [§89, Law 20 of 1977.]

575. (1) The District Court, for any sufficient cause, may on the application of the guardian or of a relative of the person of unsound mind, or of the Attorney-General, Superintendent of Police, or (where the property of the person of unsound mind consists in whole or in part of land, or of any interest in land) of the Government Agent, made by petition in the way of summary procedure, remove any manager appointed by the court, and may appoint any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him.

578. (1) When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the District Court, or if the court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the court may institute an inquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs.

Further inquiry when person of unsound mind so found is alleged to have recovered.

(2) The court may also, for any sufficient cause, in like manner remove any guardian appointed by the court.

(2) The inquiry shall be conducted in the manner provided in section 560 and the four following sections of this Ordinance; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the court shall make an order for his estate to be delivered over to him, and such order shall be final.

Punishment for neglect or refusal to account.

576. The District Court may on any application made to it by a relative of the person of unsound mind or a public officer under section 575 impose a fine not exceeding five hundred rupees on any manager of the estate of a person of unsound mind who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of court, and may also commit him to close custody until he shall deliver such accounts or property.

579. In all cases in which this Chapter is applicable, the procedure herein provided shall be followed, anything in the Mental Diseases Ordinance to the contrary notwithstanding.

Saving of Mental Diseases Ordinance.

Where not necessary court need not appoint manager.

577. If it appears to the District Court, having regard to the situation and condition in life of the person of unsound mind and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as 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

580. Every order made by a District Court under the provisions of this Chapter shall be subject to an appeal to the Court of Appeal, and such appeal may be prosecuted by, or at the instance of, the person suspected or adjudged to be of unsound mind, or of any relative or friend of his, or of any medical practitioner who shall have certified or testified to his state of mind; and the Court of Appeal shall take cognizance of such appeal, and deal with the same as an appeal from an interlocutory order of the District Court, and make such order thereon as to the said court shall seem fit. And it shall be the duty of the District Court to conform to and execute such order.

Appeal to Court of Appeal.

580A. (1) The provisions contained in this Chapter, other than section 555 shall apply in the case of mentally deficient persons.

Provisions applicable to mentally deficient persons. [§14, 53 of 1980.]

(2) For the purposes of this section, "mentally deficient persons", mean persons who are incapable of managing their own affairs by reason of being mentally ill, feeble, infirm or defective, though not adjudicated as persons of unsound mind in accordance with any law for the time being in force.

Proceedings exempt from stamp duty.

581. No stamp duty shall attach or be payable for any application, process or other document filed in court under the provisions of this Chapter.

CHAPTER XL

ACTIONS FOR THE APPOINTMENT OF GUARDIANS

Certificate of right to have charge of minor's property.

582. Every person who shall claim a right to have charge of property in trust for a minor, under a will or deed, or by reason of nearness of kin, or otherwise, may apply to the Family Court for a certificate of curatorship; and no person shall be entitled to institute or defend any action connected with the estate of a minor, of which he claims the charge, until he shall have obtained such certificate:

[54, 24 of 1969.]

Provided that when the property is below the value of twenty thousand rupees, or for any other sufficient reason, any court having jurisdiction may allow any relative of a minor to institute or defend an action on his behalf, although a certificate of curatorship has not been granted to such relative;

And provided further that any such person so claiming to have charge of any such property under the provisions of a will, of which probate shall have been duly granted, may institute or defend any such action without having obtained such certificate.

Explanation.—A person to whom letters of administration of a deceased person's estate have been granted under Chapter XXXVIII of this Ordinance does not thereby obtain a right to have charge, within the meaning of this section, of such portion or share of his deceased's estate, if any there be, as descends to a minor heir.

583. Any relative or friend of a minor, in respect of whose property such certificate has not been granted, may apply by petition in the way of summary procedure to the Family Court, to appoint a fit person to take charge of the property and person or of either property or person of such minor.

Application for appointment of person to have charge of property or person of minor.

584. If the property is situate in more than one district, any such application as aforesaid shall be made to the Family Court of the district in which the minor at the time of the application resides.

To be made in district where minor resides.

585. (1) If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the court shall grant a certificate of curatorship to such person.

Charge of property of minor to whom to be granted.

(2) If there is no person so entitled, or if such person is unwilling to undertake the trust and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the court may grant a certificate to such relative.

(3) The court may also, if it think fit (unless a guardian has been appointed by the father), appoint such person as aforesaid or such relative, or any other relative or friend of the minor, to be guardian of the person of the minor.

Same person may be appointed guardian of person.

(4) The court may call upon any grama seva niladhari for a report on the character and qualification of any relative or friend of the minor who may be desirous or willing to be entrusted with the charge of the property or person of such minor, and who resides in the division.

Court may call upon grama seva niladhari to report on qualification.

586. If no title to a certificate is established to the satisfaction of the court by a person claiming under a will or deed, and if there is no near relative willing and fit to be entrusted with the charge of the property of the minor, and the court shall think it necessary for the interest of the minor that provision should be made by the court for the charge of the property and person of such minor, the court may grant a certificate to any fit person whom the court may appoint for the purpose.

When charge of property may be granted to any fit person.

Guardian to have charge of the person and maintenance, to be appointed at the same time ;

587. (1) Whenever the court shall grant a certificate of curatorship to the estate of a minor who is resident in Sri Lanka to any person under the last section, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor.

(2) The person to whom a certificate of curatorship has been granted may be appointed guardian, provided he would not be the legal heir of the minor, if the minor then died.

his allowance.

(3) If the person appointed to be guardian be unwilling to discharge the trust gratuitously, the court may assign him such allowance, to be paid out of the estate of the minor, as under the circumstances of the case it may think suitable. The court may also fix such allowance as it may think proper for the maintenance and education of the minor; and such allowance and the allowance of the guardian (if any) shall be paid to the guardian by the other person as aforesaid.

(4) In any case in which the court is satisfied that it will be for the interest of the minor, it may direct the raising of such allowance out of the corpus of the estate, by mortgage or sale or such other mode of realization as it thinks fit.

Costs of inquiries.

588. (1) In all inquiries held by the Family Court under this Chapter, the court may make such order as to the payment of costs by the person on whose application the inquiry was made, or out of the estate of the minor, or otherwise, as it may think proper.

Inventory.

(2) Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this Chapter, shall, within a time to be fixed by the court, file in court an inventory of the property belonging to the minor, and shall also twice every year, namely, within one month from the first day of January and the first day of July, respectively, in each year, file an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate and the balance in hand.

Impeachment of the inventory and accounts.

589. Any relative of the minor or the minor himself by a next friend or the Attorney-General may, by petition and by way of summary procedure, impeach and falsify the correctness of the said inventory and periodic accounts, or complain of delay

in the filing, of them ; and the court may on any such application make such order as it shall think proper.

590. It shall be lawful for any relative of a minor with the leave of the court, or the minor himself by a next friend, at any time during the continuance of the minority, to sue for an account from any person to whom a certificate shall have been granted under the provisions of this Ordinance, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Any relative of minor may sue curator for accounts.

591. The Family Court, for any sufficient cause shown on petition by way of summary procedure preferred by the guardian, or by a relative, or by a next friend of the minor, or by the Attorney-General, may recall any certificate granted under this chapter and may grant a certificate to any other person; and may compel the person whose certificate has been recalled to make over the property in his hands to his successor, and to account to such successor for all moneys received and disbursed by him. The court may also sufficient cause in like manner remove any guardian appointed by the court.

Recall of the certificates.

592. (1) The Family Court may permit any person to whom a certificate shall have been granted under this Ordinance, and any guardian appointed by the court, to resign his trust; and may give him a discharge therefrom on his accounting to his successor, duly appointed, for all moneys received and disbursed by him, and making over the property in his hands.

Resignation and discharge of curator of property, or guardian of person of minor.

(2) The application to be discharged from the trust shall be made by petition in the way of summary procedure, in which petition a near relative of the minor or the Attorney-General shall be named a respondent; and it shall be competent to the court to direct that any other person be made a respondent.

593. Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this Chapter, if he is not willing to discharge the trust gratuitously, shall be entitled to receive such allowance, to be paid out of the minor's estate, as the Family Court shall by

Allowance of curator.

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.

Minor's education.

594. Every guardian appointed by the Family Court under this Chapter, who shall have charge of any minor, shall be bound to provide for his education in a suitable manner. The general superintendence and control of the education of all such minors shall be vested in the Family Court.

CHAPTER XLI

ACTIONS FOR APPOINTMENT AND REMOVAL OF TRUSTEES

Trustees.

595. Applications to the District Court for the exercise of its jurisdiction for the appointment or removal of a trustee, and not asking any further remedy or relief, may be made by petition in the way of the summary procedure hereinbefore prescribed.

CHAPTER XLII

MATRIMONIAL ACTIONS

Procedure in matrimonial actions.

596. In all actions for divorce *a vinculo matrimonii*, or for separation *a mensa et thoro*, or for declaration of nullity of marriage, the pleadings shall be by way of plaint and answer, and such plaint and answer shall be subject to the rules and practice by this Ordinance provided with respect to plaints and answers in ordinary civil actions, so far as the same can be made applicable, and the procedure generally in such matrimonial cases shall (subject to the provisions contained in this Chapter) follow the procedure hereinbefore set out with respect to ordinary civil actions.

Court of district in which petitioner resides to have jurisdiction.

597. Any husband or wife may present a plaint to the Family Court within the local limits of the jurisdiction of which he or she, as the case may be, resides, praying that his or her marriage may be dissolved on any ground for which marriage may, by the law applicable in Sri Lanka to his or her case, be dissolved.

Co-defendant.

598. Upon any such plaint presented by a husband, in which the adultery of the wife

is the cause or part of the cause of action, the plaintiff shall make the alleged adulterer a co-defendant to the said action, unless he is excused from so doing on one of the following grounds, to be allowed by the court upon an application for the purpose:—

- (1) that the defendant is leading the life of a prostitute, and that the plaintiff knows of no person with whom the adultery has been committed;
- (2) that the name of the alleged adulterer is unknown to the plaintiff, although he has made due efforts to discover it;
- (3) that the alleged adulterer is dead;

and it shall be lawful in any such plaint to include a claim for pecuniary damages against such co-defendant.

599. The prayer to be excused from making the alleged adulterer a co-defendant and the allegations of fact upon which it is founded, supported by affidavit of fact or other sufficient evidence, shall be embodied in the plaint.

Affidavit where co-defendant is excused.

599A. The provisions of sections 598 and 599 shall, *mutatis mutandis*, apply where in a plaint presented by a wife, adultery of the husband is a cause of action.

Sections 598 and 599 to apply where adultery of the husband is alleged. [§91, Law 20 of 1977.]

602.* When the court is satisfied on the evidence that the case of the plaintiff has been proved, the court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 604 and 605.

Decree to be passed declaring marriage dissolved. [§93, Law 20 of 1977.]

603. In any action instituted for dissolution of marriage, if the defendant opposes the relief sought on any ground which would have enabled him or her to sue as plaintiff for such dissolution, the court may in such action give to the defendant on his or her application the same relief to which he or she would have been entitled in case he or she had presented a plaint seeking such relief.

Defendant when entitled to relief.

* Sections 600 and 601 are repealed by Law No. 20 of 1977.

Decree to be
decree nisi in
the first
instance.
[§94, Law 20 of
1977.]

604. Every decree for dissolution of marriage shall, in the first instance, be a decree nisi not to be made absolute till after the expiration of not less than three months from the pronouncement thereof, or such longer period as the court may prescribe in the said decree.

Decree when to
be made
absolute.

605. Whenever a decree nisi has been made and no sufficient cause has been shown why the same should not be made absolute as in the last preceding section provided within the time therein limited, such decree nisi shall on the expiration of such time be made absolute :

[§95, Law 20 of
1977.]

Provided that where such decree nisi is entered *ex parte*, the period during which the same should not be made absolute shall be computed from the date of service of such decree nisi on the defaulting party.

Actions of
nullity of
marriage.

607.* (1) Any husband or wife may present a plaint to the Family Court within the local limits of the jurisdiction of which he or she (as the case may be) resides, praying that his or her marriage may be declared null and void.

(2) Such decree may be made on any ground which renders the marriage contract between the parties void by the law applicable to Sri Lanka.

Application for
separation or
for divorce
whether after
decree of
separation or
otherwise.

608. (1) Application for a separation *a mensa et thoro* on any ground on which by the law applicable to Sri Lanka such separation may be granted, may be made by either husband or wife by plaint to the Family Court, within the local limits of the jurisdiction of which he or she, as the case may be, resides, and the court, on being satisfied on due trial of the truth of the statements made in such plaint, and that there is no legal ground why the application should not be granted, may decree separation accordingly.

[§97, Law 20 of
1977.]

(2) Either spouse may—

(a) after the expiry of a period of two years from the entering of a decree of separation under subsection (1)

by a Family Court, whether entered before or after the 15th day of December, 1977, or

(b) notwithstanding that no application has been made under subsection (1) but where there has been a separation *a mensa et thoro* for a period of seven years,

apply to the Family Court by way of summary procedure for a decree of dissolution of marriage, and the court may, upon being satisfied that the spouses have not resumed cohabitation in any case referred to in paragraph (a), or upon the proof of the matters stated in an application made under the circumstances referred to in paragraph (b), enter judgment accordingly :

Provided that no application under this subsection shall be entertained by the court pending the determination of any appeal taken from such decree of separation. The provisions of sections 604 and 605 shall apply to such a judgment.

609. (1) In every case of such separation under this Chapter the wife shall, from the date of the sentence and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Separated
wife's property.

(2) Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, devolve as the same would have devolved if she had died unmarried :

Provided that if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

610. In every case of such separation under this Chapter the wife shall, whilst so separated, be considered as an unmarried

Separated
wife's contracts
and rights to
sue.

* Section 606 is repealed by Law No. 20 of 1977.

woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceedings; and her husband shall not be liable in respect of any contract, act, or costs entered into, done, omitted, or incurred by her during the separation :

Provided that where, upon any such separation alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use to the persons who supplied them ;

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

When decree for separation may be revised by the court which made it.

611. (1) Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of separation has been pronounced, may, at any time thereafter, present a petition to the court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence at the hearing, and that there was reasonable excuse for such absence, and also for the alleged desertion, where desertion was the ground of such decree.

(2) Such petition shall be deemed and shall be dealt with by the court as a plaint in a regular action, and the party in whose favour the decree of separation sought to be reversed was passed shall be made a defendant therein. And the court may, after trial in regular course of procedure, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but such reversal shall not prejudice or affect the rights or remedies which any other person would have had in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the time of

the sentence of separation and of the reversal thereof.

612. (1) Whenever in any plaint presented by a husband the alleged adulterer has been made a co-defendant, and the adultery has been established, the court may order the co-defendant to pay the whole or any part of the costs of the proceedings in addition to any damages which may be awarded, where such damages have been claimed :

Co-defendant may be ordered to pay costs.

Provided that the co-defendant shall not be ordered to pay the plaintiff's costs, nor shall any damages be awarded—

- (a) if the defendant was at the time of the adultery living apart from her husband and leading the life of a prostitute ; or
- (b) if the co-defendant had not at the time of the adultery reason to believe the defendant to be a married woman.

(2) The provisions of the preceding subsection shall, *mutatis mutandis*, apply where a woman has been made a co-defendant. [§98, Law 20 of 1977.]

614.* (1) In any action under this Chapter, whether it be instituted by a husband or a wife, the wife may present a petition for alimony pending the action. Such petition shall be preferred and dealt with as of summary procedure, and the husband shall be made respondent therein ; and the court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the action as it may deem just :

Alimony pendente lite.

Provided that alimony pending the action shall in no case be less than one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

* Section 613 is omitted, having been rendered inoperative by the repeal of section 606.

[§99, Law 20 of 1977.]

(2) A husband may present a petition for alimony pending the action. The provisions of the preceding subsection shall apply, *mutatis mutandis*, to such application.

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 :

[§99, Law 20 of 1977.]

(3) Where one of the spouses is not possessed of sufficient income or means to defray the cost of litigation, the court may at any stage of the action order the spouse who is possessed of sufficient income or means to pay to the other spouse such sum on account of costs as it considers reasonable.

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.

Settlement upon decree of divorce or separation. [§100, Law 20 of 1977.]

615. (1) The court may, if it thinks fit, upon pronouncing a decree of divorce or separation, order for the benefit of either spouse or of the children of the marriage or of both, that the other spouse shall do any one or more of the following :—

619. In any action for obtaining a separation, the court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such action, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said court.

Court may before decree for separation order maintenance of minor children.

- (a) make such conveyance or settlement as the court thinks reasonable of such property or any part thereof as he may be entitled to ;
- (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 paragraph (b) or paragraph (c) by the hypothecation of immovable property or by the execution of a bond with or without sureties, or by the purchase of a policy of annuity in an insurance company or other institution approved by court.

620. The court after a decree of separation may, upon application by way of summary procedure for this purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

Court may after decree of separation make order respecting custody, &c., of minor children.

(2) The court may at any stage discharge, modify, temporarily suspend and revive or enhance an order made under subsection (1).

621. In any action for obtaining a dissolution of marriage or a decree of nullity of marriage, the court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim orders, and may make such provision in the decree absolute or decree, as the court deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the action, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the court.

Court may make interim order and also provide for custody, &c., of minor children in decree.

Court may inquire into ante-nuptial and post nuptial settlements.

618.* The court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the

* Sections 616 and 617 are repealed by Law No. 20 of 1977.

Court may after decree absolute make orders respecting custody, &c., of minor children.

622. The court after a decree absolute for dissolution of marriage or a decree of nullity of marriage may, upon application by petition on summary procedure for the purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said court as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

Adjournment and further evidence.

623. The court may from time to time adjourn the hearing of any petition or plaint under this Chapter, and may of its own motion require further evidence thereon if it sees fit so to do.

Appeal.

624. All decrees and orders made by the court in any action or proceeding under this Chapter shall be enforced and may be appealed from, in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the laws, rules, and orders for the time being in force.

Enforcement of alimony and maintenance orders. [§102, Law 20 of 1977.]

624A. An order for alimony or maintenance made under this Chapter may be enforced either in accordance with the provisions of this Ordinance or in the manner provided in the Maintenance Ordinance.

When parties may marry again. [§103, Law 20 of 1977.]

625. Upon a decree nisi for divorce being made absolute under the provisions of this Chapter, or when three months after the passing of the decree thereunder of nullity of marriage shall have elapsed, without an appeal having been taken therefrom, or upon the confirmation in appeal of any 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.

Protection of third parties dealing with wife after decree made and before reversal.

626. (1) Every decree for separation or order to protect property obtained by a wife under this Chapter shall, until reversed or discharged, be deemed valid, so far as necessary for the protection of any person dealing with the wife.

(2) No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order and of the reversal, discharge, or variation thereof.

(3) All persons who, in reliance on any such decree or order, make any payment to, or permit any transfer to be made, or act to be done by the wife who shall have obtained such decree or order, shall (notwithstanding the same may then have been reversed, discharged, or varied, or notwithstanding the separation of the wife from her husband may have ceased or may at some time since the making of the decree or order have been discontinued) be protected and indemnified as if at the time of such payment, transfer, or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued, unless at the time of the payment, transfer, or other act such persons had notice of the reversal, discharge, or variation of the decree or order or of the cessation or discontinuance of the separation.

627. Save as expressly otherwise provided in the Kandyan Marriage and Divorce Act and the Muslim Marriage and Divorce Act, nothing in this Chapter contained shall be taken to apply to any marriage between persons professing Islam or to any marriage affected by the provisions of the Kandyan Marriage and Divorce Act.

Saving of the application of this Chapter as to Muslim and Kandyan marriages. [§104, Law 20 of 1977.]

CHAPTER XLIII

INTERPLEADER ACTIONS

628. When two or more persons claim adversely to one another payment of the same sum of money or delivery of the same property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute an action of interpleader against all the claimants, for the purpose of obtaining a decision as to the party to whom the

Interpleader actions.

payment should be made or the property delivered, and of obtaining indemnity for himself :

Provided that if any action is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute an action of interpleader.

Form of plaint. 629. In every action of interpleader the plaintiff must, in addition to the other statements necessary for plaints, state—

- (a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder ;
- (b) the claims made by the defendants severally ; and
- (c) that there is no collusion between the plaintiff and any of the defendants ;

and such plaint shall also be supported by an affidavit of the plaintiff verifying the statements contained therein.

Property claimed to be deposited in court.

630. When the thing claimed is capable of being paid into court or placed in the custody of the court, the plaintiff must so pay or place it before he can be entitled to any order in the action.

Procedure at the hearing.

631. At the hearing the court may—

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the action ;

or if it thinks that justice or convenience so require—

- (b) retain all parties until the final disposal of the action ;

and if it finds that the admissions of the parties or other evidence enable it to do so, may—

- (c) adjudicate upon the title to the thing claimed ;

or else it may—

- (d) direct the defendants to interplead one another by filing statements

and entering into evidence for the purpose of bringing their respective claims before the court.

632. Nothing in this Chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any person other than persons making claim through such principals or landlords.

Who may not be sued in interpleader.

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.

633. When the action is properly instituted, the court may provide the plaintiff's costs by giving him a charge on the thing claimed, or in some other effectual way.

Of the plaintiff's costs therein.

634. If any of the defendants in an interpleader is actually suing the stakeholder in respect of the subject of such action, the court in which the action against the stakeholder is pending shall, on being duly informed by the court which passed the decree in the interpleader action in favour of the stakeholder, that such decree has been passed, stay the proceedings as against him, and his costs in the action so stayed may be provided for in such action ; but if and so far as they are not provided for in that action, they may be added to his costs incurred in the interpleader action.

Procedure where stakeholder is sued by defendant.

CHAPTER XLIV

ACTIONS WHICH FAIL FOR WANT OF JURISDICTION

635. When an action fails for want of jurisdiction in the court to entertain and determine the matter of the action on its merits, it shall, nevertheless, be competent to the court to make such order on the parties for the payment of costs as to it shall seem just ; and every such order for the payment of costs is a decree for money within Chapter XX.

Power to make order for costs notwithstanding want of jurisdiction.

When want of jurisdiction caused by exclusive jurisdiction of any court or tribunal, averment of jurisdiction in plaintiff is traversed. [§105, Law 20 of 1977.]

636. When the want of jurisdiction is caused by reason of the exclusive jurisdiction of any court or tribunal, the averment in the plaintiff made in pursuance of section 45 shall be considered as traversed, whether the defendant in his answer is silent in reference to it or not; and it shall be the duty of the court to dismiss the action on this preliminary issue in bar at the earliest stage of the action whereat, by the admission of the parties or other evidence, it appears to the court that such court or tribunal has exclusive jurisdiction.

Order of dismissal not reversed on appeal, conclusive as to jurisdiction of other court. [§105, Law 20 of 1977.]

637. The order of court so dismissing the action shall adjudicate upon the facts which found the jurisdiction of such court or tribunal and if not appealed against, or if, in the event of an appeal, it is not reversed, this order shall be conclusive evidence of jurisdiction on the same claim being made before such court or tribunal.

And conversely. [§105, Law 20 of 1977.]

638. Also the decision of any court or tribunal declining jurisdiction shall be conclusive evidence against such jurisdiction in an action upon the same claim brought in any other court.

security to meet the same, and that he does verily believe that the defendant is about to quit Sri Lanka, and, if he shall at the same time further establish to the satisfaction of the Judge by affidavit or (if the Judge shall so require) by viva voce testimony such facts that the Judge infers from them that the defendant is about to quit Sri Lanka, and will do so unless he be forthwith apprehended, such Judge may order a warrant (form No. 100, First Schedule) to arrest the body of the defendant and to bring him before the court unless he shall give bail in, or make deposit of, such an amount as the said Judge shall consider reasonable and adequate, which amount the said Judge at the time of making the said order shall set out on the face thereof; and the said warrant may be executed within one calendar month from the date thereof, including the day of such date, and not afterwards, in any district of Sri Lanka:

Provided that if the plaintiff shall be in possession of any security in part, he or the person making the application on his behalf shall, on pain of punishment as for contempt of court, set forth the same particularly in his application and the amount thereof, which amount shall be deducted from the amount of security to be required from the defendant.

PART V

PROVISIONAL REMEDIES

CHAPTER XLVII*

OF ARREST AND SEQUESTRATION BEFORE JUDGMENT

Arrest before judgment.

650.* If a plaintiff or one of several plaintiffs in any action, either at the commencement thereof or at any subsequent period before judgment, shall, by way of motion on petition, supported by his own affidavit and viva voce examination (should the Judge consider such examination desirable), subject, however, to the exceptions hereinafter contained, satisfy the Judge that he has a sufficient cause of action against the defendant, either in respect of a money claim of or exceeding one thousand five hundred rupees or because he has sustained damage to that amount, and that he has no adequate

651. The defendant being arrested on such a warrant shall at once be brought up before the court by which it was issued in custody of the Fiscal, unless he shall give reasonable security (form No. 101, First Schedule) to the Fiscal to appear and answer the plaintiff's claim and to abide by and perform the judgment of the court, or to surrender himself or be surrendered to be charged in execution for the same; in which case the Fiscal shall be authorized to discharge him. If he is brought before the court under the warrant, or if he appears in discharge of the bail taken by the Fiscal, he must give bail (form No. 102, First Schedule) to abide by and perform the judgment of the court, and pay any sum or sums which may be awarded against him or to surrender himself or be surrendered by

Arrested person to be discharged on giving bail.

[§106, Law 20 of 1977.]

* Chapter XLV—Section 639, is repealed by Ordinance No. 9 of 1917; Sections 640 to 644 (both inclusive), are repealed by Ordinance No. 21 of 1927; Chapter XLVI—Sections 645 to 648 (both inclusive),—is repealed by Act No. 7 of 1949; Section 649 is repealed by Ordinance No. 21 of 1927.

otherwise
committed to
prison.

his sureties, to be charged in execution for the same; or if he is unable or unwilling to give such bail, he shall be committed to prison (form No. 103, First Schedule) until he does so, or until the determination of the action; and in the event of the decree being passed against him, then until the execution of the decree subject to the provisions of Chapter XXII in regard to imprisonment in execution of a decree for money; and

Provided also that no person shall in any case be imprisoned under this section for a longer period than three months before decree.

Arrested
person may
deposit money
with Fiscal
instead of
giving bail.

652. The defendant may, instead of giving bail, as is 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 on the warrant; and the sum so deposited shall be applied in satisfaction of the judgment should the same eventually pass against the defendant, and the surplus, if any, shall be refunded to the defendant.

Of
sequestration
before
judgment.

653. If a plaintiff in any action, either at the commencement thereof or at any subsequent period before judgment, shall, by way of motion on petition supported by his own affidavit and viva voce examination (if the Judge should consider such examination necessary) satisfy the Judge that he has a sufficient cause of action against the defendant, either in respect of a money claim of or exceeding one thousand five hundred rupees or because he has sustained damage to that amount, and that he has no adequate security to meet the same, and that he does verily believe that the defendant is fraudulently alienating his property to avoid payment of the said debt or damage; and if he shall at the same time further establish to the satisfaction of the Judge by affidavit or (if the Judge should so require) by viva voce testimony such facts that the Judge infers from them that the defendant is fraudulently alienating his property with intent to avoid payment of the said debt or damage, or that he has with such intent quitted Sri Lanka leaving therein property belonging to him, such Judge may order a mandate (form No. 104, First Schedule) to issue to the Fiscal,

[§107, Law 20
of 1977.]

directing him to seize and sequester the houses, lands, goods, money, securities for money and debts, wheresoever or in whose custody soever the same may be within his district, to such value as the court shall think reasonable and adequate and shall specify in the mandate, and to detain or secure the same to abide the further orders of the court.

Explanation.—Sequestration of immovable property has the effect of sequestering all rents and profits which proceed thereout, pending the sequestration.

654. Before making the order for a warrant of arrest or mandate of sequestration, the Judge shall require the plaintiff to enter into a bond (form No. 105, First Schedule), with or without sureties, in the discretion of the Judge, to the effect that the plaintiff will pay all costs that may be awarded and all damages which may be sustained by reason of such arrest or sequestration, by the defendant or by any other person in whose possession such property shall have been so sequestered; and it shall be competent to the court to award such damages and costs of suit either to the defendant or to those in whose possession such property shall have been so sequestered.

Plaintiff to give
security before
such warrant
of arrest or
sequestration is
issued.

655. In substitution for the affidavit of the plaintiff required by sections 650 and 653—

Who may
make affidavit
in lieu of
plaintiff.

- (a) when the action is brought by the Attorney-General, then any officer of the State; and
- (b) when the action is brought by a corporation, board, public body, or company, then any principal officer of such corporation, board, public body, or company; and
- (c) when the plaintiff is absent from Sri Lanka, then his attorney duly authorized to bring and conduct the action; and
- (d) when the plaintiff, or if there are more plaintiffs than one when such of the plaintiffs as are in Sri Lanka, or when such attorney of the plaintiff as is just above-mentioned

is or are unable from want of personal knowledge or from bodily or mental infirmity to make the required affidavit, then any recognized agent of the plaintiff,

660. Sequestration before judgment shall not affect the rights, existing prior to the sequestration, of persons not parties to the action, nor bar any person holding a decree against the defendant from applying for the sale of the property under sequestration in execution of such decree.

Effect of sequestration on prior rights.

may be allowed by the court to make an affidavit in these matters instead of the plaintiff :

661. Where property is under sequestration by virtue of the provisions of this Chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to again seize the property as preliminary to sale or delivery in execution of such decree.

Subsequent seizure of property under decree unnecessary.

Provided that in each of the foregoing cases the person who makes the affidavit instead of the plaintiff must be a person having personal knowledge of the facts of the cause of action, and must in his affidavit swear or affirm that he deposes from his own personal knowledge of the matter therein contained, and shall be liable to be examined as to the subject-matter thereof at the discretion of the Judge, as the plaintiff would have been if the affidavit had been made by him.

CHAPTER XLVIII

OF INJUNCTIONS

662. Every application for an injunction for any of the purposes mentioned in section 54 of the Judicature Act, except in cases where an injunction is prayed for in a plaint in any action, shall be by petition, and shall be accompanied by an affidavit of the applicant or some other person having knowledge of the facts, containing a statement of the facts on which the application is based.

When injunction may be granted. [§15, 53 pf 1980.]

Punishment for wilful false statement.

656. Any person wilfully making any false statement by affidavit or otherwise in the course of any of the proceedings aforesaid may be punished as for a contempt of court, besides his liability to be tried and punished under the Penal Code for the offence of giving false evidence where such statement is on oath or affirmation.

663. An injunction granted by the court on any such application may in case of disobedience be enforced by the punishment of the offender as for a contempt of court.

Disobedience to injunction how punished.

Manner of sequestration.

657. The sequestration ordered in pursuance of section 653 shall be made in the manner hereinbefore provided for sequestration or seizure of property preliminary to sale thereof in execution of a decree for money.

664. The court shall in all cases, except when it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction cause the petition of application for the same together with the accompanying affidavit to be served on the opposite party ; and where the application is made after the defendant has answered, the injunction shall in no case be granted before such service. But the court may in its discretion enjoin the defendant until the hearing and decision of the application.

Application to be on notice to opposite party.

Manner of investigating any claim to property sequestered.

658. If any claim be preferred to the property sequestered before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property seized in execution of a decree for money.

Costs and damages where sequestration wrongful.

659. If upon any such investigation the court is satisfied that the property sequestered was not the property of the defendant, it shall pass an order releasing such property from seizure, and shall decree the plaintiff to pay such costs and damages by reason of such sequestration, as the court shall deem meet. If otherwise, the court shall disallow the claim, and make such order as to costs as it shall deem meet.

665. An injunction directed to a corporation or board or other public body or company is binding not only on the corporation, board, public body, or company itself, but also on all members or officers of the corporation, board, public body, or company whose personal action it seeks to restrain.

Effect on corporation, &c.

How set aside or varied.

666. An order for an injunction made under this Chapter may be discharged, or varied, or set aside by the court, on application made thereto on petition by way of summary procedure by any party dissatisfied with such order.

When court may award compensation to respondent.

667. If it appears to the court that the injunction was applied for on insufficient grounds, or if, after the issue of an injunction which it has granted, the action is dismissed or judgment is given against the applicant by default or otherwise, and it appears to the court that there was no probable ground for applying for the injunction, the court may, on the application of the party against whom the injunction issued, award against the party obtaining the same in its decree such sum as it deems a reasonable compensation for the expense or injury caused to such party by the issue of the injunction. An award under this section shall bar any action for compensation in respect of the issue of the injunction.

CHAPTER XLIX

OF INTERIM ORDERS

Order for sale of perishable property.

668. Any court may, on the application of any party to an action, order the sale by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property being the subject of such action, which is subject to speedy and natural decay. The party carrying out the sale shall, within such time as the court shall limit, and after deducting thereout such expenses as the court allows him, deposit the proceeds of the sale in court to the credit of the action.

Order for detention, preservation, or inspection of property.

669. The court may, on the application of any party to an action, and on such terms as it thinks fit—

- (a) make an order for the detention, preservation, or inspection and survey of any property being the subject of such action;
- (b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such action; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

670. Every application under either of the two preceding sections shall be made by petition in the way of summary procedure; and every party who is sought to be affected by the order must be named a respondent in the petition. Any such application may be made by a plaintiff after service of summons, or by a defendant after he has appeared in the action.

Application herein to be made by way of summary procedure.

CHAPTER L

OF THE APPOINTMENT OF RECEIVERS

671. Whenever it appears to the court to be necessary for the restoration, preservation, or better custody or management of any property, movable or immovable, the subject of an action, or under sequestration, the court may on the application of any party who shall establish a prima facie right to or interest in such property, by order—

When court may appoint a receiver.

- (a) appoint a receiver of such property, and, if need be,
- (b) remove the person, in whose possession or custody the property may be, from the possession or custody thereof;
- (c) commit such property to the custody or management of such receiver; and
- (d) grant to such receiver such fee or commission on the rents and profits of the property by way of remuneration as the court thinks fit, and all such powers as to bringing and defending actions and for the realization, management, protection, preservation, and improvement of the property, the collection of the rents and profits thereof, the application and

And give him powers over subject of action or sequestration.

disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the court thinks fit.

PART VI

OF SPECIAL PROCEEDINGS

CHAPTER LI

OF REFERENCE TO ARBITRATION

Notice of application.

672. Notice of an application for the appointment of a receiver under this Chapter must be served on the adverse party, unless he has left Sri Lanka 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.

676. (1) If all the parties to an action desire that any matter in difference between them in the action be referred to arbitration, they may at any time before judgment is pronounced apply, in person or by their respective registered attorneys, specially authorized in writing in this behalf, to the court for an order of reference.

Matter in difference in an action may by consent of parties be referred to arbitration.

Receivers to give security and pass accounts.

673. Every receiver so appointed as aforesaid shall—

(a) give such security (if any) as the court thinks fit duly to account for what he shall receive in respect of the property;

(b) pass his accounts at such periods and in such forms as the court directs;

(c) pay the balance due from him therein as the court directs; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

(2) Every such application shall be in writing and shall state the particular matters sought to be referred, and the written authority of the registered attorney to make it shall refer to it, and shall be filed in court at the time when the application is made, and shall be distinct from any power to compromise or to refer to arbitration which may appear in the proxy constituting the registered attorney's general authority to represent his client in the action.

Mode of submission.

(3) The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

Appointment of arbitrator.

(4) If the parties cannot agree with respect to such nomination or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the court, the court shall nominate the arbitrator.

When court may nominate arbitrator.

Power of court to remove, or require fresh security.

674. The court may at any time, on sufficient cause shown therefor, remove a receiver or require him to give fresh security.

677. (1) The court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award and specify such time in the order.

The matter in difference to be referred to arbitrator by order of court.

(2) When once a matter is referred to arbitration, the court shall not deal with it in the same action, except as hereinafter provided.

Powers conferable by the court not to exceed those of parties themselves.

675. Nothing in sections 671 and 673 authorizes or empowers the court to remove from the possession or custody of property under sequestration any person whom the parties to the action or some or one of them have or has not a present right so to remove.

678. (1) If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

Appointment of an umpire.

- (a) by the appointment of an umpire ; or
- (b) by declaring that the decision shall be with the majority if the major part of the arbitrators agree ; or
- (c) by empowering the arbitrators to appoint an umpire ; or
- (d) otherwise, as may be agreed between the parties ; or if they cannot agree, as the court determines.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or being guilty of any contempt to an arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the court on the representation of such arbitrator or umpire, as they would incur for the like offences in actions tried before the court.

Power of arbitrators to take evidence.

(2) If an umpire is appointed, the court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

683. If from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the action.

Extension of time for award.

In event of death, &c., court may appoint new arbitrator ; or supersede arbitration.

679. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects, or becomes incapable to act, or leaves Sri Lanka under circumstances showing that he will probably not return at an early date, the court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving Sri Lanka, or make an order superseding the arbitration, and in such case shall proceed with the action.

684. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators—

When umpire may enter on the reference in lieu of arbitrators.

- (a) if they have allowed the appointed time to expire without making an award ; or
- (b) when they have delivered to the court or to the umpire a notice in writing stating that they cannot agree.

When court may appoint umpire.

680. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire ; and if within seven days after such notice has been served, or such further time as the court may in each case allow, no umpire be appointed, the court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

685. When an award in an action has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them ; and notice of the filing shall be given to the parties.

Award to be filed in court.

Powers of umpire appointed after reference.

681. Every arbitrator or umpire appointed under the foregoing sections shall have the like powers as if his name had been inserted in the order of reference.

686. Upon any reference by an order of court the arbitrators or umpire may, with the consent of the court, state the award as to the whole or any part thereof in the form of a special case, for the opinion of the court ; and after the filing of such special case upon notice to the parties, the court shall upon an appointed day hear argument and deliver its opinion thereon ; and such opinion shall be added to and form part of the award.

Award may be in form of special case.

Court to issue process.

682. (1) The court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire to examine as the court may issue in actions tried before it.

Application to set aside or correct the award.

687. Within fifteen days from the date of receipt of notice of the filing of the award any party to the arbitration may by petition apply to the court to set aside the award, or to modify or to correct the award, or to remit the award to the arbitrators for reconsideration, on grounds mentioned in the following sections.

- (a) corruption or misconduct of the arbitrator or umpire ;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ;

When court may correct award.

688. The court may, by order, modify or correct an award—

- (c) the award having been made after the issue of an order by the court superseding the arbitration and restoring the action ;

- (a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred ; or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

and no award shall be valid unless made within the period allowed by the court. When award is not valid.

Court may make order as to costs.

689. The court may also make such orders as it thinks fit respecting the costs of the arbitration, if any question arises respecting such costs and the award contains no sufficient provision concerning them.

692. (1) If the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if it has been made and the court has refused such application, then the court shall, after the time for making such application has expired, on a day of which notice shall be given to the parties, proceed to give judgment according to the award ; or if the award has been submitted to it in the form of a special case, according to its own opinion on such case. Judgment to be according to the award.

When court may remit award for reconsideration.

690. The court may remit the award on any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit—

(2) Upon the judgment so given a decree shall be framed, and shall be enforced in manner provided in this Ordinance for the execution of decrees. And decree to be framed thereon.

- (a) where the award has left undetermined any of the matters referred to arbitration, or when it determines any matter not referred to arbitration ;
- (b) where the award is so indefinite as to be incapable of execution ;
- (c) where an objection to the legality of the award is apparent upon the face of it.

(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.

When an award is void.

691. (1) An award remitted under section 690 becomes void on the refusal of the arbitrators or umpire to reconsider it.

693. (1) When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement, or to be appointed by any court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in such court. Agreement to refer any difference to arbitration may be filed in court.

When may an award be set aside.

(2) No award shall be set aside except on one of the following grounds, namely :—

(2) The application shall be by petition in the way of summary procedure as hereinbefore provided, in which the parties to the agreement other than the petitioner or petitioners shall be named respondents. Application therefor.

Court to order reference thereon.

694. On such application being made, if no sufficient cause be shown to the contrary, the court may cause the agreement to be filed, and shall make an order of reference thereon; and may also nominate the arbitrator when he is not named therein and the parties cannot agree as to the nomination.

Provisions of this Chapter to apply to such reference.

695. The foregoing provisions of this Chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the court under the last preceding section, and to the award of arbitration and to the enforcement of the decree founded thereupon.

Award made on a reference independently of court may be filed in court.

696. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may within six months of the making of the award apply to the court having jurisdiction over the matter to which the award relates, that the award be filed in court.

Application therefor.

697. The application shall be by petition in the way of summary procedure as hereinbefore provided, in which the parties to the arbitration other than the petitioner or petitioners shall be named respondents.

Filing and enforcement of such award.

698. If on the hearing of such application no ground such as is mentioned or referred to in sections 690 or 691, be shown against the award, the court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this Chapter.

CHAPTER LII

OF PROCEEDINGS ON AGREEMENT OF PARTIES

Agreed statement of case for decision of court.

699. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing, stating such question in the form of a case for the opinion of the court, and providing that upon the finding of the court with respect to such question—

- (a) sum of money fixed by the parties, or to be determined by the court, shall be paid by one of the parties to the other of them; or
- (b) some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or
- (c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the court to decide the question raised thereby.

700. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

When value of property is to be stated therein.

701. The agreement, if framed in accordance with the rules hereinbefore contained, may for the determination of the question or questions thereby raised be brought before the court which would have jurisdiction to entertain an action, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement. And for this purpose it shall be presented to the court as an exhibit to a petition preferred by one or more of the parties to the agreement in the way of summary procedure, to which petition the other parties to the agreement shall be named respondent, and in which petition it shall be alleged that the agreement was duly executed by all the parties, and that the controversy is real, and that the agreement is submitted bona fide for the purpose of determining the rights of the parties; such petition shall be verified by affidavit, and the prayer of the petition shall conform to the stipulations of the agreement within section 699.

To what court agreement may be presented.

Judgment and decree thereon.

702. If at the hearing of this petition on consideration of the evidence before it the court is satisfied that the allegations of the petition are established, and is further of opinion that the subject of the agreement is fit to be decided, then it shall proceed to pronounce judgment between the parties upon the facts and questions stated in the agreement, and upon the judgment so given a decree shall be framed and passed, and shall be enforced in the manner provided in this Ordinance for the execution of decrees.

CHAPTER LIII

OF SUMMARY PROCEDURE ON LIQUID CLAIMS

Action by summary procedure on liquid claims.

703. All actions where the claim is for a debt or liquidated demand in money arising upon a bill of exchange, promissory note, or cheque, or instrument or contract in writing for a liquidated amount of money, or on a guarantee where the claim against the principal is in respect of such debt or liquidated demand, bill, note, or cheque, may, in case the plaintiff desires to proceed under this Chapter, be instituted by presenting a plaint in the form prescribed by this Ordinance, but the summons shall be in the form No. 19 in the First Schedule, or in such other form as the Supreme Court may from time to time prescribe.

Defendant not to appear or defend except with leave.

704. (1) In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the action unless he obtains leave from the court as hereinafter mentioned so to appear and defend; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest to the date of the payment, and such costs as the court may allow at the time of making the decree.

Without such leave decree at once with speedy execution.

(2) The defendant shall not be required, as a condition of his being allowed to appear and defend, to pay into court the sum mentioned in the summons, or to give security therefor, unless the court thinks his defence not to be prima facie sustainable, or feels reasonable doubt as to its good faith.

705. (1) The plaintiff who so sues and obtains such summons as aforesaid must on presenting the plaint produce to the court the instrument on which he sues, and he must make affidavit that the sum which he claims is justly due to him from the defendant thereon.

Instrument to be produced with the plaint, and affidavit to be made.

(2) If the instrument appears to the court to be properly stamped, and not to be open to suspicion by reason of any alteration or erasure or other matter on the face of it, and not to be barred by prescription, the court may in its discretion make an order for the service on the defendant of the summons above mentioned.

(3) The day to be inserted in the notice as the day for the defendant's appearance shall be as early a day as can be conveniently named, regard being had to the distance of the defendant's residence from the court.

Summons to be of short date.

706. The court shall, upon application by the defendant, give leave to appear and to defend the action upon the defendant paying into court the sum mentioned in the summons, or upon affidavits satisfactory to the court which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application and on such terms as to security, framing, and recording issues, or otherwise, as the court thinks fit.

When leave to defend may be granted.

707. After decree the court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the action, if it seem reasonable to the court so to do, and on such terms as the court thinks fit.

When court may set aside decree, &c.

708. In any proceeding under this Chapter the court may order the instrument on which the action is founded to be forthwith deposited with an officer of the court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Court may order deposit of instrument.

709. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of

Recovery of expenses incurred in noting.

the expenses incurred in noting the same for non-acceptance, or non-payment, or otherwise, by reason of such dishonour, as he has under this Chapter for the recovery of the amount of such bill or note.

same from him, or who refuses to impart any knowledge or information he may have concerning the same, or to disclose any other fact which will in any way aid the petitioner in making discovery of such property, so that it cannot be inventoried and valued; and praying an inquiry respecting it, and that the person complained of may be cited to attend the inquiry and to be examined accordingly.

Saving clause.

710. Except as provided in this Chapter, the procedure in actions under this Chapter shall be the same as the procedure in actions instituted under Chapter VII.

Special trial roll to be kept.

711. In every court in which cases may be instituted under this Chapter, a special trial roll shall be kept of such cases in which issue has been joined. And it shall be competent for the Judge of such court to order such cases to be set down for hearing on such days, and on the day fixed for the hearing of any such case to direct the same to be called on for trial, in such order as to him shall appear best calculated to promote the ends of justice, any rule or practice of such court to the contrary notwithstanding:

Provided that the parties to such case shall have received reasonable notice of the day of hearing.

(2) The petition may be accompanied by affidavits or other evidence tending to support the allegations thereof.

(3) If the court is satisfied upon the materials so presented that there are reasonable grounds for inquiry, it shall issue a citation accordingly, which may be made returnable forthwith, or at such future time as the court shall direct.

713. (1) There shall be annexed to, or endorsed on, the citation an order signed by the Judge, requiring the person cited to attend personally at the time and place therein specified.

Order to accompany citation.

(2) The citation and order must be personally served, and the service shall be ineffectual unless it is accompanied by 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 court.

Service of citation.

(3) Failure to attend as required by the citation and order may be punished as a contempt of court.

Failure to obey citation.

PART VII

OF THE AIDING AND CONTROLLING OF EXECUTORS AND ADMINISTRATORS, AND THE JUDICIAL SETTLEMENT OF THEIR ACCOUNTS

CHAPTER LIV

OF AIDING, SUPERVISING, AND CONTROLLING EXECUTORS AND ADMINISTRATORS

Proceedings to discover property withheld, &c.

712. (1) An executor or administrator may present to the court from which grant of probate or administration issued to him a petition entitled as of the action in which such grant issued, setting forth upon knowledge, or information and belief, any facts tending to show that money or other movable property which ought to be delivered to the petitioner, or which ought to be included in his inventory and valuation, is in the possession, under the control, or within the knowledge or information of a person who withholds the

714. (1) Upon the attendance of a person in obedience to such citation and order, he shall be examined fully and at large, on oath or affirmation, respecting any money or other property of the testator or intestate, or of which the testator or intestate was in possession at the time of or within two years preceding his death.

Examination of person cited.

(2) A refusal to be sworn or to answer any question allowed by the court is punishable in the same manner as a like refusal by a witness in a civil case.

Refusal to answer.

(3) In case the person cited puts in an affidavit that he is the owner of any of the said property, or is entitled to the possession thereof by virtue of any lien thereon or

special property therein, the proceedings as to such property so claimed shall be dismissed.

Further evidence.

715. In the absence of the affidavit last mentioned, either party may on any such inquiry produce further evidence in like manner and with like effect as upon a trial.

Unless the person cited gives security, decree awarding possession to the petitioner.

716. Where it appears to the court, from the examination and other testimony, if any, that there is reason to suspect that money or other property of the testator or intestate is withheld or concealed by the person cited, the court shall, unless the person cited gives security by a bond entered into with the petitioner as obligee, with such sureties and in such penalty as the court approves, for the payment of the money or delivery of the property, or in default of such delivery for the payment to the obligee of the full value thereof, and in either case of all damages which may be awarded against the obligor for withholding the same whenever it shall be determined in an action brought by the obligee that it belongs to the estate of the testator or intestate, make a decree reciting the grounds thereof, and requiring the person cited to deliver possession of the money or other property, specifying the sum or describing the property, to the petitioner. But in the event of such security being given, and after payment within a time to be fixed thereof of any costs which the court may award to the petitioner, the proceedings shall be dismissed.

Disobedience to decree, contempt.

717. (1) Where the decree requires the person cited to deliver money, disobedience thereto may be punished as contempt of court.

Warrant to seize property.

(2) Where it requires him to deliver possession of other property, a warrant shall issue on the application of the petitioner directed to the Fiscal, and commanding him to search for and seize the property, if it is found in the possession of the person cited, or his agent, or any person deriving title from him since the presentation of the petition to deliver the same to the petitioner, and to return the warrant within sixty days.

(3) The issue of such a warrant does not affect the power of the court to enforce the decree, or any part thereof, by punishing a disobedience thereto.

718. (1) A creditor, or any person interested in the estate, may present to the court in the action in which grant of probate or administration issued, proof by affidavit that an executor or administrator has failed to file in court the inventory and valuation, and account (or a sufficient inventory and valuation, or sufficient accounts) required by law within the time prescribed therefor.

Executor, &c., how compelled to return inventory and accounts.

(2) Thereupon, or of its own motion, if the court is satisfied that the executor or administrator is in default, it shall make an order requiring the delinquent to file the inventory and valuation or accounts, or a further inventory and valuation or further accounts, as the case may be; or in default thereof to show cause at a time and place therein specified why he should not be attached.

(3) Upon the return of the order, if the delinquent has not filed a sufficient inventory and valuation or sufficient accounts, the court shall issue a warrant of attachment against him, and shall deal with him as for a contempt of court.

719. A person committed to jail under the provisions of the last preceding section may be discharged by the court upon his paying and delivering under oath all the money and other property of the testator or intestate, and all papers relating to the estate under his control, to the Judge, or person authorized by the Judge to receive the same.

How executor or administrator may be discharged from commitment.

720. In either of the following cases a petition, entitled as of the action in which grant of probate or administration issued, may be presented to the court which issued the same, praying for a decree directing an executor or administrator to pay the petitioner's claim, and that he be cited to show cause why such decree should not be made—

Petition by creditor or legatee to compel payment.

- (a) by a creditor, for the payment of a debt, or of its just proportional part, at any time after twelve months have expired since grant of probate or administration;
- (b) by a person entitled to a legacy, or any other pecuniary provision under a will, or a distributive share, for the payment or satisfaction

thereof, or of its just proportional part, at any time after twelve months have expired since such grant.

(2) 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 such final account on a date to be specified therein; and in default thereof to show cause why he should not be attached.

(3) Upon the day fixed in such order, if the delinquent has not filed a sufficient final account, the court may issue a warrant of attachment against him and deal with him as for contempt of court.

(4) A delinquent committed to jail under subsection (3) shall be discharged by the court upon his filing a sufficient final account.

(5) Every account so filed by the accounting party shall be in accordance with the specimen form No. 118A in the First Schedule 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;
- (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.

(6) To each account filed 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 deceased and of all money and other property belonging to the estate which have come to his hands, or have been received by any other person by his order or authority for his use; and that he does not know of

Citation to issue.

721. On the presentation of such petition the court shall issue a citation accordingly, and upon the return thereof shall make such decree in the premises as justice requires. But in any case where the executor or administrator files an affidavit setting forth facts which show that it is doubtful whether the petitioner's claim is valid and legal, and denying its validity or legality absolutely, or upon information and belief, or where the court is not satisfied that there is money or other movable property of the estate applicable to the payment or satisfaction of the petitioner's claim, and which may be so applied without injuriously affecting the rights of others entitled to priority or equality of payment or satisfaction, the decree shall dismiss the petition, but such dismissal shall not prejudice the right of the petitioner to an action or accounting.

Appeal.

722. Every order or decree made under the provisions of this Chapter shall be subject to an appeal to the Court of Appeal.

CHAPTER LV

OF THE ACCOUNTING AND SETTLEMENT OF THE ESTATE

Executor may file intermediate account at any time.

723. An executor or administrator may at any time voluntarily file in the court from which grant of probate or administration issued to him an intermediate account, and the vouchers in support of the same.

Court may compel executor to file intermediate account at any time.

724. The court may in any case at any time, and either upon the application of a creditor or party interested or of its own motion, make an order requiring an executor or administrator to render an intermediate account.

Procedure where executor or administrator has failed to file an account under section 553.

724A. (1) Any person interested in the estate may present to the court proof by affidavit that an executor or administrator has failed to file in court such account as is prescribed by section 553.

[5108, Law 20 of 1977.]

any error or omission in the account to the prejudice of any creditor of, or person interested in, the estate.

(7) The court may reject an account which does not comply with the provisions of this section and require the executor or administrator to file a sufficient account within a specified period.

Court to grant a discharge to the executor or administrator where estate has been duly administered and distributed.
[§108, Law 20 of 1977.]

724B. (1) Where an executor or administrator files with his final account a receipt and discharge in the form No. 119A in the First Schedule (subject to such variations as circumstances may require) signed by the devisees, legatees, trustees, heirs, creditors or other persons entitled to or having an interest in 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.

(2) 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 such a sufficient receipt and discharge to be filed.

(3) 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.

(4) Where such a 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.

(5) 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.

(6) The court shall inquire into such objections and 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.

(7) Where, however, the objections are of such a nature that, in the opinion of the court, for the adjudication of the disputes raised therein all other parties interested in the estate shall have notice thereof, the court shall direct judicial settlement of the account in the manner provided in the succeeding sections.

725. In any of the following cases, and either upon the application of a party mentioned in the next section or of its own motion, the court may from time to time compel a judicial settlement of the account of an executor or administrator:—

Judicial settlement of account.

- (a) where one year has expired since grant to him of probate or administration;
- (b) where such grant has been revoked, or for any other reason his powers have ceased;
- (c) where he has sold or otherwise disposed of any immovable property of the testator, or devisable interest therein, or the rents, profits, or proceeds thereof, pursuant to a power in the will, where one year has elapsed since the grant of probate to him.

726. (1) The application for a judicial settlement in the last section mentioned shall be by petition, entitled as of the action in which grant of probate or administration issued, and may be presented by a creditor, or by any person interested in the estate or fund, including a child born after the making of a will; or by any person in behalf of an infant so interested; or by a surety in

Who may apply for accounting.

the official bond of the person required to account, or the legal representative of such surety.

consolidation shall not affect any power of the court which might be exercised in either special proceeding.

Citation.

(2) Upon the presentation thereof, citation shall issue accordingly; but in a case specified in paragraph (a) of the last preceding section the court may, if the petition is presented within less than eighteen months after the issue of probate or administration, entertain or refuse to entertain it in its discretion.

729. At any time after the expiration of one year since grant of probate or administration to an executor or administrator, he may present to the court which issued the same a petition, entitled as of the action in which such grant issued to him, praying that his account may be judicially settled, and that the creditors or persons claiming to be creditors, husband or wife, heirs, next of kin, and legatees (if any) of the testator or intestate, or, if any of those persons has died, his executor or administrator (if any), may be cited to attend the settlement. If one or more co-executors or co-administrators presents such a petition for a settlement of his separate account, it must pray that his co-executors or co-administrators be also cited. And upon the presentation of any such petition a citation shall issue accordingly.

Executor, &c., may petition for judicial settlement of his account.

Order to account.

727. (1) Upon the return of such citation, if the executor or administrator fails either to appear, or to show good cause to the contrary, or to present, in a proper case, a petition as prescribed in section 729, an order shall be made directing him to account within such a time and in such a manner as the court prescribes, and to attend before the court from time to time for that purpose. And the executor or administrator shall be bound by such order without service thereof, and if he disobeys it the court may issue a warrant of attachment against him, and the grant of probate or administration issued to him may be revoked.

730. (1) Upon the return of such citation the court must take the account and hear the allegations and proofs of the parties respecting the same.

Citation.

Hearing.

Supplemental citation.

(2) If it appears that there is a surplus, distributable to creditors or persons interested, the court may at any time issue a supplemental citation, directed to such persons as must be cited upon the petition of an executor or administrator for a judicial settlement of his account, requiring them to attend the accounting.

(2) Any party may contest the account with respect to a matter affecting his interest in the settlement and distribution of the estate; and any party may contest an intermediate account rendered under section 724 in case the same has not been consolidated under section 728.

Person cited may bring in other parties.

728. (1) Upon the return of any citation issued under any of the foregoing sections of this Chapter, the executor or administrator may, if one year has expired since grant of probate or administration issued to him, present a petition as in the next section prescribed.

731. Any creditor or person interested in the estate, although not cited, is entitled to appear upon the hearing, and thus make himself a party to the special proceeding.

Creditor not cited may appear.

Proceedings.

(2) A citation issued upon such a petition need not be directed to the petitioner in the special proceeding pending against the executor or administrator; but the hearing of the special proceeding shall be adjourned until the return of the citation so issued, whereupon the two special proceedings shall be consolidated. Such

732. Any executor or administrator whose grant has been revoked or who is desirous of resigning his office may, in the same action, present to the court a petition praying that his account may be judicially settled, and that his successor (if any) and the other persons specified in section 729 may be cited to attend the settlement. The proceedings thereon shall be regulated according to the provisions of the last three sections.

Executor, &c., whose grant has been revoked may petition.

Affidavit to be annexed to accounts.

733. To each account filed under this Chapter shall be appended an affidavit of the accounting party, to the effect that the account contains, according to the best of his knowledge and belief, a full and true statement of all his receipts and disbursements on account of the estate of the testator or intestate, and of all money and other property belonging to the estate which has come to his hands, or which has been received by any other person by his order or authority for his use; and that he does not know of any error or omission in the account to the prejudice of any creditor of, or person interested in, the estate.

Vouchers to be produced.

734. Upon every accounting by an executor or administrator, the accounting party must produce and file a voucher for every payment, except in one of the following cases :—

- (1) He may be allowed, without a voucher, any proper item of expenditure, not exceeding twenty rupees, if it is supported by his own uncontradicted oath or affirmation, stating positively the fact of payment and specifying where and to whom the payment was made :

Provided that all the items so allowed against an estate, upon all the accountings of all the executors or administrators, shall not exceed two hundred rupees.

- (2) If he proves, by his own or another's sworn testimony, that he did not take a voucher when he made the payment, or that the voucher then taken by him has been lost or destroyed, he may be allowed any item of which he satisfactorily proves the payment by the testimony of the person to whom he made it, or, if that person is dead or cannot be found, by any competent evidence other than his own or his wife's oath or affirmation.

But no such item shall be allowed unless the court is satisfied that the charge is correct and just.

Accounting party to be examined.

735. The court may at any time make an order requiring the accounting party to make and file his account, or to attend and be examined on oath or affirmation touching his receipts and disbursements, or touching any other matter relating to his administration, or any act done by him under colour of his grant or after the death of the testator or intestate, and before the issue of such grant or touching any movable property of the testator or intestate owned or held by him at the time of his death.

736. (1) Upon a judicial settlement of the account of an executor or administrator, he may prove any debt owing to him by his testator or intestate :

Court to determine claims.

Provided that a concise statement of such debt with an intimation of the petitioner's intention so to prove the same has been inserted in the petition.

(2) Where a contest arises between the accounting party and any of the other parties respecting any property alleged to belong to the estate, but to which the accounting party lays claim, or respecting a debt alleged to be due by the accounting party to the testator or intestate, or by the testator or intestate to the accounting party, the contest must be tried and determined in the same special proceeding and in the same manner as any issue arising on a civil trial.

737. From the death of the testator or intestate until the first judicial settlement of an account by the executor or administrator, the running of the Ordinance relating to the prescription of actions against a debt due from the deceased to the accounting party, or any other cause of action in favour of the latter against the deceased, is suspended, unless the accounting party was appointed upon the revocation of a former grant to another person; in which case the running of the Ordinance is so suspended from the grant to him until the first judicial settlement of his account. After the first judicial settlement of the account of an executor or administrator, the Ordinance begins again to run against a debt due to him from the deceased, or any other cause of action in his favour against the deceased.

Prescription.

738. Upon a judicial settlement of the account of an executor or administrator, the court may allow the accounting party for

Court may allow for property lost, &c.

property of the testator or intestate perished or lost without the fault of the accounting party.

Effect of
judicial
settlement.

739. A judicial settlement under this Chapter, either by the decree of the District Court or upon an appeal therefrom, is conclusive evidence against all parties who were duly cited or appeared, and all persons deriving title from any of them at any time, of the following facts, and no others :—

- (a) that the items allowed to the accounting party for money paid to creditors, legatees, heirs, and next of kin, for necessary expenses, and for his services are correct ;
- (b) that the accounting party has been charged with all the interest for money received by him and embraced in the account, for which he was legally accountable ;
- (c) that the money charged to the accounting party, as collected, is all that was collectible at the time of the settlement on the debts stated in the account ;
- (d) that the allowances made to the accounting party for the decrease, and the charges against him for the increase, in the value of property were correctly made.

Decree for
payment and
distribution.

740. (1) When an account is judicially settled under the provisions of this Chapter, and any part of the estate remains and is ready to be distributed to the creditors, legatees, heirs, next of kin, husband, or wife of the testator or intestate, or their assigns, the decree must direct the payment and distribution thereof to the persons so entitled, according to their respective rights.

(2) If any person who is a necessary party for that purpose has not been cited, or has not appeared, a supplemental citation must be issued as prescribed in section 727.

(3) Where the validity of a debt, claim, or distributive share is not disputed, or has been established, the decree must determine to whom it is payable, the sum to be paid, and all other questions concerning the same.

And such decree shall be conclusive with respect to the matters enumerated in this section upon each party to the special proceedings who was duly cited or appeared, and upon every person deriving title from such party.

741. (1) In either of the following cases the decree may direct the delivery of unsold property, movable or immovable, or the assignment of an uncollected demand, or any other movable property, to a party or parties entitled to payment or distribution in lieu of the money value of the property :—

When specific
property may
be delivered.

- (a) where all the parties interested, who have appeared, manifest their consent thereto by a writing filed in court ;
- (b) where it appears that a sale thereof, for the purpose of payment of distribution would cause a loss to the parties entitled thereto.

(2) The value must be ascertained, if the consent does not fix it, by an appraiser under oath made by one or more persons appointed by the court for the purpose.

742. Where an admitted debt of the testator or intestate is not yet due, and the creditor will not accept present payment with a rebate of interest, or where an action is pending between the executor or administrator and a person claiming to be a creditor of the deceased, the decree must direct that a sum sufficient to satisfy the claim, or the proportion to which it is entitled, together with the probable amount of the interest and costs, be retained in the hands of the accounting party, or paid into court for the purpose of being applied to the payment of the claim when it is due, recovered, or settled ; and that so much thereof as is not needed for that purpose be afterwards distributed according to law.

When money
may be
retained.

743. Where a legacy or distributive share is payable to a person of unsound mind or a minor, the decree may, in the discretion of the court, direct it to be paid to the manager or curator, as the case may be, of the estate of such person of unsound mind or minor, and where a sum of less than one hundred rupees is so payable to a

Share of
person of
unsound mind
or minor.

minor, the decree may direct that the same be applied to the maintenance or education of the minor. And such manager or curator shall apply and account for any sum received by him under this Chapter in manner in Chapters XXXIX and XL respectively provided with regard to sums coming to his hands as such manager or curator.

Appeal.

744. Every order or decree made under the provisions of this Chapter shall be subject to an appeal to the Court of Appeal.

CHAPTER LVI

OF ACCOUNTING IN CASES OF PERSONS OF UNSOUND MIND AND OF MINORS

Compulsory judicial settlement of accounts in cases of persons of unsound mind, mentally deficient persons and minors. [§ 16, 53 of 1980.]

745. A petition praying for the judicial settlement of the account of—

- (a) the manager of the estate of a person of unsound mind or mentally deficient person ;
- (b) the guardian of the person of a person of unsound mind or mentally deficient person ;
- (c) the curator of the estate of a minor ;
- (d) the guardian of the person of a minor ;
- (e) the next friend of a minor plaintiff ;
- (f) the guardian for the action of a minor defendant ;.

and that such persons may be cited to attend the settlement thereof, may in every case where such person is required by law to file accounts, be presented to the court having jurisdiction, in the manner in the last preceding Chapter provided, by any of the following persons respectively, namely :—

In cases falling under paragraphs (a) and (b) by the person of unsound mind or mentally deficient person, after he has been found by adjudication to have ceased to be of unsound mind or mentally deficient, or by any relative or friend of the person of unsound mind or mentally deficient person, or by the executor or administrator of a

deceased person of unsound mind or mentally deficient person, or under paragraph (a) by the guardian of the person, and under paragraph (b) by the manager of the estate, of a person of unsound mind and mentally deficient person or by any public officer mentioned in section 556 ;

In cases falling under paragraphs (c), (d), (e), and (f)—

by the minor after he has attained majority, or by the executor or administrator of a deceased minor, or under paragraph (c) by the guardian of the person, and under paragraph (d) by the curator of the estate of a minor ;

And in any case by the successor of any such manager, curator, guardian, next friend, or guardian for the action. But in cases falling under paragraphs (b), (d), (e), and (f) proof must be adduced to the satisfaction of the court that the person so required to account has received money or property of the minor for which he is liable to account and has not accounted.

746. A petition praying for the judicial settlement of his account and a discharge from his duties and liabilities may be presented in like manner by any of the persons described under paragraphs (a), (b), (c), (d), (e), and (f) of the last preceding section, in any case where a petition for a judicial settlement of his account may be presented by any other person as prescribed in the last section. The petition must pray that every person who might have so presented a petition may be cited to attend the settlement.

Voluntary judicial settlement of accounts in case of persons of unsound mind and minors.

747. (1) Upon the presentation of any petition as mentioned in the last two sections, the court shall issue a citation accordingly.

Procedure.

(2) Sections 724 to 740 both inclusive shall be taken to apply as far as practicable, *mutatis mutandis*, to all proceedings under this Chapter. And the accounting party must annex to every account produced and filed by him an affidavit verifying the account.

748. Every order or decree made under the provisions of this Chapter shall be subject to an appeal to the Court of Appeal.

Appeal.

CHAPTER LVII

PART VIII

GENERAL CLAUSES

OF APPEALS

CHAPTER LVIII

OF APPEALS AND REVISIONS

Requisites of petitions relating to persons of unsound mind, mentally deficient persons, minors, or trustees. [§17, 53 of 1980.]

749. Every petition by which an application is made to a District Court for the exercise of its powers over or in respect of persons of unsound mind, mentally deficient persons, minors or trustees, as the case may be, shall state expressly that the petitioner does not know of any person interested in the subject of the petition or in the person sought to be affected by the order prayed for in the petition, who is likely to entertain any objection thereto, other than those who are named as respondents in the petition.

Citations.

750. But the court shall have power nevertheless to direct that the order *nisi* be served on any person or persons other than a respondent, whom it may consider entitled to have notice of the application.

Security bonds.

751. All security bonds made under or in pursuance of the provisions of Chapters XXXIX, and XL, XLI shall, unless otherwise expressly or by implication directed, be expressed to be made with the Registrar of the court for the time being, and in the case of bonds so made, upon each occurrence of a change of Registrar the new Registrar shall be deemed to take the place of, and to be substituted for, the Registrar whom he succeeds, as party obligee to the contract on the bond, and shall become such party as fully and completely in all respects as if he were originally made such party on the occasion of the making of the bond.

Security from managers and curators. [§18, 53 of 1980.]

752. The District Court shall have the like power to make the person appointed manager of the estate of a person of unsound mind, or mentally deficient person, or the person appointed curator of a minor's estate, give security for the due administration of the estate as it has in the case of administrators of deceased persons' estates.

Powers of revision by Court of Appeal.

753. The Court of Appeal 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.

Mode of preferring appeal. [§109, Law 20 of 1977.]

754. (1) Any person who shall be dissatisfied with any judgment pronounced by any original court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Court of Appeal against such judgment for any error in fact or in law.

(2) Any person who shall be dissatisfied with any order made by any original court in the course of any civil action, proceeding, or matter to which he is or seeks to be a party, may prefer an appeal to the Court of Appeal against such order for the correction of any error in fact or in law, with the leave of the Court of Appeal first had and obtained.

(3) Every appeal to the Court of Appeal from any judgment or decree of any original court, shall be lodged by giving notice of appeal to the original court within such time and in the form and manner hereinafter provided.

(4) The notice of appeal shall be presented to the court of first instance for this purpose, by the party appellant or his registered attorney within a period of fourteen days from the date when the decree or order appealed against was pronounced, exclusive of the day of that date itself and of the day when the petition is presented and of public holidays, and the court to which the notice is so presented shall receive it and

deal with it as hereinafter provided. If such conditions are not fulfilled, the court shall refuse to receive it.

(5) Notwithstanding anything to the contrary in this Ordinance, for the purposes of this Chapter—

“judgment” means any judgment or order having the effect of a final judgment made by any civil court; and

“order” means the final expression of any decision in any civil action, proceeding or matter which is not a judgment.

Notice of appeal.
[§109, Law 20 of 1977.]

755. (1) Every notice of appeal shall be distinctly written on good and suitable paper and shall be signed by the appellant or his registered attorney and shall be duly stamped. Such notice shall also contain the following particulars:—

- (a) the name of the court from which the appeal is preferred;
- (b) the number of the action;
- (c) the names and addresses of the parties to the action;
- (d) the names of the appellant and respondent;
- (e) the nature of the relief claimed:

Provided that where the appeal is lodged by the Attorney-General, no such stamps shall be necessary.

(2) The notice of appeal shall be accompanied by—

- (a) except as provided herein, security for the respondent's costs of appeal in such amount and nature as is prescribed in the rules made by the Supreme Court, or acknowledgment or waiver of security signed by the respondent or his registered attorney; and
- (b) proof of service, on the respondent or on his registered attorney, of a

copy of the notice of appeal, in the form of a written acknowledgment of the receipt of such notice or the registered postal receipt in proof of such service.

(3) Every appellant shall within sixty days from the date of the judgment or decree appealed against present to the original court a petition of appeal setting out the circumstances out of which the appeal arises and the grounds of objection to the judgment or decree appealed against, and containing the particulars required by section 758, which shall be signed by the appellant or his registered attorney. Such petition of appeal shall be exempt from stamp duty.

(4) Upon the petition of appeal being filed, the court shall forward the petition of appeal together with all the papers and proceedings in the case relevant to the judgment or decree appealed against as speedily as possible, to the Court of Appeal, retaining however an office copy of the judgment or decree appealed against for the purposes of execution, if necessary. Such proceedings shall be accompanied by a certificate from the Registrar of the court stating the dates of the institution and decision of the case, in whose favour it was decided and the dates on which the notice and the petition of appeal were filed.

756. (1) On receipt of the petition of appeal, the Registrar of the Court of Appeal shall forthwith number the petition and shall enter such number in the Register of Appeals and notify the parties concerned by registered post.

Procedure in respect of appeal and application for leave to appeal.
[§109, Law 20 of 1977.]

(2) Every application for leave to appeal against an order of court made in the course of any civil action, proceeding or matter, shall be made by petition duly stamped, addressed to the Court of Appeal and signed by the party aggrieved or his registered attorney and shall be supported by affidavit and shall contain the particulars required by section 758. The appellant shall with such petition tender as many copies as may be required for service on the respondents.

(3) Upon an application for leave to appeal being filed, the Registrar of the Court of Appeal shall number such application and shall, as speedily as possible, submit such application to a Judge in Chambers.

(4) The application for leave to appeal shall be presented to the Court of Appeal for this purpose by the party appellant or his registered attorney within a period of fourteen days from the date when the order appealed against was pronounced exclusive of the day of that date itself and of the day when the application is presented and of public holidays and the Court of Appeal shall receive it and deal with it as hereinafter provided and if such conditions are not fulfilled, the Court of Appeal shall reject it.

(5) A Judge to whom an application for leave to appeal has been submitted may—

- (a) forthwith fix a date for the hearing of the application and order notice thereof to be issued on the respondent or respondents, or
- (b) require the application to be supported in open court by the petitioner or attorney-at-law on his behalf on a day to be fixed by such Judge; and the court having heard the petitioner or his attorney-at-law may reject such application or fix a day for the hearing of the application and order notice thereof to be issued on the respondent or respondents:

Provided that when an application is rejected under this subsection, the court shall record the reasons for such rejection.

(6) Where notice is ordered to issue, the Registrar of the Court of Appeal shall accordingly issue notice on each respondent or his registered attorney by registered post and shall also annex to it a copy of the petition of appeal furnished by the appellant. On the date specified in the notice, or on such other date as the court shall then fix, the court shall hear the application for leave to appeal and grant or refuse leave to appeal.

(7) Upon leave to appeal being granted, the Registrar of the Court of Appeal shall immediately inform the original court, and, unless the Court of Appeal has otherwise directed, all proceedings in the original court shall be stayed and the said court shall as speedily as possible forward to the Court of Appeal all the papers and proceedings in the case relevant to the matter in issue.

757. (1) The security to be required from a party appellant shall be by bond (form No. 129, First Schedule) with one or more good and sufficient surety or sureties, or shall be by way of mortgage of immovable property or deposit and hypothecation by bond of a sum of money sufficient to cover the cost of the appeal and to no greater amount.

Security to be by bond and with surety.

(2) Security shall be dispensed with where the appellant is—

[§110, Law 20 of 1977]

- (a) the Attorney-General;
- (b) the spouse in a matrimonial action in whose favour an order for alimony *pendente lite* has been made;
- (c) an insolvent in respect of insolvency proceedings;
- (d) exempted from depositing security by any other written law.

758. (1) The petition of appeal shall be distinctly written upon good and suitable paper, and shall contain the following particulars:—

Form of appeal. [§111, Law 20 of 1977.]

- (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 Court of Appeal;
- (e) a plain and concise statement of the grounds of objection to the judgment, decree, or order appealed

against—such statement to be set forth in duly numbered paragraphs;

(f) a demand of the form of relief claimed.

In deciding appeal, court not confined to grounds set forth by appellant.

(2) The court in deciding any appeal shall not be confined to the grounds set forth by the appellant, but it shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of being heard on that ground.

Where petition to be rejected.

759. (1) If the petition of appeal is not drawn up in the manner in the last preceding section prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended, within a time to be fixed by the court; or be amended then and there. When the court rejects under this section any petition of appeal, it shall record the reasons of such rejection. And when any petition of appeal is amended under this section, the Judge, or such officer as he shall appoint in that behalf, shall attest the amendment by his signature.

[§ 112, Law 20 of 1977.]

(2) In the case of any mistake, omission or defect on the part of any appellant in complying with the provisions of the foregoing sections, the Court of Appeal may, if it should be of opinion that the respondent has not been materially prejudiced, grant relief on such terms as it may deem just.

When one of several plaintiffs or defendants may appeal against whole decree.

760. Where there are more plaintiffs or more defendants than one in an action, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Court of Appeal may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

Death or change of status of party to appeal. [§113, Law 20 of 1977.]

760A. Where at any time after the lodging of an appeal in any civil action, proceeding or matter, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court

of Appeal may in the manner provided in the rules made by the Supreme Court for that purpose, determine who, in the opinion of the court, is the proper person to be substituted or entered on the record in place of, or in addition to, the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be substituted or entered of record as aforesaid.

CHAPTER LIX

OF THE EXECUTION OF DECREES UNDER APPEAL

761. No application for execution of an appealable decree shall be instituted or entertained until after the expiry of the time allowed for appealing therefrom:

Application for execution of decree not to be entertained till expiry of appealable time. [§114, Law 20 of 1977.]

Provided, however, that where an appeal is preferred against such a decree, the judgment-creditor may forthwith apply for execution of such decree under the provisions of section 763.

763*. (1) In the case of an application being made by the judgment-creditor for execution of a decree which is appealed against, the judgment-debtor shall be made respondent.

Application for execution of decree pending appeal must be on notice to debtor; and execution will only be granted on security.

If, on any such application, an order is made for the execution of a decree against which an appeal is pending, the court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Court of Appeal.

And when an order has been passed for the sale of immovable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall, on the application of the judgment-debtor, be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the court which passed the decree thinks fit.

* Section 762 is repealed by Law No. 20 of 1977.

[§19, 53 of 1980.]

(2) The Court may order execution to be stayed upon such terms and conditions as it may deem fit, where—

- (a) the judgment-debtor satisfies the court that substantial loss may result to the judgment-debtor unless an order for stay of execution is made, and
- (b) security is given by the judgment-debtor for the due performance of such decree or order as may ultimately be binding upon him.

Exception in favour of the State.

764. No such security in appeal shall be required from the State or (when Government has undertaken the defence of the action) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

CHAPTER LX

OF APPEAL NOTWITHSTANDING LAPSE OF TIME

Appeal notwithstanding lapse of time.

765. It shall be competent to the Court of Appeal to admit and entertain a petition of appeal from a decree of any original court, although the provisions of sections 754 and 756 have not been observed :

Provided that the Court of Appeal is satisfied that the petitioner was prevented by causes not within his control from complying with those provisions ; and

Provided also that it appears to the Court of Appeal that the petitioner has a good ground of appeal, and that nothing has occurred since the date when the decree or order which is appealed from was passed to render it inequitable to the judgment-creditor that the decree or order appealed from should be disturbed.

Petition therefor.

766. In every such petition of appeal as is the subject of the last section the judgment-creditor shall be named respondent, and the petition shall be accompanied by a certified copy of the decree or order appealed from, and of the judgment on which it is based, as well as by such affidavits of facts and other materials as may constitute *prima facie* evidence that

the conditions precedent to the petition of appeal being entertained, which are prescribed in the last section, are fulfilled. Also, every such petition shall be presented immediately to the Court of Appeal in its appellate jurisdiction, and in addition to the prayer for relief in respect to the subject of appeal it shall contain a prayer that the appeal may be admitted notwithstanding the lapse of time.

to be presented immediately to the Court of Appeal.

767. On any such petition being forwarded to the Court of Appeal the question whether or not it ought to be admitted shall be a preliminary question to be determined forthwith on summary procedure, according to the provisions of alternative (b), section 377. If upon the hearing of this question the Court of Appeal is satisfied that the conditions prescribed in section 765 are fulfilled, it may order the petition of appeal to be admitted upon such conditions as to costs, security, or otherwise as to the court may seem just, and in the event of its doing so the Registrar shall, where the court of first instance is the Court of Appeal, proceed as in section 768 provided ; but where such court is a District Court, Family Court or Primary Court, the Court of Appeal shall issue a mandate to such court, directing it to forward to the Court of Appeal the record of the proceedings of the action in which the decree or order appealed from was passed ; if, however, on the contrary, the court is not satisfied that the said conditions are fulfilled, it shall dismiss the petition and make such order as to costs as may seem to the court just.

Order of Court of Appeal thereon.

CHAPTER LXI

HEARING OF THE APPEAL

768. When the petition of appeal has been preferred to the Court of Appeal in the manner in section 755 prescribed or in the event of the petition of appeal being presented immediately to the Court of Appeal, and when the order for the admission has been made, the Registrar of the Court of Appeal shall enter it in the roll of pending appeals, and the matter of the appeal shall come up for hearing before the court without further notice to the parties concerned, in accordance with the direction

Hearing of appeal. [§116, Law 20 of 1977.]

given to such Registrar by the President of the Court or any other Judge of the Court of Appeal authorized by him in that behalf :

Provided however that the preceding provisions of this section shall not in any event derogate from the right, power or authority of any division of the Court of Appeal or any Judge thereof to make any order in regard to any case or matter listed for hearing, order or disposal before such court or Judge ;

Provided further that a list of the appeals pending before the court in their order on the roll, or of a sufficient number of them, be daily kept suspended upon the notice-board of the court, and that no appeal shall come on for hearing until it has been in that list in the case of appeals from District Courts or Family Courts for fourteen days, or in the case of appeals from Primary Courts for seven days ;

Provided also that the court may of its own motion or on the application of a party concerned and with reasonable notice to the parties accelerate or postpone the hearing of an appeal, upon any such terms as to the prosecution or the costs of the appeal, or otherwise as it may think fit.

Appellant and respondent to be heard.

769. (1) When the appeal comes on for hearing, the appellant shall be heard in support of the appeal. The court shall then, if it does not at once dismiss the appeal or affirm the decree appealed from, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

[§117, Law 20 of 1977.]

(2) If the appellant does not appear either in person or by an attorney-at-law to support his appeal, the court shall consider the appeal and make such order thereon as it thinks fit :

Provided that, on sufficient cause shown, it shall be lawful for the Court of Appeal to reinstate upon such terms as the court shall think fit any appeal that has been dismissed under this subsection.

Power of court to adjourn hearing. [§118, Law 20 of 1977.]

770. If, at the hearing of the appeal, the respondent is not present and the court is not satisfied upon the material in the record or upon other evidence that the notice of

appeal was duly served upon him or his registered attorney as hereinbefore provided, 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 issue the requisite notice of appeal for service.

771. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Court of Appeal to rehear the appeal ; and if he satisfies the court that the notice of appeal was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the court may rehear the appeal on such terms as to costs or otherwise as the court thinks fit to impose upon him.

Rights of respondent to object to decree.

772. (1) Any respondent, though he may not have appealed against any part of the decree, may, upon the hearing, not only support the decree on any of the grounds decided against him in the court below, but take any objection to the decree which he could have taken by way of appeal, provided he has given to the appellant or his registered attorney seven days' notice in writing of such objection.

Rights of respondent at hearing.

(2) Such objection shall be in the form prescribed in paragraph (e) of section 758.

773. Upon hearing the appeal, it shall be competent to the Court of Appeal to affirm, reverse, correct or modify any judgment, decree, or order, according to law, or to pass such judgment, decree or order therein between and as regards the parties, or to give such direction to the court below, or to order a new trial or a further hearing upon such terms as the Court of Appeal shall think fit, or, if need be, to receive and admit new evidence additional to, or supplementary of, the evidence already taken in the court of first instance, touching the matters at issue in any original cause, suit or action, as justice may require or to order a new or further trial on the ground of discovery of fresh evidence subsequent to the trial.

Power of court to dismiss the appeal, affirm, vary or set aside the decree or direct new trial, &c. [§119, Law 20 of 1977.]

Judgment of
the court.

774. (1) On the termination of the hearing of the appeal, the Court of Appeal shall either at once or on some future day, which shall either then be appointed for the purpose, or of which notice shall subsequently be given to the parties or their counsel, pronounce judgment in open court; and each Judge may, if he desires it, pronounce a separate judgment.

(2) The decree shall also state by what parties, and in what proportions, the costs of the action are to be paid.

(3) The decree shall be sealed with the seal of the court. decree to be sealed;

(4) As soon as the decree is sealed all the proceedings in the case sent up to the Court of 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 Court of Appeal) shall be forthwith returned to the court of first instance; which shall conform to and execute such decree in all particulars. after sealing of decree proceedings to be returned to court of first instance.

[§120, Law 20
of 1977.]

(2) The judgment which shall be given or taken down in writing, shall be signed and dated by the Judges, and shall state—

- (a) the points for determination;
- (b) the decision of the 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.

777. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this Chapter desires to obtain execution of the same, he shall apply to the court which passed the decree against which the appeal was preferred; and such court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in an action. Execution of the decree passed in appeal.

Decree of the
Court of
Appeal.

776*. (1) The decree of the Court of Appeal shall be passed in accordance with the judgments of the Judges of which the bench hearing the appeal is composed, if they are unanimous in regard to it, but, if otherwise, in accordance with the judgments of the majority of them. It shall bear date the day on which the judgment was pronounced, and shall contain the following particulars:—

- (a) the heading "In the Court of Appeal";
- (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.

how framed;

PART IX OF SUMMARY PROCEDURE IN RESPECT OF CONTEMPTS OF COURT

CHAPTER LXV†

792†. In all courts the summary procedure to be followed for the exercise of the special jurisdiction to take cognizance of and to punish summarily offences of contempt of court, and offences declared by this Ordinance to be punishable as contempts of court, shall be that which is prescribed in the sections next immediately following. Summary procedure in case of contempt.

793. The court shall issue a summons to the accused person in the form No. 132 in the First Schedule or to the like effect, which summons shall state shortly the nature of the alleged offence and the information or grounds upon which the summons is issued, and shall require the Summons to accused.

* Section 775 is repealed by Law No. 20 of 1977.

† Chapter LXII—Section 778 is repealed by Law No. 20 of 1977.

‡ Chapters LXIII and LXIV—Sections 779 to 791 (both inclusive)—are repealed by Ordinance No. 31 of 1909.

accused person to appear before the court on a day named in the summons to answer the charge.

When may court issue warrant simultaneously with summons.

794. It shall be competent to the court simultaneously with issuing such summons, or at any time after such summons has been issued, if it has reason to believe that the attendance of the accused person at the time appointed in the summons to answer the charge cannot otherwise be secured, to issue a warrant for his arrest in the form No. 133 in the First Schedule or to the like effect, which warrant shall recite the issuing of the summons, and the day appointed therein for the hearing of the charge, and shall command that the accused person after arrest be kept in custody until that day, and be then brought before the court to answer the charge in the summons :

Provided that the person arrested shall at any time after arrest be enlarged upon sufficient security, to an amount endorsed on the warrant by the court, either of the accused person's own bond or that of another person, for his appearance in court on the day named in the summons, being furnished to the officer in whose custody he is.

Judge to record minute of facts observed by him.

795. When the information upon which the charge is based is furnished to the court, either wholly or in part, by the personal observation of the Judge of the accused person's behaviour and language in his presence, the Judge shall at the time record a minute of the facts so observed by him, which shall be admissible as evidence at the hearing of the charge, and in such case no such summons as in section 793 is mentioned shall be necessary, but the accused person may be forthwith committed to jail or admitted to bail as in the last preceding section provided, and all further steps shall be taken in manner herein provided, as though such summons or summons and warrant as aforesaid had been issued.

On day of hearing court may ask accused if he admits truth of charge.

796. On the day appointed by the court for the hearing of the charge, or on any subsequent day to which the hearing may have been adjourned in consequence of the previous non-attendance of the accused

person, the court shall commence the hearing by asking the accused person whether or not he admits the truth of the charge ; and if he does not admit the truth of the charge, the court shall proceed to take evidence (if any) which may be necessary in addition to the court minute under section 795 to establish the charge ; and also to take the accused person's statement and any evidence which he may offer in answer to the charge.

797. (1) If the accused person admits the charge, or if after taking the evidence on both sides and considering the court minute and hearing the accused person's explanation the court finds the accused person guilty of the charge, it shall make out a conviction in the form No. 134 in the First Schedule or to the like effect, which shall recite the materials on which the conviction is founded, and adjudicate upon the material facts of the accused person's behaviour and language, with so much of the surrounding circumstances as cause these to constitute the offences of contempt of court. And the sentence passed by the court shall be recorded on this conviction.

Form of the conviction and sentence thereon.

(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.

When may court dismiss charge.

798. An appeal shall lie to the Court of Appeal from every order, sentence, or conviction made by any court in the exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of contempt of court, and of offences by this Ordinance made punishable as contempt of court ; and the procedure on any such appeal shall follow the procedure laid down in the Code of Criminal Procedure Act regulating appeals from orders made in the ordinary criminal jurisdiction of Magistrates' Courts.

Appeal to Court of Appeal.

799. Every sentence of fine or imprisonment passed by a court in exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of, contempt of court, and offences by this Ordinance made punishable as contempt of court, shall be carried into effect in the same manner and according to the same procedure as is provided in the Code of

Procedure for carrying out sentence of court in case of conviction for contempt.

Criminal Procedure Act for carrying into effect sentences of fine or imprisonment passed by any court in the exercise of its ordinary criminal jurisdiction.

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.

836. At any time after a warrant of arrest has been issued under this Ordinance the court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

Warrant of arrest may be cancelled on ground of illness of party.

PART X

CHAPTER LXVII*

MISCELLANEOUS

837. (1) When a judgment-debtor has been arrested under this Ordinance, the court may release him, if in its opinion he is not in a fit state of health to undergo imprisonment.

Judgment-debtor under arrest may be released on ground of illness.

(2) When a judgment-debtor has been committed to jail, he may be released therefrom—

(a) by the Commissioner of Prisons or by any two Visitors of the jail, on the ground of his suffering from any infectious or contagious disease; or

(b) by the committing court or any court having jurisdiction in the place at which such jail may be situate, on the ground of his suffering from any serious illness.

838. A judgment-debtor released under the last preceding section may be rearrested, but the period of his imprisonment shall not in the aggregate exceed six months.

Released judgment-debtor may be rearrested.

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

Inherent powers of court saved.

800. The provisions of Article 105 (3) of the Constitution and sections 18 and 55 of the Judicature Act shall apply to the sentence of fine or imprisonment, as the case may be, that may be imposed on conviction for contempt under this Chapter by the various courts.

Sentences to be imposed under this Chapter. [§20, 53 of 1980.]

834†. No Judge, Magistrate, or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from his court. And where any matter is pending before a court having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto and their registered attorneys and counsel 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 Judges, parties, registered attorneys and counsel.

835. (1) When in a case pending before any court there appears to the court sufficient ground for sending for investigation to a Magistrate a charge of any such offence as is described in sections 190, 193, 196, 197, 202, 203, 204, 205, 206, 207, 452, 459, 462, 463, 464, or 466 of the Penal Code, which may be made in the course of any other action or proceeding or with respect to any document offered in evidence in the case, the court may cause the person accused to be detained till the rising of the court, and may then or sooner send him in custody to the Magistrate or take sufficient bail for his appearance before the Magistrate. The court shall send to the Magistrate the evidence and documents

When may civil court send cases for investigation to Magistrate.

*Chapter LXVI—Sections 801 to 833 (both inclusive)—is repealed by Law No. 20 of 1977.

† Section 833A is repealed by Act No. 5 of 1964.

FIRST SCHEDULE

No. 1

[Section 10.]

FORM OF NOTICE OF MOTION FOR TRANSFER OF AN ACTION OR MATTER

In the Court of Appeal of the Republic of Sri Lanka

(Title of action, &c., showing in what court it is pending.)

Take notice that the accompanying affidavit will be read and a motion made before the Court of Appeal at Colombo (or as the case may be) on the day of, 19, at o'clock of the forenoon, or so soon thereafter as counsel may be heard, on the part of the defendant (or as the case may be) that this action (or prosecution, or matter) may be withdrawn from (name the court or place in which the action, &c., is pending) and may be transferred to (name the court or place to which transfer is desired); and that the plaintiff (or as before) may be ordered to pay to the applicant his costs of, and occasioned by, this application.

This day of, 19

(Signed)

(Name and address of registered attorney or party giving notice.)

To (name and address of registered attorney or party to be served).
(Annex to this notice copy of the affidavit on which motion is to be made.)

No. 2

[Section 10.]

FORM OF AFFIDAVIT IN SUPPORT OF MOTION FOR TRANSFER

*(For formal parts see No. 75.)*1.—*(State proceedings in court of institution.)*

2.—*(Where the motion is for transfer to a court of inferior jurisdiction.)* The plaintiff's claim is for (state nature and particulars of claim as furnished to defendant, and show that the action is within the jurisdiction of the court to which transfer is desired).

3.—*(In the like case.)* The plaintiff has no visible means of paying my costs should judgment not be given for the said plaintiff.

4.—*(Show means of knowledge.)*

5.—*(Where the motion is for transfer to a court of superior jurisdiction.)* I am advised, and verily believe, that upon the trial of the said action several difficult questions of law are likely to arise, and amongst others the following: (here state the questions likely to arise, and verify the facts raising them).

6.—*(State special reasons, if any, for transfer.)*7.—*(Show means of knowledge.)*

8.—*(Where defendant moves.)* I have a good defence to this action upon the merits, and this application is not made for the purpose of embarrassing or delaying the plaintiff, but bona fide and for the purpose of obtaining a proper trial of the said action.

No. 3

[Section 18.]

FORM OF NOTICE TO A PERSON WHO THE COURT CONSIDERS SHOULD BE JOINED AS A CO-PLAINTIFF

(Title.)

To of

Whereas the above-named (plaintiff) has instituted the above-named action against the above-named (defendant) for

And whereas it appears to this court necessary that you should be added as a plaintiff in the said action, in order to enable this court effectually and completely to adjudicate thereon:

Take notice that you should on or before the day of, 19, signify to this court whether you consent to be so added.

This day of, 19

(Signed), District Judge.

No. 4

FORM OF AUTHORITY FOR THE APPEARANCE OF ONE OR MORE OF SEVERAL PLAINTIFFS OR DEFENDANTS ON BEHALF OF THE OTHER OR OTHERS OF THEM [Section 23.]

(Title.)

I,, of, (or, We,, of,), plaintiff (or defendant, or plaintiffs, or defendants) in the above-named action, do hereby appoint, of, (and, of,), who is (are) also (plaintiff or defendant) in the said action, to appear, plead, and act for me (us) therein.

Witness my (our) hand (hands) this day of, 19

(Signed)

Address

No. 5

FORM OF GENERAL POWER OF ATTORNEY

[Section 25.]

I,, of, do hereby constitute and appoint, of, my true and lawful attorney for me and in my name and on my behalf to appear, sue, or answer, and to receive all process in any action, appeal, or other judicial proceeding whatsoever in any court, and generally to act in all such proceedings in any way in which I might, if present, be permitted or called on to act.

Witness my hand this day of, 19

(Signed)

Address

No. 6

FORM OF APPOINTMENT OF A REGISTERED ATTORNEY BY THE ATTORNEY-GENERAL

[Section 27.]

I, the undersigned,, Attorney-General of the Republic of Sri Lanka, do hereby authorize and appoint, gentleman, one of the Attorneys-at-Law of the Supreme Court of the Republic of Sri Lanka, 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 state against one (or in a certain action instituted in the said Court by one against me as representing the state), wherein (state what the action is) to (sue or defend, as the case may be) and to represent the state 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 attorney-at-law may lawfully do herein.

Given under my hand at this day of, 19

The address for service of the said attorney-at-law is at

Signature

No. 7

FORM OF APPOINTMENT OF A REGISTERED ATTORNEY

[Section 27.]

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, attorney-at-law, to be registered attorney 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 attorney-at-law 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 set 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 attorney-at-law, to take and use all lawful ways and means, and to do and perform all such acts, matters and things as may be necessary in and about the premises which being personally present might or could lawfully do, and, if necessary, one or more attorney or attorneys-at-law or counsel, 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 attorney-at-law or his substitute or substitutes, or the said counsel, shall do herein.

Witness hand at this day of, One thousand nine hundred and

The address for service of the said attorney-at-law is at

Signature

No. 8

FORM OF REVOCATION OF SUCH APPOINTMENT

(Title)

Know all men by these presents that I, *A.B.*, of (or we, *A.B.*, of, and *C.D.*, of, having received the leave of the above-named court in that behalf, do (and each of us doth) hereby revoke and cancel the paper writing filed in the above-named action, and dated (&c.), whereby I (we) have nominated and appointed of to be my (our) registered attorney (registered attorneys) in the said action; and that the said has (have) from this date ceased to be my (our) registered attorney (registered attorneys) in the said action; and the said paper writing shall be henceforth of no force or effect.

The day of, 19

(Signed as the Proxy.)

No. 9

FORM OF NOTICE TO APPOINT A NEW REGISTERED ATTORNEY IN PLACE OF ONE CEASING TO ACT

(Title)

To *Y. Z.*, the defendant (or plaintiff) above named.

Take notice that you are hereby required to appoint another registered attorney in place of *A. B.*, your former registered attorney of record, who (died, or was removed or suspended, or) became incapable to act by reason of (state reason, as the case may be) on or about the day of, 19; and cause notice of such new appointment to be given to the undersigned at the under-written address.

The day of, 19

(Signed), Party (or Registered Attorney)

Address

[Section 27.]

[Section 28.]

No. 10

FORM OF NOTICE OF SUBSTITUTION OF NEW REGISTERED ATTORNEY IN PLACE OF ONE CEASING TO ACT

[Section 28.]

(Title)

To (party or registered attorney issuing the last preceding notice).

Take notice that the undersigned has been substituted (or where the party himself gives the notice, that I, the said Y. Z., have substituted name and address of new registered attorney) in the place of A. B., formerly registered attorney of record for (defendant or plaintiff) in the above-named action.

The day of, 19....

(Signed), Party (or Registered Attorney)

Address

No. 11

FORM OF APPOINTMENT OF AGENT TO ACCEPT SERVICE OF SUMMONS AND OTHER PROCESS
(GENERAL AND SPECIAL)

[Section 30.]

(Where the appointment is special, head with title of the action.)

I,, of, do hereby constitute and appoint, of, my agent to receive on my behalf the service of all summonses and other processes in (any action, appeal, or other civil proceeding whatsoever in any court, or where the appointment is special, substitute in the above-named action).

Witness my hand this day of, 19....

The address for service of the said is at

(Signed)

Address

No. 11A

APPLICATION FOR REGISTRATION OF ADDRESS FOR SERVICE OF PROCESS

[Section 30A]
[§3, Law 12 of 1973.]

To the Registrar of Lands of

I (name in full and address) apply under section 30A of the Civil Procedure Code for registration in or in continuation of the folio (or folios) specified in B below of the address specified in A below as the address for service of process in any action upon the mortgage registered in the folio or folios specified in B below. Particulars of the instrument under which I derive title are given in C below.

A

ADDRESS FOR SERVICE

(Name of registered attorney or person to whom process is to be sent.)
(Full postal address in Sri Lanka)

e.g., H. John Perera,
No. 18, Maliban Street,
Pettah, Colombo.

B

FOLIO (OR FOLIOS) IN WHICH THE ADDRESS IS TO BE REGISTERED

Volume :
Folio :
Volume :
Folio :

C

PARTICULARS OF INSTRUMENT UNDER WHICH APPLICANT DERIVES TITLE

(1) Number and date of deed :

(2) Name of attesting notary :

(3) Volume and folio where the deed is registered :

2. I further declare that my address for service previously registered with you on in volume folio is hereby cancelled.

3. The registration fee of Rs. is enclosed in stamps.

.....
(Signature of applicant.)

* No. 14

FORMAL PARTS OF THE PLAINT

[Sections 40-46.]

In the District Court of Colombo (or Primary Court, as the case may be).

A. B., of (names, descriptions, and addresses of all the plaintiffs, and if they or any of them sue in any representative capacity, state the capacity—e.g., "as executor of C. D." or "administrator of the estate of E. F."—or if the plaintiff is a minor or person of unsound mind appearing by his next friend or manager, say "a minor, by C. D., of, his next friend") Plaintiff.

Against

Y. Z., of (names, descriptions, and addresses of all the defendants as above, stating the capacity, if any, as above in which any of them are sued) Defendant.

The day of, 19

The plaintiff of the above-named plaintiff (or plaintiffs) (and if the case is so add: appearing by G. H., his registered attorney) 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 registered attorney where he appears by one; if otherwise, plaintiff must sign, and an officer authorized by the court in that behalf must verify the signature.)

* Forms No. 12 and 13 are omitted consequent on the repeal of sections 31 and 32 by Law No. 20 of 1977.

No. 15

FORMAL PARTS OF THE ANSWER AND REPLICATION

[Sections 75
and 79.]

(Title and number of action, names, descriptions and addresses of parties, as in the plaint.)

The day of 19.....

The answer of the above-named defendant (or defendants, and if the case is so add: appearing by G. H., his registered attorney) states as follows :—

(Here set forth the defence or defences and claim in reconvention, if any, separately stating and numbering them; and where defendant prays for a declaration of title to land, conclude) And the defendant prays for judgment for the said premises.

Signature (as in Plaint.)

(For Replication, follow this form as near as may be.)

No. 16

FORM OF SUMMONS

[Section
55 (1).
[§125, Law 20
of 1977.]

(Title.)

To the above-named defendant (or defendants).

Whereas the above-named plaintiff has instituted an action against you in this court for (state particulars of claim), you are hereby required to file in court your answer, if any, to the plaint herewith annexed on or before the day of 19..... and you are hereby required to take notice that in default of your filing answer on or before the said date the action will be proceeded with and heard *ex parte*.

You are further required, if you do not appear by a registered attorney, to file a memorandum stating an address at which all legal notices may be served.

By order of court,

.....
Registrar.

Note.—If you desire to receive notice of the date on which the above action will be called in open court, in order to fix the date of trial, you are required by section 80 to furnish to the Registrar of this Court a registered address and tender stamps to the requisite value to cover postage by registered post.

.....
Sgd : Registrar.

This day of 19.....

No. 16A

MEMORANDUM OF REGISTERED ADDRESS

[Section 55
(2).
[§125, Law 20
of 1977.]

In the District Court/ Primary Court of

Case No .

On this day of 19.....

I,, being the defendant in the above action hereby furnish my postal address for service of the notice under section 80 of this Code and all other legal documents required to be served on me under this Code. I undertake to inform the Registrar of any change of address.

I also tender stamps to the value of Rs. to cover cost of service of the notice under section 80 on me by registered post.

Signature :
Defendant.

Address :

Signature :
Defendant.

No. 17

[Sections 55 and 364.]

FORM OF PRECEPT TO FISCAL TO SERVE SUMMONS

(Title)

To the Fiscal of the Court of

Serve forthwith the summons in the above-named action, which, with duplicates, is herewith transmitted to you, upon each of the persons to whom it is directed, and leave with or tender to each such person a duplicate summons and one of the copies of (or concise statements presented with) the plaint, which accompany the summons. And certify to this court on or before the day of 19.... in what manner you have executed this precept, returning the summons attached to your certificate as an exhibit.

By order of court,

(Signed), Registrar.

The day of 19....

No. 18

[Sections 69, 70 and 71.]
[§125, Law 20 of 1977.]

FORM OF SUMMONS FOR SERVICE OUT OF SRI LANKA

(Title)

To the above-named defendant (or defendants).

Whereas the above-named plaintiff has instituted an action against you in this court for (state particulars of claim) you are hereby required to file in court your answer, if any, to the plaint herewith annexed on or before the day of 19.... and you are hereby required to take notice that in default of your filing answer on or before the said date, the action will be proceeded with and heard *ex parte*.

You are further required, if you do not appear by a registered attorney, to file a memorandum stating an address at which all legal notices may be served.

By order of court,

.....
Registrar.

Note.—If you desire to receive notice of the date on which the above action will be called in open court, in order to fix the date of trial, you are required by section 80 to furnish to the Registrar of this Court a registered address and tender stamps to the requisite value to cover postage by registered post.

Sgd :
Registrar.

This day of 19....

No. 19

[Section 703.]

SUMMONS IN AN ACTION OF SUMMARY PROCEDURE ON A LIQUID CLAIM

(Title)

To the above-named defendant (or defendants).

Whereas the above-named plaintiff has instituted an action against you in this court under Chapter LIII of the Civil Procedure Code, for rupees principal and interest (or rupees, balance of principal and interest) due to him as payee (or indorsee) of a bill of exchange (or as the case may be: state the instrument on which the claim is made), of which a copy is hereto annexed:

You are hereby summoned to obtain leave from the court within days from the service hereof, inclusive of the day of such service, to appear and defend the action, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after expiration of

such days to obtain a decree for any sum not exceeding rupees (*name the sum claimed*), together with interest thereon at the rate specified in the said (*instrument*) to the date of payment in full, and the sum of rupees for costs.

Leave to appear may be obtained on an application to the court supported by affidavit showing that there is a defence to the action on the merits, or that it is reasonable that you should be allowed to appear in the action.

(*Here copy the instrument sued on, and where it is a negotiable instrument and carries endorsements, with the endorsements.*)

By order of court.

(Signed), Registrar.

The day of, 19.....

No. 20

FORMS OF CONCISE STATEMENTS TO BE PRESENTED WITH PLAINT

[Section 49.]

The claim of the plaintiff (*and where the plaintiff sues in a representative capacity, add: suing as administrator of the estate and effects of A. B., deceased, or as the case may be*) is rupees for money lent (and interest, or as the case may be, showing the nature of the claim). (*Where defendant is sued in a representative capacity, state it, as*) The defendant, C. D., is sued as the administrator of the estate and effects of X. Y., deceased (and the defendants E. F. and G. H., as his co-heirs-at-law, or as the case may be).

(*Add, where the claim is for a debt or liquidated demand*) And rupees for costs; and if the amount claimed be paid to the plaintiff or his registered attorney within days (*or if the summons is to be served out of the jurisdiction, insert the time for appearance limited in the order*) from the service hereof, further proceedings will be stayed.

Add, when necessary—

- And for an injunction.
- And for mesne profits.
- And for an account of rent, or arrears of rent.
- And for breach of covenant for repairs (*or as the case may be*).

The following may be used in appropriate cases:

Partnership.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant (under articles of partnership dated the day of), and to have the affairs of the partnership wound up.

By Mortgagee.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the day of, made between (*parties*), or by deposit of title deeds, and that the property mortgaged may be realized by sale.

By Mortgagor.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated, and made between (*parties*), and to redeem the property comprised therein.

Raising Portions.

The plaintiff's claim is that the sum of rupees, which by a deed of settlement dated was provided for the portions of the younger children of, may be raised.

Execution of Trust.

The plaintiff's claim is to have the trusts of an indenture dated, and made between (*parties*), carried into execution.

Cancellation or Rectification.

The plaintiff's claim is to have a deed dated, and made between (*parties*), set aside or rectified.

Specific Performance.

The plaintiff's claim is for specific performance of an agreement dated day of for the sale by the plaintiff to the defendant of certain hereditaments at

*No. 25

FORM OF INTERROGATORIES

(Title.)

Interrogatories on behalf of the above-named plaintiff (*or as the case may be*) for the examination of the above-named defendant (*or as the case may be*):

- 1.—Did not, &c.
- 2.—Has not, &c.

The defendant *A. B.* is required to answer the interrogatories numbered

The defendant *C. D.* is required to answer the interrogatories numbered

(Signed), Registered Attorney

for Plaintiff.

No. 26

FORM OF ANSWER TO INTERROGATORIES

(Title.)

The answer of the above-named defendant, *A. B.* (*or as the case may be*), to the interrogatories for his examination delivered on behalf of the above-named plaintiff (*or as the case may be*):

In answer to the said interrogatories, I, the above-named defendant, *A. B.*, make oath (*or affirmation*) and say as follows:

1, 2, 3, 4.—(*Set forth answers to the interrogatories in paragraphs numbered consecutively.*)

5.—I object to answer the interrogatories numbered, on the ground that (*state ground of objection, verifying the same*).

Sworn (*or affirmed*) this day of, 19, before me, &c.

No. 27

FORM OF NOTICE TO ADMIT GENUINENESS OF DOCUMENTS

(Title.)

To (*set out names and places of residence of persons to be served with the notice*).

Take notice that the above-named plaintiff (*or as the case may be*) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (*as the case may be*) or his registered attorney at, on, between the hours of and; and the defendant (*or as before*) is hereby required, within forty-eight hours from the

* Forms Nos. 21 to 24 are omitted as being not applicable to sections 84 to 86, replaced by Law No. 20 of 1977.

[Sections 94 et seq.]

[Section 99.]

[Section 101.]

hour last mentioned, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been, and that such as are specified as copies are true copies.

By order of court,

(Signed) Registrar.

The day of, 19

(Here annex Schedule of Documents.)

No. 28

FORM OF ADMISSION OF GENUINENESS OF DOCUMENTS

[Section 101.]

(Title.)

To (names, &c., of persons to be served).

I (or We, if the case is so), saving all just exceptions as to the admissibility thereof in evidence, hereby admit that the document mentioned in the notice of the day of, 19, issued from this court at the instance of (as the case may be, or, if any are not admitted, that such of the documents mentioned (as above) as are included in the schedule hereto annexed) were respectively written (&c., as in notice).

(Signed) (By party or registered attorney.)

The day of, 19

No. 29

FORM OF NOTICE TO PRODUCE DOCUMENTS FOR INSPECTION

[Section 104.]

(Title.)

To (set out names and place of residence of party to be served).

Take notice that the above-named plaintiff (or as the case may be) requires you to produce for inspection by him or his registered attorney the following documents referred to in (state as the case is); that is to say (describe documents), and to permit such party or registered attorney to take copies thereof.

By order of court,

(Signed) Registrar.

The day of, 19

No. 30

FORMS OF APPOINTMENT, AND OF REFUSAL, TO INSPECT DOCUMENTS

[Sections 104
and 105.]

(Title.)

To (name, &c., of person to be served).

Take notice that the plaintiff (or as the case may be) can inspect the documents mentioned in the notice of the day of, 19, issued from this court at his instance, except (mention any document of which inspection is refused), at my office (or as the case may be) on the day of, 19, at o'clock of the noon. The defendant (or as the case may be) objects to produce the documents hereinbefore excepted, on the ground (state the ground).

(Signed) (By party or registered attorney.)

The day of, 19

No. 31

[Section 105.]

FORM OF NOTICE OF OBJECTION TO GIVE INSPECTION

(Title.)

To (as in last form).

Take notice that the defendant (or as may be) objects to give the plaintiff (or as may be) inspection of the documents mentioned in the notice (as in last form), on the ground (state the ground).

The day of, 19..... (Signed as before.)

No. 32

[Sections
121-126.]

FORM OF SUMMONS TO WITNESS

(Title.)

To (name, description, and address of witness).

You are hereby summoned to appear in this court in person on the day of 19..... at o'clock in the forenoon, to give evidence on behalf of the plaintiff (or defendant) in the above-mentioned action, and to produce (here describe with convenient certainty any document the production of which is required: if the summons is only to 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), Registrar.

The day of, 19.....

NOTE. 1.—If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause the document to be produced in this court on the day and at the hour within-named.

NOTE. 2.—If you are detained beyond the day within-named, a sum of rupees will be tendered to you for each day's attendance beyond the day specified.

(NOTE. 3.—No money having been paid to the court to cover the costs of your attendance, and no security having been given for the payment thereof, your attendance on this summons is not obligatory.)

(NOTE. 4.—Money has been paid into court (or security has been given, (or the case may be) for the costs of your attendance.)

No. 33

FORMS OF PLAINTS

PLAINTS IN ORDINARY CASES

(i) For Money Lent

(Title.)

1.—That on the day of, 19..... at plaintiff lent the defendant rupees repayable on demand (or on the day of

2.—That the defendant has not paid the same, except rupees paid on the day of, 19.....

(If the plaintiff claims exemption from any law of limitation, say:

3.—The plaintiff was a minor (or insane) from the day of till the day of

4.—The plaintiff prays judgment for rupees, with interest at per centum from the day of, 19.....

(ii) *For Money received to Plaintiff's use*

(Title.)

1.—That on the day of, 19, at, the defendant received rupees (or a cheque on the Bank for rupees) from one *E. F.* for the use of the plaintiff.

2.—That the defendant has not paid (or delivered) the same accordingly.

3.—The plaintiff prays judgment for rupees, with interest at per centum from the day of, 19

(iii) *For Price of Goods sold by a Factor*

(Title.)

1.—That on the day of, 19, at, he and *E. F.*, since deceased, delivered to the defendant (one thousand barrels of flour, five hundred bushels of rice, or as the case may be) for sale upon commission.

2.—That on the day of, 19, (or, on some day unknown to the plaintiff, before the day of, 19,), the defendant sold the said merchandise for rupees.

3.—That the commission and expenses of the defendant thereon amount to rupees.

4.—That on the day of, 19, the plaintiff demanded from the defendant the proceeds of the said merchandise.

5.—That he has not paid the same.

(Demand of judgment.)

(iv) *For Money received by Defendant through the Plaintiff's Mistake of Fact*

(Title.)

1.—That on the day of, 19, at, the plaintiff agreed to buy and the defendant agreed to sell bars of silver at cents per ounce of fine silver.

2.—That the plaintiff procured the said bars to be assayed by one *E. F.*, who was paid by the defendant for such assay and that the said *E. F.*, declared each of the said bars to contain 1,500 ounces of fine silver, and that the plaintiff accordingly paid the defendant rupees therefor.

3.—That each of the said bars contain only 1,200 ounces of fine silver.

4.—That the defendant has not repaid the sum so overpaid.

(Demand of judgment.)

(v) *For Money paid to a Third Party at the Defendant's Request*

(Title.)

1.—That on the day of, 19, at, at the request (or by the authority) of the defendant, the plaintiff paid to one *E. F.*, rupees.

2.—That, in consideration thereof, the defendant promised (or became bound) to pay the same to the plaintiff on demand (or as the case may be).

3.—That (on the day of, 19,), the plaintiff demanded payment of the same from the defendant, but he has not paid the same.

(Demand of judgment.)

(vi) *For Goods sold at a Fixed Price and delivered*

(Title.)

- 1.—That on the day of, 19, at, E. F., of, deceased, sold and delivered to the defendant (*one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods.*)
- 2.—That the defendant promised to pay rupees for the said goods on delivery (or on the day of, *some day before the plaint was filed.*)
- 3.—That he has not paid the same.
- 4.—That the said E. F. in his lifetime made his will, whereby he appointed the plaintiff executor thereof.
- 5.—That on the day of, 19, the said E. F. died.
- 6.—That on the day of, probate of the said will was granted to the plaintiff by the District Court of
- 7.—The plaintiff as executor as aforesaid (*demand of judgment.*)

(NOTE — If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest.)

(vii) *For Goods sold at a Reasonable Price and delivered*

(Title.)

- 1.—That on the day of, 19, at, plaintiff sold and delivered to the defendant (*sundry articles of house furniture*), but no express agreement was made as to the price.
- 2.—That the same were reasonably worth rupees.
- 3.—That the defendant has not paid the same.

(*Demand of judgment.*)

(NOTE — The law implies a promise to pay so much as the goods are reasonably worth.)

(viii) *For Goods delivered to a Third Party at Defendant's Request, at a Fixed Price*

(Title.)

- 1.—That on the day of, 19, at, plaintiff sold to the defendant (*one hundred barrels of flour*), and at the request of the defendant, delivered the same to one E. F.
- 2.—That the defendant promised to pay the plaintiff rupees therefor.
- 3.—That he has not paid the same.

(*Demand of judgment.*)

(ix) *For Necessaries furnished to the Family of Defendant's Testator, without his Express Request, at a Reasonable Price*

(Title.)

- 1.—That on the day of, 19, at, plaintiff furnished to (*Mary Jones*), the wife of (*James Jones*), deceased, at her request sundry articles of (*food and clothing*), but no express agreement was made as to the price.

- 2.—That the same were necessary for her.
- 3.—That the same were reasonably worth rupees.
- 4.—That the said (*James Jones*) refused to pay the same.
- 5.—That the defendant is the executor of the last will of the said (*James Jones*).

(Demand of judgment.)

(x) For Goods sold at a Fixed Price

(Title.)

- 1.—That on the day of, 19, at, the plaintiff sold to *E. F.*, of, deceased, (all the crops then growing on his farm in
- 2.—That the said *E. F.* promised to pay the plaintiff rupees for the same.
- 3.—That he did not pay the same.
- 4.—That the defendant is administrator of the estate of the said *E. F.*

(Demand of judgment.)

(xi) For Goods sold at a Reasonable Price

(Title.)

- 1.—That on the day of, 19, at, *E. F.*, of sold to the defendant (all the fruit growing in his orchard in), but no express agreement was made as to the price.
- 2.—That the same was reasonably worth rupees.
- 3.—That the defendant has not paid the same.
- 4.—That on the day of, the District Court of duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff manager of his estate.
- 5.—The plaintiff as manager as aforesaid (demand of judgment).

(xii) For Goods made at Defendant's Request, and not accepted

(Title.)

- 1.—That on the day of, 19, at, *E. F.*, of agreed with the plaintiff that the plaintiff should make for him (six tables and fifty chairs), and that the said *E. F.* should pay for the same upon delivery thereof rupees.
- 2.—That the plaintiff made the said goods, and on the day of, 19, offered to deliver the same to the said *E. F.* and has ever since been ready and willing so to do.
- 3.—That the said *E. F.* has not accepted the said goods or paid for the same.
- 4.—That on the day of, 19, the District Court of duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the defendant manager of his estate.

5.—The plaintiff prays judgment for rupees, with interest from the day of at the rate of per centum per annum, to be paid out of the estate of the said E. F. in the hands of the defendant.

(xiii) For Deficiency upon a Resale (Goods sold at Auction)

(Title.)

1.—That on the day of, 19, at, plaintiff put up at auction sundry (articles of merchandise), subject to the condition that all goods not paid for and removed by the purchaser thereof within (ten days) after the sale should be resold by auction on his account, of which condition the defendant had notice.

2.—That the defendant purchased (one crate of crockery) at the said auction at the price of rupees.

3.—That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for (ten days) thereafter, of which the defendant had notice.

4.—That the defendant did not take away the said goods purchased by him, nor pay therefor, within (ten days) after the sale, nor afterwards.

5.—That on the day of, 19, at, the plaintiff resold the said (crate of crockery), on account of the defendant, by public auction for rupees.

6.—That the expenses attended upon such resale amounted to rupees.

7.—That the defendant has not paid the deficiency thus arising, amounting to rupees.

(Demand of judgment.)

(xiv) For the Purchase Money of Lands conveyed

(Title.)

1.—That on the day of, 19, at, the plaintiff sold (and conveyed) to the defendant (the house and compound No., in the city of, or a farm known as in or a piece of land lying, &c.).

2.—That the defendant promised to pay the plaintiff rupees for the said (house and compound, or farm, or land).

3.—That he has not paid the same.

(Demand of judgment.)

(xv) For the Purchase Money of Immovable Property contracted to be sold, but not conveyed

(Title.)

1.—That on the day of, 19, at, the plaintiff and defendant entered into a notarial agreement, a copy of which is hereto annexed, by which they mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff (the house No. in the town of or acres of land in bounded) for rupees.

2.—That on the day of, 19, at, the plaintiff tendered (or was ready and willing, and offered to execute) a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3.—That the defendant has not paid the said sum.

(Demand of judgment.)

(xvi) For Services at a Fixed Price

(Title.)

1.—That on the day of, 19, at, the defendant (hired plaintiff as a clerk, at the salary of rupees per year).

2.—That from the (said day) until the day of, 19, the plaintiff served the defendant as his (clerk).

3.—That the defendant has not paid the salary.

(Demand of judgment.)

(xvii) For Services at a Reasonable Price

(Title.)

1.—That between the day of, 19, and the day of, 19, at, plaintiff (executed sundry drawings, designs, and diagrams) for the defendant at his request; but no express agreement was made as to the sum to be paid for such services.

2.—That the said services were reasonably worth rupees.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(xviii) For Services and Materials at a Fixed Price

(Title.)

1.—That on the day of, 19, at, plaintiff (furnished the paper for and printed one thousand copies of a book called) for the defendant at his request (and delivered the same to him).

2.—That the defendant promised to pay rupees therefor.

3.—That he has not paid the same.

(Demand of judgment.)

(xix) For Services and Materials at a Reasonable Price

(Title.)

1.—That on the day of, 19, at, plaintiff built a house (known as No. in,) and furnished the materials therefor, for the defendant at his request, but no express agreement was made as to the price to be paid for such work and materials.

2.—That the said work and materials were reasonably worth rupees.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(xx) *For Rent reserved in a Lease*

(Title.)

1.—That on the day of, 19, at, the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed (or state the substance of the contract).

2.—That the defendant has not paid the rent of the (month) ending on the day of 19, amounting to rupees.

(Demand of judgment.)

Another Form

1.—That the plaintiff let to the defendant a house No., for seven years, to hold from the day of, 19, at rupees a year, payable quarterly.

2.—That of such rent quarters are due and unpaid.

(Demand of judgment.)

(xxi) *For Use and Occupation at a Fixed Rent*

(Title.)

1.—That on the day of, 19, at, the defendant hired from the plaintiff (the house No. street), at the rent of rupees, payable on the first day of

2.—That the defendant occupied the said premises from the day of 19, to the day of 19

3.—That the defendant has not paid rupees, being the part of the said rent due on the first day of 19

(Demand of judgment.)

(xxii) *For Use and Occupation at a Reasonable Rent*

(Title.)

1.—That the defendant occupied (the house No. street) by permission of the said X. Y., deceased, from the day of 19, until the day of 19, and no agreement was made as to payment for the use of the said premises.

2.—That the use of the said premises for the said period was reasonably worth rupees.

3.—That the defendant has not paid the same.

4.—That the said X. Y., in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5.—That on the day of 19, the said X. Y. died.

6.—That on the day of, probate of the said will was granted to the plaintiff by the District Court of

7.—The plaintiff as such executor as aforesaid prays judgment for rupees.

(xxiii) *For Board and Lodging*

(Title.)

1.—That from the day of, 19, until the day of, 19, the defendant occupied certain rooms in the house (No. street), by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance, and other necessaries.

2.—That, in consideration thereof, the defendant promised to pay (or that no agreement was made as to payment for such meat, drink, attendance, or necessaries, but the same were reasonably worth) the sum of rupees.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(xxiv) *For Freight of Goods*

(Title.)

1.—That on the day of, 19, at, plaintiff transported in (his barge, or otherwise) (one thousand barrels of flour, or sundry goods), from to at the request of the defendant.

2.—That the defendant promised to pay the plaintiff the sum of (one rupee per barrel) as freight thereon (or, that no agreement was made as to payment for such transportation, but such transportation was reasonably worth rupees).

3.—That the defendant has not paid the same.

(Demand of judgment.)

(xxv) *For Passage Money*

(Title.)

1.—That on the day of, 19, plaintiff conveyed the defendant (in his ship called the), from to at his request.

2.—That the defendant promised to pay the plaintiff rupees therefor (or that no agreement was made as to the said passage, but the said passage was reasonably worth rupees).

3.—That the defendant has not paid the same.

(Demand of judgment.)

(xxvi) *On an Award*

(Title.)

1.—That on the day of, 19, at, the plaintiff and defendant having a controversy between them, concerning (a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay), agreed to submit the same to the award of E. F. and G. H., as arbitrators (or entered into an agreement, a copy of which is hereto annexed).

2.—That on the day of, 19, at, the said arbitrators awarded that the defendant should (pay the plaintiff rupees).

3.—That the defendant has not paid the same.

(Demand of judgment.)

NOTE.—This will apply when the agreement to refer is not filed in Court.

(xxvii) *On a Foreign Judgment*

(Title.)

1.—That on the day of, 19, at, in the State (or Kingdom) of, the Court of that State (or Kingdom), in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2.—That the defendant has not paid the same.

(Demand of judgment.)

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY

(xxviii) *On an Annuity Bond*

(Title.)

1.—That on the day of, 19, at, the defendant by his bond became bound to the plaintiff in the sum of rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff rupees half-yearly on the day of, and the day of, in every year during the life of the plaintiff, the said bond should be void.

2.—That afterwards, on the day of, 19, the sum of rupees for of the said half-yearly payments of the said annuity became due to the plaintiff, and is still unpaid.

(Demand of judgment.)

(xxix) *Payee against Maker*

(Title.)

1.—That on the day of, 19, at, the defendant, by his promissory note, now overdue, promised to pay to the plaintiff rupees (days) after date.

2.—That he has not paid the same (except rupees, paid on the day of, 19,).

(Demand of judgment.)

(NOTE.—Where the note is payable after notice for paragraphs 1 and 2 substitute—)

1.—That on the day of, 19, at, the defendant, by his promissory note, promised to pay to the plaintiff rupees months after notice.

2.—That notice was afterwards given on the day of by the plaintiff to the defendant to pay the same months after the said notice.

3.—That the said time for payment has elapsed, but the defendant has not paid the same.

(Where the note is payable at a particular place, say—)

1.—That on the day of, 19, at, the defendant, by his promissory note, now overdue, promised to pay to the plaintiff (at Messrs. A. & Co.'s, Colombo) rupees months after date.

2.—That the said note was duly presented for payment (at Messrs. A. & Co.'s) aforesaid, but has not been paid.

(xxx) First Indorsee against Maker

(Title.)

1.—That on the day of, 19, at, the defendant, by his promissory note, now overdue, promised to pay to the order of E. F. (or to E. F., or order) rupees (..... days after date).

2.—That the said E. F. indorsed the same to the plaintiff.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(xxxii) Subsequent Indorsee against Maker

(Title.)

1.—*(As in the last preceding form.)*

2.—That the same was, by the indorsement of the said E. F. and of G. H. and I. J. (or and others), transferred to the plaintiff.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(xxxiii) First Indorsee against First Indorser.

(Title.)

1.—That E. F., on the day of, 19, at, by his promissory note, now overdue, promised to pay to the defendant or order rupees months after date.

2.—That the defendant indorsed the same to the plaintiff.

3.—That on the day of, 19, the same was duly presented for payment, but was not paid *(or state facts excusing want of presentment)*.

4.—That the defendant had notice thereof.

5.—That he has not paid the same.

(Demand of judgment.)

(xxxiii) *Subsequent Indorsee against First Indorser, the Indorsement being Special*

(Title.)

1.—That the defendant indorsed to one *E. F.* a promissory note, now overdue, made (or purporting to have been made) by one *G. H.*, on the day of, 19, at, to the order of the defendant, for the sum of rupees (payable days after date).

2.—That the same was, by the indorsement of the said *E. F.* (and others), transferred to the plaintiff (or that the said indorsed the same to the plaintiff).

3, 4 and 5.—(Same as 3, 4, and 5 of the preceding form.)

(Demand of judgment.)

(xxxiv) *Subsequent Indorsee against his Immediate Indorser*

(Title.)

1.—That the defendant indorsed to the plaintiff a promissory note, now overdue, made (or purporting to have been made) by one *E. F.*, on the day of, 19, at, to the order of one *G. H.*, for the sum of rupees (payable days after date), and indorsed by the said *G. H.* to the defendant.

2, 3, and 4.—(Same as in 3, 4, and 5 of last preceding form.)

(Demand of judgment.)

(xxxv) *Subsequent Indorsee against Intermediate Indorser*

(Title.)

1.—That a promissory note, now overdue, made (or purporting to have been made) by one *E. F.*, on the day of, 19, at, to the order of one *G. H.*, for the sum of rupees (payable days after date) and indorsed by the said *G. H.* to the defendant was by the indorsement of the defendant (and others) transferred to the plaintiff.

2, 3, and 4.—(As in No. xxxiii.)

(Demand of judgment.)

(xxxvi) *Subsequent Indorsee against Maker and First and Second Indorsers*

(Title.)

1.—That on the day of, 19, at, the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*, rupees (..... months after date).

2.—That the said *E. F.* indorsed the same to the defendant, *G. H.*, who indorsed it to the plaintiff.

3.—That on the day of, 19, the same was presented (or state facts excusing want of presentment) to the said *C. D.* for payment, but was not paid.

4.—That the said *E. F.* and *G. H.* had notice thereof.

5.—That they have not paid the same.

(Demand of judgment.)

(XXXVII) *Drawer against Acceptor*

(Title.)

1.—That on the day of, 19, at, by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him rupees (..... days after date, or sight, thereof).

2.—That the defendant accepted the said bill, (If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.)

3.—That he has not paid the same.

4.—That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

(Demand of judgment.)

(NOTE.—Where the bill is payable to a third party for paragraph 1, 2, 3, say—)

1.—That on, &c., at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to E. F. or order rupees months after date.

2.—That the plaintiff delivered the said bill to the said E. F. on

3.—That the defendant accepted the said bill but did not pay the same, whereupon the same was returned to the plaintiff.

(XXXVIII) *Payee against Acceptor*

(Title.)

1.—That on the day of, 19, the defendant accepted a bill of exchange, now overdue, made (or purporting to have been made) by one E. F., on the day of, 19, at, requiring the defendant to pay to the plaintiff rupees after sight thereof.

2.—That he has not paid the same.

(Demand of judgment.)

(XXXIX) *First Indorsee against Acceptor*

(Title.)

1.—That on the day of, 19, the defendant accepted a bill of exchange, now overdue, made (or purporting to have been made) by one E. F. on the day of, 19, at, requiring the defendant to pay to the order of one G. H. rupees after sight thereof.

2.—That the said G. H. indorsed the same to the plaintiff.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(xl) *Subsequent Indorsee against Acceptor*

(Title.)

- 1.—(As in the last preceding form to the end of paragraph 1.)
- 2.—That by the indorsement of the said *G. H.* (and others) the same was transferred to the plaintiff.
- 3.—That the defendant has not paid the same.

(Demand of judgment.)

(xli) *Payee against Drawer for Non-acceptance*

(Title.)

- 1.—That on the day of, 19, at, the defendant, by his bill of exchange directed to *E. F.*, required the said *E. F.* to pay to the plaintiff rupees (..... days after sight).
- 2.—That on the day of, 19, the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.
- 3.—That the defendant had due notice thereof.
- 4.—That he has not paid the same.

(Demand of judgment.)

(xlii) *First Indorsee against First Indorser*

(Title.)

- 1.—That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made (or purporting to have been made) by one *E. F.*, on the day of, 19, at, requiring one *G. H.* to pay to the order of the defendant rupees days after sight (or after date, or at sight) thereof (and accepted by the said *G. H.* on the day of, 19
- 2.—That on the day of, 19, the same was presented to the said *G. H.* for payment, and was dishonoured.
- 3.—That the defendant had due notice thereof.
- 4.—That he has not paid the same.

(Demand of judgment.)

(xliii) *Subsequent Indorsee against First Indorser, the Indorsement being Special*

(Title.)

- 1.—That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made (or purporting to have been made) by one *G. H.* on the day of, 19, at, requiring one *I. J.* to pay to the order of the defendant rupees days after sight thereof (or otherwise), and accepted by the said *I. J.* on the day of, 19, (This paragraph may be omitted if not according to the fact.)
- 2.—That the same was, by the indorsement of the said *E. F.* (and others), transferred to the plaintiff.
- 3.—That on the day of, 19, the same was presented to the said *I. J.* for payment, and was dishonoured.
- 4.—That the defendant had due notice thereof.
- 5.—That he has not paid the same.

(Demand of judgment.)

(xlii) *Subsequent Indorsee against his Immediate Indorser*

(Title.)

1.—That the defendant indorsed to plaintiff a bill of exchange, now overdue, made (or purporting to have been made) by one *E. F.*, on the day of, 19, at, requiring one *G. H.* to pay to the order of *I. J.* rupees days after sight thereof (or otherwise), (accepted by the said *G. H.*) and indorsed by the said *I. J.* to the defendant.

2.—That on the day of, 19, the same was presented to the said *G. H.* for payment, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(Demand of judgment.)

(xiv) *Subsequent Indorsee against Intermediate Indorser*

(Title.)

1.—That a bill of exchange, now overdue, made (or purporting to have been made) by one *E. F.*, on the day of, 19, at, requiring one *G. H.* to pay to the order of one *I. J.* rupees days after sight thereof (or otherwise), accepted by the said *G. H.* and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant (and others), transferred to the plaintiff.

2.—That on the day of, 19, the same was presented to the said *G. H.* for payment, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(Demand of judgment.)

(xlii) *Indorsee against Drawer, Acceptor, and Indorser*

(Title.)

That on the day of, 19, at, the defendant, by his bill of exchange, now overdue, directed to the defendant *E. F.*, required the said *E. F.* to pay to the if the defendant *G. H.* rupees (..... days after sight thereof).

That on the day of, 19, the said *E. F.* accepted the same.

That the said *G. H.* indorsed the same to the plaintiff.

That on the day of, 19, the same was presented to the said or payment, and was dishonoured.

That the other defendants had due notice thereof.

That they have not paid the same.

(Demand of judgment.)

(xlvii) *Payee against Drawer for Non-acceptance of a Foreign Bill*

(Title.)

1.—That on the day of, 19, at, the defendant by his bill of exchange, drawn in (Colombo), required one E. F. to pay to the plaintiff in (London) pounds sterling (sixty days) after sight thereof.

2.—That on the day of, 19, the same was presented to the said E. F. for acceptance, and was dishonoured, and was thereupon duly protested.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(5.—That the value of pounds sterling, at the time of the service of notice of protest on the defendant was rupees and cents.)

Wherefore the plaintiff demands judgment against the defendant for rupees, with (six per centum) compensation and interest from the day of 19

(xlviii) *Payee against Acceptor*

(Title.)

1.—That on the day of, 19, at, one E. F., by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff rupees after date (or days after sight) thereof.

2.—That on the day of, 19, the defendant accepted the said bill.

3.—That he has not paid the same.

(Demand of judgment.)

(xlix) *On a Marine (Open) Policy, on Vessel lost by Perils of the Sea, &c.*

(Title.)

1.—The plaintiff was the owner of (or had an interest in) the ship at the time of her loss, as hereinafter mentioned.

2.—That on the day of, 19, at, the defendants, in consideration of rupees to them paid (or which the plaintiff then promised to pay), executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed (or whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from to, whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees).

3.—That the said ship while proceeding on the voyage mentioned in the said policy was, on the day of, 19, totally lost by the perils of the sea (or otherwise).

4.—That the plaintiff's loss thereby was rupees.

5.—That on the day of, 19, he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6.—That the defendants have not paid the said loss.

(Demand of judgment.)

(1) *On Cargo lost by Fire (Valued Policy)*

(Title.)

1.—That plaintiff was the owner of (or had an interest in) (one hundred bales of cotton) on board the ship at the time of her loss as hereinafter mentioned.

2.—That on the day of, 19, at the defendants, in consideration of rupees which the plaintiff then paid (or promised to pay), executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed (or whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods, before their landing at; or, in case of partial loss, such damages as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods).

3.—That on the day of, 19, at, while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (or as the case may be).

4, 5, and 6.—(As in paragraphs 4, 5, and 6 of the last preceding form).

(Demand of judgment.)

(ii) *On Freight (Valued Policy)*

(Title.)

1.—That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to at the time of her loss as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2.—That on the day of, 19, at the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed (or state its tenor as before).

3.—That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of, 19, totally lost by (the perils of the sea).

4.—That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage by reason of her loss as aforesaid.

5. and 6.—(as in form No. xlix.)

(Demand of judgment.)

(iii) *For a Loss by General Average*

(Title.)

1.—That the plaintiff was the owner of (or had an interest in) (one hundred bales of cotton) shipped on board a vessel called the *Y. Z.*, to, at the time of the loss hereafter mentioned.

2.—That on the day of, 19, at, in consideration of rupees (which the plaintiff then promised to pay), the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed (or state its tenor as before).

3.—That on the day of, 19, while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4.—That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5.—That on the day of, 19, he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6.—The defendant has not paid the said loss.

(Demand of judgment.)

(lii) For a Particular Average Loss

(Title.)

1 and 2.—(As in the last preceding form.)

3.—That on the day of, 19, while on the high seas, the sea-water broke into the said ship, and damaged the said (cotton) to the amount of rupees.

4 and 5.—(As in paragraphs 5 and 6 of the last preceding form.)

(Demand of judgment.)

(liv) On a Fire Insurance Policy

(Title.)

1.—That plaintiff (was the owner of, or) had an interest in a (dwelling house, know as No., street, in the city of), at the time of its destruction (or injury) by fire as hereinafter mentioned.

2.—That on the day of, 19, at, in consideration of rupees (to them paid), the defendants executed to the plaintiff a policy of insurance on the said (premises), a copy of which is hereunto annexed (or state its tenor).

3.—That on the day of, 19, the said (dwelling house) was totally destroyed (or greatly damaged) by fire.

4.—That the plaintiff's loss thereby was rupees.

5.—That on the day of, 19, he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6.—The defendants have not paid the said loss.

(Demand of judgment.)

(lv) Against Surety for Payment of Rent

(Title.)

1.—That on the day of, 19, at, one E. F. hired from the plaintiff, for the term of years, the (house No., street) at the annual rent of rupees, payable (monthly).

2.—That (at the same time and place) the defendant agreed, in consideration of the letting of the said premises to the said E. F., to guarantee the punctual payment of the said rent.

3.—That the rent aforesaid for the month of 19, amounting to rupees, has not been paid.

(If by the terms of the agreement notice is required to be given to the surety, add—)

4.—That on the day of, 19, the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5.—That he has not paid the same.

(Demand of judgment.)

PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT

(vi) For Breach of Agreement to convey Land

(Title.)

1.—That on the day of, 19, at, the plaintiff and defendant entered into a notarial agreement, of which a copy is hereto annexed, by which the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of (ten thousand) rupees payable as hereinafter mentioned, he would, on the day of, 19, at, execute to the plaintiff a sufficient conveyance of (the house No. street, in the city of) free from all encumbrances; and the plaintiff agreed to pay (ten thousand) rupees for the same on delivery thereof.

2.—That on the day of, 19, the plaintiff demanded the conveyance of the said property from the defendant and tendered rupees to the defendant (or, that all conditions were fulfilled, and all things happened and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part).

3.—That the defendant has not executed any conveyance of the said property to the plaintiff (or that there is a mortgage upon the said property made by to for rupees, registered in the office of on the day of, 19, and still unsatisfied or any other defect of title).

4.—That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5.—The plaintiff prays judgment for rupees compensation.

(vii) For Breach of Agreement to purchase Land

(Title.)

1.—That on the day of, 19, at, the plaintiff and defendant entered into a notarial agreement, of which a copy is hereto annexed, by which they mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff (forty acres of land in the village of for rupees).

2.—That on the day of, 19, at, the plaintiff, being then the absolute owner of the said property (and the same being free from all encumbrances as was made to appear to the defendant), tendered to the defendant a sufficient instrument of conveyance of the same (or was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument), on the payment by the defendant of the said sum.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(viii) Another Form

(Title.)

1.—That by a notarial agreement dated the day of, 19, of which a copy is hereto annexed, it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant, and the defendant should purchase from the plaintiff (a house and land at the price of rupees), upon the terms and conditions following, that is to say:—

(a) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 19, on which day the said purchase should be completed.

(b) That the plaintiff should deduce and make a good title to the said premises on or before the day of 19, and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2.—That all conditions were fulfilled, and all things happened and all times elapsed, necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3.—That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

(Demand of judgment.)

(lix) For not delivering Goods sold

(Title.)

1.—That on the day of 19, at the plaintiff and defendant mutually agreed that the defendant should deliver (one hundred barrels of flour) to the plaintiff (on the day of 19) and the plaintiff should pay therefor rupees on delivery.

2.—That on the (said) day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3.—That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

(Demand of judgment.)

(ix) For Breach of Contract to employ

(Title.)

1.—That on the day of 19, at, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as (an accountant, or in the capacity of foreman, or as the case may be), and that the defendant should employ the plaintiff as such, for the term of (one year), and pay him for his services rupees (monthly).

2.—That on the day of 19, the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3.—That on the day of 19, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

(Demand of judgment.)

(ixi) For Breach of Contract to employ, where the Employment never took effect

(Title.)

1.—(As in last preceding form.)

2.—That on the day of 19, at, the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3.—That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

(Demand of judgment.)

(lxii) *For Breach of Contract to serve*

(Title.)

1.—That on the day of, 19, at, the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an (annual) compensation of rupees, and that the defendant should serve the plaintiff as (an artist) for the term of (one year).

2.—That the plaintiff has always been ready and willing to perform his part of the said agreement (and on the day of, 19, offered so to do).

3.—That the defendant (entered upon) the service of the plaintiff on the above-mentioned day, but afterwards, on the day of, 19, he refused to serve the plaintiff as aforesaid.

(Demand of judgment.)

(lxiii) *Against a Builder for Defective Workmanship*

(Title.)

1.—That on the day of, 19, at, the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed (or state the tenor of the contract).

(2.—That the plaintiff duly performed all the conditions of the said agreement on his part.)

3.—That the defendant (built the house referred to in the said agreement in a bad and unworkmanlike manner).

(Demand of judgment.)

(lxiv) *By the Master against the Father or Guardian of an Apprentice*

(Title.)

1.—That on the day of, 19, at, the defendant entered into an agreement, under his hand, a copy of which is hereto annexed (or state the tenor of the contract).

2.—That after the making of the said agreement the plaintiff received the said (apprentice) into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3.—That on the day of, 19, the said (apprentice) wilfully absented himself from the service of the plaintiff, and continues so to do.

(Demand of judgment.)

(lxv) *By the Apprentice against the Master*

(Title.)

1.—That on the day of, 19, at, the defendant entered into an agreement with the plaintiff and his (father) E. F., under their hands, a copy of which is hereto annexed.

2.—That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice, to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3.—That the defendant has not (instructed the plaintiff in the business of, or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment)

(Demand of judgment.)

(lxvi) *On a Bond for the Fidelity of a Clerk*

(Title.)

1.—That on the day of, 19, at, the plaintiff employed one *E. F.* as a clerk.

2.—That on the day of, 19, at, the defendant agreed with the plaintiff that if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

(Or, 2.—That at the same time and place the defendant bound himself to the plaintiff by a writing under his hand, in the penal sum of rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void, but not otherwise.)

(Or, 2.—That at the same time and place the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.)

3.—That between the day of 19, and the day of, 19, the said *E. F.* received money and other property amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

(Demand of judgment.)

(lxvii) *By Tenant against Landlord, with Special Damage*

(Title.)

1.—That on the day of, 19, at, the defendant, by an instrument in writing, let to the plaintiff (the house No. street), for the term of years, contracting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2.—That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3.—That on the day of, during the said term, one *E. F.*, who was the lawful owner of the said house, unlawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4.—That the plaintiff was thereby (prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal).

(Demand of judgment.)

(lxviii) *For Breach of Warranty of Movables*

(Title.)

1.—That on the day of, 19, the defendant, warranted a steam-engine to be in good working order and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2.—That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which would otherwise have accrued to him while the engine was under repair.

(Demand of judgment.)

(lxix) *On an Agreement of Indemnity*

(Title.)

1.—That on the day of, 19, at the plaintiff and defendant being partners in trade under the firm of *A. B. & C. D.*, dissolved the said partnership and mutually agreed that the defendant should take and keep all the partnership property, pay all the debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2.—That the plaintiff duly performed all the conditions of the said agreement on his part.

3.—That on the day of, 19, a judgment was recovered against the plaintiff and defendant by one *E. F.* in the District Court of, upon a debt due from the said firm to the said *E. F.*, and on the day of, 19, the plaintiff paid rupees (in satisfaction of the same).

4.—That the defendant has not paid the same to plaintiff.

(Demand of judgment.)

(lxx) *By Shipowner against Freighter for not Loading*

(Title.)

1.—That on the day of, 19, at the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

(Or, 1.—That on the day of, 19, at, the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship at on the day of, 19, *five hundred tons of merchandise*, which she should carry to and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage if required, at rupees per day.)

2.—That at the time fixed by the said agreement the plaintiff was ready and willing, and offered to receive (the said merchandise, or the merchandise mentioned in the said agreement) from the defendant.

3.—That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

PLAINTS FOR COMPENSATION UPON WRONGS

(lxxi) *For Trespass on Land*

(Title.)

1.—That on the day of, 19, at, the defendant entered upon certain land of the plaintiff, known as (and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same).

(Demand of judgment.)

(Ixxii) *For Trespass in entering a Dwelling house*

(Title.)

1.—That the defendant entered a dwelling house of the plaintiff called and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling house, and removed, took, and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling house, and kept them so expelled for a long time.

2.—That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling house for himself and his family.

(Demand of judgment.)

(Ixxiii) *For Trespass on Movables*

(Title.)

1.—That on the day of 19 at the defendant broke open ten barrels of rum belonging to the plaintiff and emptied their contents into the street (or seized and took the plaintiff's goods, that is to say, iron, rice, and household furniture, or as the case may be, and carried away the same and disposed of them to his own use).

(Or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.)

2.—That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expenses in feeding them and in getting them restored to him; and was also prevented from selling them at as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff (otherwise, state the injury according to the facts.)

(Demand of judgment.)

(Ixxiv) *For the Conversion of Movable Property*

(Title.)

1.—That on the day of 19 plaintiff was in possession of certain goods described in the schedule hereto annexed (or of one thousand barrels of flour).

2.—That on that day at the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

(Demand of judgment.)

(The Schedule)

(Ixxv) *Against a Warehouseman for Refusal to deliver goods*

(Title.)

1.—That on the day of 19 at the defendant, in consideration of the payment to him of rupees (or rupees per barrel, per month, &c.), agreed to keep in his godown (one hundred barrels of flour), and to deliver the same to the plaintiff on payment of the said sum.

2.—That thereupon the plaintiff deposited with the defendant the said (one hundred barrels of flour).

3.—That on the day of 19 the plaintiff requested the defendant to deliver the said goods and tendered him rupees (or the full amount of storage due thereon), but the defendant refused to deliver the same.

4.—That the plaintiff was thereby prevented from selling the said goods to E. F., and the same are lost to the plaintiff.

(Demand of judgment.)

(lxxvi) *For procuring Property by Fraud*

(Title.)

1.—That on the day of, 19, at, the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that (he, the defendant, was solvent, and worth rupees over all his liabilities).

2.—That the plaintiff was thereby induced to sell (and deliver) to the defendant (dry goods) of the value of rupees.

3.—That the said representations were false (or state the particular falsehoods), and were then known by the defendant to be so.

4.—That the defendant has not paid for the said goods. (Or, if the goods were not delivered, that the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended rupees.)

(Demand of judgment.)

(lxxvii) *For fraudulently procuring Credit to be given to another Person*

(Title.)

1.—That on the day of, 19, at, the defendant represented to the plaintiff that one E. F. was solvent and in good credit, and worth rupees over all his liabilities (or that E. F. then held a responsible situation, and was in good circumstances, and might safely be trusted with goods on credit).

2.—That the plaintiff was thereby induced to sell to the said E. F. (rice) of the value of rupees (on months' credit).

3.—That the said representations were false, and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff (or to deceive and injure plaintiff).

4.—That the said E. F. did not pay for the said goods at the expiration of the credit aforesaid (or has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises).

(Demand of judgment.)

(lxxviii) *For polluting the Water under the Plaintiff's Land*

(Title.)

1.—That he is, and at all the times hereinafter mentioned was, possessed of certain land called, and situated in, and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2.—That on the day of, 19, the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3.—That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

(Demand of judgment.)

(lxxix) *For carrying on a Noxious Manufacture*

(Title.)

- 1.—That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called
, situate in
- 2.—That ever since the day of, 19, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.
- 3.—That thereby the trees, hedges, herbage, and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and livestock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.
- 4.—That by reason of the premises the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep, and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

(Demand of judgment.)

(lxxx) *For obstructing a Way*

(Title.)

- 1.—That the plaintiff is, and at the time hereinafter mentioned was, possessed of (a house in the village of
).
- 2.—That he was entitled to a right of way from the said (house) over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants (with vehicles, or on foot), at all times of the year.
- 3.—That on the day of, 19, defendant wrongfully obstructed the said way, so that the plaintiff could not pass (with vehicles, or on foot, or in any manner) along the said way (and has ever since wrongfully obstructed the same).
- 4.—(State special damage, if any.)

(Demand of judgment.)

Another Form

- 1.—That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.
- 2.—That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones (or into the said trench) and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

(Demand of judgment.)

(lxxxi) *For diverting a Watercourse*

(Title.)

- 1.—That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a stream known as the, in the village of, district of
- 2.—That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3.—That on the day of, 19, the defendant by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4.—That by reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

(Demand of judgment.)

(lxxxii) *For obstructing a Right to use Water for Irrigation*

(Title.)

1.—That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2.—That on the day of, 19, the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

(Demand of judgment.)

(lxxxiii) *For Waste by a Lessee*

(Title.)

1.—That on the day of, 19, the defendant hired from plaintiff (the house No. street) for the term of

2.—That the defendant occupied the same under such hiring.

3.—That during the period of such occupation the defendant greatly injured the premises (defaced the walls, tore up the floors, and broke down the doors; or otherwise specify the injuries as far as possible).

The plaintiff prays judgment for rupees compensation.

(lxxxiv) *For Assault and Battery*

(Title.)

That on the day of, 19, at, the defendant assaulted and beat plaintiff.

The plaintiff prays judgment for rupees compensation.

(lxxxv) *For Assault and Battery, with Special Damage*

(Title.)

1.—That on the day of, 19, at, the defendant assaulted and beat him until he became insensible.

2.—That the plaintiff was thereby disabled from attending to his business for (six weeks thereafter), and was compelled to pay rupees for medical attendance, and has been ever since disabled (from using his right arm, or otherwise state the damage as the case may be).

(Demand of judgment.)

(lxxxvi) For Assault and False Imprisonment

(Title.)

1.—That on the day of, 19, at, the defendant assaulted the plaintiff and imprisoned him for days (or hours). (State special damage, if any thus—)

2.—That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment (or otherwise, as the case may be.)

(Demand of judgment.)

(lxxxvii) For Injuries caused by Negligence on Railroad

(Title.)

1.—That on the day of, 19, the defendants were common carriers of passengers by railway between and

2.—That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3.—That while he was such passenger at (or near the station of or between the stations of and), a collision occurred on the said railway caused by the negligence and unskillfulness of the defendants' servants, whereby the plaintiff was much injured (having his leg broken, his head cut, &c., and state the special damage, if any, as) and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as (a salesman).

(Demand of judgment.)

(Or thus: 2.—That on that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, &c., as in paragraph 3.)

(lxxxviii) For Injuries caused by Negligent Driving

(Title.)

1.—The plaintiff is a shoemaker, carrying on business at The defendant is a merchant of

2.—On the (23rd , 19) the plaintiff was walking eastward along street, in Colombo, at about 3 o'clock in the afternoon. He was obliged to cross street, which is a street running into street at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of street into street. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3.—By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims rupees damages.

(lxxxix) For Libel, the Words being libellous in themselves

(Title.)

1.—That on the day of, 19, at, the defendant published in a newspaper, called the (or in a letter addressed to E. F.), the following words concerning the plaintiff:

(Set forth the words used.)

2.—That the said publication was false and malicious.

(Demand of judgment.)

[NOTE.—If the libel was in a language not the language of the court, set out the libel verbatim in the language in which it was published, and then proceed thus: "which said words being translated into the language, have the meaning and effect following, and were so understood by the persons to whom they were so published; that is to say (*here set out a literal translation of the libel in the language of the court.*)"]

(xc) For Libel, the Words not being libellous in themselves

(Title.)

1.—That the plaintiff (is, and) was on and before the day of, 19 , a merchant doing business in the city of

2.—That on the day of, 19 , at, the defendant published in a newspaper, called the (or in a letter addressed to *E. F.* or otherwise how published), the following words concerning the plaintiff:

(" *A. B.* of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address. ")

3.—That the defendant meant thereby that (the plaintiff had absconded to avoid his creditors, and with intent to defraud them).

4.—That the said publication was false and malicious.

(Demand of judgment.)

(xci) For Slander, the Words being actionable in themselves

(Title.)

1.—That on the day of, 19 , at, the defendant falsely and maliciously spoke, in the hearing of *E. F.* (or sundry persons), the following words concerning the plaintiff: (" He is a thief ").

2.—That, in consequence of the said words, the plaintiff lost his situation as in the employ of

(Demand of judgment.)

(xcii) For Slander, the Words not being actionable in themselves

(Title.)

1.—That on the day of, 19 , at, the defendant falsely and maliciously said to one *E. F.* concerning the plaintiff: (" He is a young man of remarkably easy conscience. ")

2.—That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3.—That in consequence of the said words (the said *E. F.* refused to employ plaintiff as a clerk).

(Demand of judgment.)

(xciii) For Malicious Prosecution

(Title.)

1.—That on the day of, 19, at, the defendant obtained a warrant of arrest from, a (Magistrate of the said city, or as the case may be), on a charge of, and the plaintiff was arrested thereon, and imprisoned for (days or hours, and gave bail in the sum of rupees to obtain his release).

2.—That in so doing the defendant acted maliciously and without reasonable or probable cause.

3.—That on the day of, 19, the said Magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4.—That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or that in consequence of the said arrest, the plaintiff lost his situation as a clerk to one E. F., or that by reason of the premises the plaintiff suffered pain of body and mind and was prevented from transacting his business, and was injured in his credit, and incurred expenses in obtaining his release from the said imprisonment and defending himself against the said complaint.

(Demand of judgment.)

PLAINTS IN ACTIONS FOR SPECIFIC PROPERTY

(xciv) By the Absolute Owner for the Possession of Immovable Property

(Title.)

1.—That X. Y. was the absolute owner (of the estate, or the share of the estate, called situated in the district of, of the estimated value of rupees, or of the house No. street, in the town of Colombo, the estimated value of which is rupees).

2.—That on the day of, 19, Z, illegally dispossessed the said X. Y. of the estate (or share or house).

3.—That the said X. Y. has since died intestate, leaving the plaintiff, the said A. B., his heir him surviving.

4.—That the defendant withholds the possession of the estate (or share or house) from the plaintiff.

The plaintiff prays judgment :

- (1) For the possession of the said premises ;
- (2) For rupees compensation for withholding the same.

(Another form)

1.—On the day of, the plaintiff, by an instrument in writing, let to the defendant a house and premises (No. 52, in the) for a term of five years from the day of, at the monthly rent of three hundred rupees.

2.—By the said instrument the defendant covenanted to keep the said house and premises in good and tenable repair.

3.—The said instrument contained a clause of re-entry entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4.—On the day of, 19, a month's rent became due, and on the day of, 19, another month's rent became due; on the day of, 19, both had been in arrear for twenty-one days, and both are still due.

5.—On the same day of, 19, the house and premises were not and are not now in good or tenantable repair and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims :

- (1) Possession of the said house and premises ;
- (2) rupees for arrears of rent ;
- (3) rupees compensation for the defendant's breach of his covenant to repair ;
- (4) rupees for the occupation of the house and premises from the day of, 19, to the day of recovering possession.

(xcv) *By the Tenant*

(Title.)

1.—That one *E. F.* is the absolute owner of (a piece of land in the town of, bounded as follows :), the estimated value of which is rupees.

2.—That on the day of, 19, the said *E. F.* let the said premises to the plaintiff for years, from

3.—That the defendant withholds the possession thereof from the plaintiff.

(Demand of judgment.)

(xcvi) *For Movable Property wrongfully taken*

(Title.)

1.—That on the day of, 19, plaintiff owned (or was possessed of) one hundred barrels of flour, the estimated value of which is rupees.

2.—That on that day, at, the defendant took the same.

The plaintiff prays judgment :

- (1) For the possession of the said goods, or for rupees in case such possession cannot be had ;
- (2) For rupees compensation for the detention thereof.

(xcvii) *For Movables wrongfully detained*

(Title.)

1.—That on the day of, 19, plaintiff owned (or state facts showing a right to the possession) the goods mentioned in the schedule hereto annexed (or describe the goods), the estimated value of which is rupees.

2.—That from that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3.—That before the commencement of his suit, to wit, on the day of, 19, the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment :

- (1) For the possession of the said goods, or for rupees in case such possession cannot be had ;
- (2) For rupees compensation for the detention thereof.

(The Schedule.)

(xcviii) *Against a Fraudulent Purchaser and his Transferee with Notice*

(Title.)

1.—That on the day of, 19, at, the defendant C. D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that (he was solvent and worth rupees over all his liabilities).

2.—That the plaintiff was thereby induced to sell and deliver to the said C. D. (*one hundred boxes of tea*), the estimated value of which is rupees.

3.—That the said representations were false, and were then known by the said C. D. to be so. (*Or*, That at the time of making the said representations the said C. D. was insolvent, and knew himself to be so.)

4.—That the said C. D. afterwards transferred the said goods to the defendant E. F. without consideration (*or* who had notice of the falsity of the representation).

The plaintiff prays judgment :

- (1) For the possession of the said goods, or for rupees in case such possession cannot be had ;
- (2) For rupees compensation for the detention thereof.

PLAINTS IN ACTIONS FOR SPECIAL RELIEF

(xcix) *For Rescission of a Contract on the Ground of Mistake*

(Title.)

1.—That on the day of, 19, the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at, contained (*ten acres*).

2.—That the plaintiff was thereby induced to purchase the same at the price of rupees, in the belief that the said representation was true, and signed an instrument of agreement of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3.—That on the day of, 19, the plaintiff paid the defendant rupees as part of such purchase-money.

4.—That the said piece of ground contained in fact only (*five acres*).

The plaintiff prays judgment :

- (1) For rupees, with interest from the day of, 19
- (2) That the said agreement of purchase be delivered up and cancelled.

(c) *For an Injunction restraining Waste*

(Title.)

1.—That plaintiff is the absolute owner of (*describe the property*).

2.—That the defendant is in possession of the same under a lease from the plaintiff.

3.—That the defendant has (*cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale*) without the consent of the plaintiff.

The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

(*Pecuniary compensation might also be prayed.*)

(ci) *For Abatement of a Nuisance*

(Title.)

1.—That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of (the house No., street).

2.—That the defendant is, and at all the said times was, the absolute owner of a (plot of ground in the same street).

3.—That on the day of, 19, the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there (and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff).

4.—That (the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same).

The plaintiff prays judgment that the said nuisance be abated.

(cii) *For an Injunction against the Diversion of a Watercourse*

(Title.)

(As in form lxxx.)

The plaintiff prays judgment that the defendant be restrained by injunction from diverting the water as aforesaid.

(ciii) *For Restoration of Movable Property, threatened with Destruction, and for an Injunction*

(Title.)

1.—That plaintiff is, and at all the times hereinafter mentioned was, the owner of a (*portrait of his grandfather which was executed by an eminent painter*), and of which no duplicate exists (*or state any facts showing that the property is of a kind that cannot be replaced by money*).

2.—That on the day of, 19, he deposited the same for safe keeping with the defendant.

3.—That on the day of, 19, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4.—That the defendant refuses to deliver the same to the plaintiff, and threatens to conceal, dispose of, cut, or injure the same if required to deliver it up.

5.—That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the (*painting*).

The plaintiff prays judgment :

(1) That the defendant be restrained by injunction from disposing of, injuring, or concealing the said (*painting*);

(2) That he return the same to the plaintiff.

(civ) *Interpleader*

(Title.)

1.—That before the date of the claims hereinafter mentioned, one *G. H.* deposited with the plaintiff (*describe the property*) for (safe keeping).

2.—That the defendant, *C. D.*, claims the same (under an alleged assignment thereof to him from the said *G. H.*).

- 3.—That the defendant, *E. F.*, also claims the same (under an order of the said *G. H.* transferring the same to him).
- 4.—That the plaintiff is ignorant of the respective rights of the defendants.
- 5.—That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the court shall direct.
- 6.—That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment :

- (1) That the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;
- (2) That they be required to interplead together concerning their claims to the said property ;
- (3) That some person be authorized to receive the said property pending such litigation ;
- (4) That upon delivering the same to such (person), the plaintiff be discharged from all liability to either of the defendants in relation thereto.

(cv) *Execution of Trusts*

(Title.)

1.—That plaintiff is one of the trustees under an instrument of settlement bearing date on or about the day of, made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant (or an instrument of assignment of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and other the creditors of *E. F.*).

2.—The plaintiff has taken upon himself the burden of the said trust, and is in possession (or of the proceeds of) the movable and immovable property conveyed (or assigned) by the before-mentioned deed.

3.—The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4.—The plaintiff is desirous to account for all the rents and profits of the said immovable property (and the proceeds of the sale of the said, or of part of the said, immovable property, or movable or the proceeds of the sale of, or part of, the said movable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust) : and he prays that the court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the court for the benefit of the said *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the court may direct, or that the said *C. D.* may show good cause to the contrary.

(cvi) *Realization of Mortgage*

(Title.)

1.—By a writing obligatory dated the day of, 19, the defendant bound himself to pay to the plaintiff (his heirs, &c.) the principal sum of rupees, together with interest thereon at the rate of per centum per annum (on demand, or as the case may be).

2.—For securing the payment of the said principal and interest the defendant mortgaged with the plaintiff, his heirs, &c., the following property (*describe*).

3.—(Where the bond is not payable on demand, *allege notice*.)

4.—There is now due from the defendant to the plaintiff the sum of rupees for principal and interest on the said writing.

5.—The plaintiff prays that the court will order the defendant to pay him the said sum of rupees, with such further interest as may accrue between the filing of the libel and the day of payment, and also the costs of this action, on some day to be named by the court, and in default that the said premises may be sold, and

the proceeds applied in and towards the payment of the amount of the said principal, interest, and costs; and that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of per centum per annum until realization; and that for that purpose all proper directions may be given, and accounts taken by the court.

(vii) *Redemption*

(Title.)

Alter form *cvi* thus:

Transpose parties and also the facts in paragraphs 1 and 2.

For paragraph 4 substitute—

4.—There is now due from the plaintiff to the defendant, for principal and interest on the said writing, the sum of rupees, which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before the filing of this libel, had notice.

For paragraph 5 substitute—

5.—The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to release the same to him upon the payment of the said sum of rupees and interest, with such costs (if any) as the court may order, upon a day to be named by the court, and that the court will give all proper directions for the preparation and execution of such release and doing such other acts as may be necessary to put him into possession of the said premises freed from the said mortgage.

(cviii) (a) *Specific Performance*

(Title.)

1.—By an agreement dated the day of, 19, and signed by the above-named defendant, C. D., he, the said C. D. contracted to buy of (or sell to) plaintiff certain immovable property therein described and referred to, for the sum of rupees.

2.—Plaintiff has applied to the said C. D. specifically to perform the said agreement on his part, but he has not done so.

3.—Plaintiff has been and still is ready and willing specifically to perform the agreement on his part, of which the said C. D. has had notice.

4.—The plaintiff prays that the court will order the said C. D. specifically to perform the said agreement, and to do all acts necessary to put plaintiff in full possession of the said property (or to accept a conveyance and possession of the said property) and to pay the costs of the action.

[N. B.—In action for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3 and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as, that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.]

(cix) (b) *Special Performance*

(Title.)

1.—That on the day of, 19, the defendant was absolutely entitled to certain immovable property described in the agreement hereto annexed.

2.—That on the same day the plaintiff and defendant entered into an agreement under their hands, a copy of which is hereto annexed.

3.—That on the day of, 19....., the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4.—That on the day of, 19....., the plaintiff again demanded such conveyance.

5.—That the defendant has not executed such conveyance. (Or, That the defendant refused to convey the same to the plaintiff.)

6.—That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment :

- (1) That the defendant execute to plaintiff a sufficient conveyance of the said property (following the terms of the agreement);
- (2) For rupees compensation for withholding the same.

(cx) Partnership

(Title.)

1.—He, the plaintiff, and the said C. D., the defendant, have been for the space of years (or months) last past carrying on business together at, within the jurisdiction of this court, under certain articles of partnership in writing, signed by them respectively (or under a certain deed sealed and executed by them respectively, or under a verbal agreement between them, the said plaintiff and defendant).

2.—Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3.—The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles (or deed or agreement).

4.—The plaintiff prays the court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the court, and the assets thereof realized, and that each party may be ordered to pay into court any balance due from him upon such partnership account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the action may be paid out of the partnership assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles (or deed, or agreement), or that if the said assets shall prove insufficient, he, the plaintiff, and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities, and costs. And to give such other relief as the court shall think fit.

[N. B.—In actions for winding up of any partnership, omit the prayer for dissolution : but insert a paragraph stating the fact of the partnership having been dissolved.]

No. 34

[Section 471.]

FORM OF ORDER FOR THE PERSONAL APPEARANCE OF PLAINTIFF, OR THE DIRECTOR OR SECRETARY OR OTHER PRINCIPAL OFFICER OF A CORPORATION, BOARD, PUBLIC BODY OR COMPANY

(Title.)

To, of, plaintiff in the above-named action (or director, or secretary, or other principal officer of the corporation, board, public body or company).

You are hereby summoned to attend in person in this court in the action above specified at o'clock of the forenoon on the day of, 19

(Signed), (Name and office of Judge).

The day of, 19

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No. 35

FORM OF LIST OF DOCUMENTS PRODUCED BY PARTIES AT THE HEARING

[Section 113.]

(Title.)

No.	Description of Document	Date (if any) Which it bears	Signature of Party or Registered Attorney

No. 36

FORM OF RECEIPT BOOK FOR RETURNED EXHIBITS

[Section 116.]

Description of exhibit	By whom preserved	No. of action in which preserved	Date on which line for appeal stayed 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
<i>Enter description merely and not substance of exhibit.</i>							<i>(Should be signed by officer in charge of this register.)</i>

No. 37

FORM OF PROCLAMATION TO BE ISSUED WHEN SUMMONS CANNOT BE SERVED

[Section 131.]

In the District Court of (or as the case may be).

PROCLAMATION

(Title.)

To all to whom these presents shall come, greeting.

Whereas it appears by the return made by the Fiscal of to a certain summons issued in the above-named action at the instance of the above-named (plaintiff or defendant), whereby one (name of witness) was required to appear and testify on behalf of the (plaintiff or defendant) in the said action [or to produce (any document required, describing it)] that the said Fiscal has not been able to serve 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,

The day of, 19

(Signed), Registrar.

No. 38

FORM OF MANDATE OF SEQUESTRATION AFTER PROCLAMATION

[Section 131.]

(Title.)

To the Fiscal of the Court of

Whereas it appears by the return made by you (or by the Fiscal of, as the case may be) to a certain summons issued in the above-named action at the instance of the above-named (plaintiff or defendant), whereby one (name of witness) was required to appear and testify on behalf of the (plaintiff or defendant) in the

said action (or to produce any document, describing it) that you (or the said, &c., as the case may be) have (has) not been able to serve a copy of the said summons on the said (witness): And whereas it has been proved to the satisfaction of this court that the said (witness) has absconded (or is keeping out of the way for the purpose of avoiding such service as aforesaid), and that he is a necessary and material witness on behalf of the said (plaintiff or defendant) at the trial of the above-named action [or that the production of the said (document) is necessary and material, &c.], without whose testimony (or without which) the said (plaintiff or defendant) cannot safely proceed to trial: And whereas in consideration of the premises a proclamation was on the day of 19, issued by this court requiring the attendance of the said (witness) at this court for the purpose aforesaid on the day of 19, at o'clock of the forenoon, and the said (witness) has not attended at such time and place in accordance with the terms of such proclamation: You are therefore commanded to seize and sequester the houses, lands, goods, moneys, securities for money, and debts of the said (witness) to the value of (insert value not exceeding the amount of cost of sequestration and of the fine imposable under section 133), wheresoever and in whose custody or possession soever the same may be within this district, and to retain and secure the same until the said (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), Registrar.

The day of 19

ENDORSEMENT ON THE ABOVE FOR FURTHER SEQUESTRATION

To the Fiscal of the Court of

Seize and sequester property of the within-named defendant to the further amount of rupees, in manner and form as you were hereby before directed.

(Signed), District Judge.

No. 39

[Section 137.]

FORM OF WARRANT OF ARREST AGAINST A WITNESS FOR DISOBEDIENCE TO A SUMMONS

(Title)

To the Fiscal of the Court of

Whereas it appears by your return to a certain summons issued in the above-named action at the instance of (plaintiff or defendant), whereby one (name of witness) was required to appear and testify on behalf of the (plaintiff or defendant) in the said action or to produce any document required, (describing it), that the said (witness) named therein was duly served with a copy thereof, but the said (witness) has failed to appear in contravention of the provisions of section 136 of the Civil Procedure Code: You are therefore to seize and arrest the said (witness) and bring him before this court forthwith, in order that he may undergo the penalties legally awarded against him for such contempt and disobedience, and further perform and abide by such order as the court shall make in this behalf: and have you there this warrant.

(Signed), District Judge (or as the case may be).

The day of 19

No. 40

FORM OF NOTICE TO PARTIES OF THE DAY FIXED FOR THE EXAMINATION OF A WITNESS ABOUT TO LEAVE THE JURISDICTION [Section 178.]

(Title.)

To (plaintiff or defendant).

Whereas application has been made to this court by the (defendant or plaintiff) in the above-named action that the examination of of a witness required by him in the said action, may be taken immediately; and it has been shown to the satisfaction of this court that the said witness is about to leave the court's jurisdiction (or state any other good and sufficient cause): Take notice that the examination of the (witness) will be taken by the court on the day of 19....., at o'clock.

By order of court.

(Signed), Registrar.

The day of 19.....

No. 41

FORM OF DECREE

[Section 188.]

(Title.)

This action coming on for final disposal before (name and office of Judge) on the day of 19..... (in the presence of on the part of the plaintiff and on the part of the defendant), it is ordered and decreed (specify in precise terms the order made in the judgment).

(And it is further ordered that the said do pay to the said his costs of this action (in Primary Courts stating the amount) as taxed by the officer of the court, with interest thereon at the rate of from the date of taxation to the date of realization.)

(Where the decree is for delivery of immovable property, describe the property in accordance with the requirements of section 190.

Where the decree is for delivery of movable property, specify the amounts to be paid as alternative if delivery cannot be had.

In case of specific performance, state the amount of damages to be paid if the contract is not performed.

Where defendant is allowed a set-off, state what is due to plaintiff and defendant, and decree recovery of the balance.

Where mesne profits pending or prior to action are claimed vary decree according to sections 195, 196.

Where the action is to enforce a right of pre-emption, or to realize a mortgage, carry out the directions of sections 200, 201.

In any case where a decree or order has the effect of postponing the final determination of a case specify therein the date of further hearing.)

(Signed) (Name and office of Judge).

The day of 19.....

No. 42

[Sections 224
and 225.]

FORM OF APPLICATION FOR EXECUTION OF A DECREE BY SEIZURE AND SALE OF MOVABLE PROPERTY

In the District Court of

I, A. B., plaintiff, hereby apply for execution of the decree herein below set forth :

Number of Action	Names of Parties	Date of Decree	Whether any Appeal preferred	Adjustment made, if any	Previous Application, if any, and Result	Amount of debt, Compensation, Interest, or other Relief granted by Decree	Amount of Costs, if any, awarded	Against whom to be enforced	Mode in which the Court's Assistance is required
1	2	3	4	5	6	7	8	9	10
No. 175 D. C. Colombo	A. B., Plaintiff against C. D., defendant	21st Sept., 1938	No	—	—	Rs. 250 principal (interest at—per centum from date of decree to payment)	Rs. 25.75 costs as awarded in the decree, Rs. 10.50 subsequently incurred Rs. 36.25	The defen- dant C. D.	I pray that the total amount of Rs. — (together with interest on the principal sum up to date of payment), and the costs of taking out this execution, be realized by (indicate manner of relief required).

I, A. B., hereby declare that what is stated herein is true to the best of my information and belief.

(Signed) A. B.

This day of, 19.....

No. 43

[Section 225.]

FORM OF WRIT OF EXECUTION AGAINST PROPERTY

(Title.)

To the Fiscal of the Court of

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), Registrar.

The day of, 19.....

V/246

No. 44

FORMS OF PROHIBITORY NOTICES

[Section 229.]

(In the case of a debt not secured by a negotiable instrument.)

To (defendant) and to (defendant's debtor).

Whereas (defendant) has failed to satisfy a decree passed against him on the day of
, 19, in (title, &c., of case), in favour of for rupees :

I hereby give you notice that you, the said defendant, are hereby prohibited and restrained until the further order of the court from which execution in the said action issued from receiving from the said (debtor) a certain debt alleged to be now due from him to you, namely (particularize it) : and that you, the said, are hereby prohibited and restrained until such further order from making payment of the said debt or any part thereof to any person whomsoever.

(Signed), Fiscal.

The day of, 19

No. 45

(In the case of a share in a public company, &c.)

To (defendant) and to manager (&c.), company.

Whereas has failed to satisfy a decree (recital as in No. 44) : I hereby give you notice that you, the defendant, are hereby prohibited and restrained until the further order of the court (as before) from making any transfer of shares in the aforesaid company, namely, or from receiving payment of any dividends thereof : and that you, the said, manager of the said company, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

(Signed), Fiscal.

No. 46

(In case of movable property not in the possession of judgment-debtor.)

To (defendant) and to (person in possession).

Whereas (recital as in No. 44) : I hereby give you notice that you, the said defendant, are hereby prohibited and restrained until the further order (as before) from receiving from the said the following property now in his possession ; that is to say (name it), to which you, the said defendant, are entitled subject to any claim of the said, and that you, the said, are hereby prohibited and restrained until (as before) from delivering such property to any person whomsoever.

(Signed), Fiscal.

No. 47

FORM OF NOTICE WHERE PROPERTY IS IN CUSTODY OF A COURT OR PUBLIC OFFICER

[Section 232.]

(Title.)

Sir,—The plaintiff in the above-named action having applied under section of the Civil Procedure Code for seizure of certain moneys (or as the case is) now in your hands (state how the moneys, &c., are in the hands of the person addressed, on what account, &c.) I request that you will hold the said (moneys), and any interest or dividend becoming payable thereon, subject to the further order of the court from which writ of execution in the said action issued.

I have, &c., Fiscal.

The day of, 19

No. 48

[Section 234.]

FORM OF NOTICE TO A COURT REQUESTING STAY OF EXECUTION OF ITS DECREE

(Title.)

To (name and office of Judge).

Whereas A. B., plaintiff in the above-named action, obtained a decree against C. D., defendant in the said action, in this court on the day of, 19, for the payment of rupees; and whereas application has been made to this court for the seizure in execution of the said decree of a decree obtained in your court by the said defendant against in (title of action): you are hereby requested to stay the execution of your said decree (until this notice shall be cancelled by this court, or as the case may be).

By order of court,

(Signed), Registrar.

The day of, 19

No. 49

[Section 235.]

FORM OF PROHIBITORY NOTICE TO HOLDER OF A DECREE SOUGHT TO BE SEIZED

(Title.)

To (defendants).

Whereas in execution of the decree passed against you in the above-named action application has been made for the seizure of the decree passed against in (title, &c., of action) of which you are the holder: you are hereby prohibited from transferring or charging the said decree in any way.

By order of court,

(Signed), Registrar.

No. 50

[Section 237.]

FORM OF PROHIBITORY NOTICE IN CASE OF IMMOVABLE PROPERTY

To (defendant).

Whereas you have failed to satisfy a decree passed against you on the day of, 19, in (title, &c. of case) in favour of, for rupees (here set out the particulars required by the section.) I hereby give you notice that you, the said defendant, are hereby prohibited and restrained until the further order of the court from which execution in the said action issued from in any way transferring, alienating, or charging the property specified in the schedule hereto annexed, and that all persons are prohibited from receiving the same or any part thereof by purchase, gift, or otherwise.

(Signed), Fiscal.

The day of, 19

(The Schedule.)

No. 51

[Section 259.]

FORM OF CERTIFICATE TO JUDGMENT-DEBTOR AUTHORIZING HIM TO MORTGAGE, LEASE, OR SELL PROPERTY

(Title.)

Whereas in execution of the decree passed in the above-named action notice of the sale of certain immovable property of the judgment-debtor has been given, and the court has, on the application of the said judgment-debtor postponed the said sale to enable him to raise the amount of the decree by (mortgage, lease, or private sale as the case may be) of the under-mentioned property or part thereof.

This is to certify that the court doth hereby authorize the said judgment-debtor to make the proposed (mortgage, lease or sale) within a period of from the date of the certificate :

Provided that all moneys payable under such (mortgage, lease, or sale) shall be paid into this court and not to the said judgment-debtor; and provided, further, that no such (mortgage, lease or sale) shall become absolute until the same shall have been confirmed by this court.

(Signed), Judge.

The day of, 19

(Details of property referred to.)

No. 52

FORM OF FISCAL'S CERTIFICATE WHERE THERE HAS BEEN A RESALE AT A LOSS, OR A FAILURE TO PAY THE DEPOSIT

[Sections 260—267.]

(Title)

I, A. B., Fiscal of the Court of, hereby certify that the under-mentioned property was, on the day of, 19, duly put up for sale under writ No. of this court in execution of the decree in the above-named action.

One was duly declared to be the purchaser of the said property at the said sale at the price of rupees.

(The said on being so declared to be such purchaser, failed to pay down the deposit of 25 per centum on the amount of his purchase-money to the officer conducting the sale, and to give good and sufficient security to the satisfaction of such officer for the payment of the residue, in manner by law required; and one being the next highest bidder at the said sale, was thereupon duly declared to be the purchaser of the said property at the price of rupees.

The said thereupon became liable to pay the difference between the said several sums of rupees and rupees, amounting to rupees.)

Or,

(The said duly paid the deposit of 25 per centum on the amount of the said purchase-money to the officer conducting the sale and entered into good and sufficient security to the satisfaction of such officer for payment of the residue, in manner by law required, but the said has failed to pay such residue, although thirty full days have elapsed since the day of sale.

In consequence of the failure aforesaid the said property was, on the day of 19, again put up for sale under the said writ, and resold, and one was duly declared to be the purchaser at such resale at the price of rupees.

The said thereupon became liable to pay the difference between the said several sums of rupees and rupees, amounting to the sum of rupees.)

(Conclude:) Demand in writing was duly made upon the said for the payment of the said sum of rupees, on the day of 19, but although one week has elapsed since the date of such demand the said has not paid the said sum of rupees.

(Signed), Fiscal, Court of

The day of, 19

(Schedule of property.)

No. 53

FORM OF NOTICE TO PERSON IN POSSESSION OF MOVABLES SOLD IN EXECUTION

[Section 278.]

(Title)

To (person in possession).

Whereas has become the purchaser at a sale by auction in execution of the above-named action of (property) now in your possession, I hereby give notice that you are prohibited and restrained from delivering possession thereof to any person except the said

(Signed), Fiscal.

The day of, 19

No. 54

[Section 279.] FORM OF NOTICE PROHIBITING PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY PERSON BUT THE PURCHASER

To (*Judgment-debtor*) and to (*Judgment-debtor's debtor*).

Whereas has become the purchaser at a sale (&c.) of a certain debt due from you, to you, that is to say (*state particulars*); I hereby give you notice that you the said are hereby prohibited from receiving payment of the said debt, and you the said from making payment of the same to any person except the said (*purchaser*).

(Signed) Fiscal.

The day of 19

(Where the property sold in execution consists of shares, this form must be followed, but the notice will be directed to the person in whose name the shares are standing, and to the manager of the company, and will be prohibitory of transferring the shares or receiving or making payment of dividends thereon.)

No. 55

[Section 283.] FORM OF ORDER CONFIRMING SALE OF LAND

(Title.)

Whereas the under-mentioned property was on the day of 19, sold by the Fiscal, in execution of the decree in the above-named action: and whereas thirty days have elapsed since the receipt of the said Fiscal's report of the said sale, and no application has been made to set aside the same (or that objections made have been disallowed): It is ordered that the said sale be and the same is hereby confirmed ("*mutatis mutandis*", where the sale is set aside.)

(Signed) (Name and office of Judge.)

The day of 19

(Schedule)

No. 56

[Section 286.] FORM OF FISCAL'S CONVEYANCE TO PURCHASER AFTER CONFIRMATION OF SALE BY COURT

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 Court, whereby he was directed (*insert directions of the writ*), A. B. (Fiscal) of the said Court, did cause to be seized and taken the property hereinafter described, which, after due notice and publication in manner by law prescribed, was exposed to public sale on the day of 19, by acting under the authority of the said Fiscal, and was sold to as the highest bidder at the said sale for the sum of rupees:

And whereas the said (*purchaser*) has duly paid to the said (Fiscal) the whole of the said purchase-money, and thus became entitled to a conveyance of the said property (or, where the plaintiff is purchaser): And whereas the said (*purchaser*) has been allowed the amount of purchase (or as the case may be) in reduction of his claim, and has produced the order of court, copy whereof is hereunto annexed, and has thus become entitled, &c.):

And whereas the said court by an order dated the day of 19, copy of which is hereunto annexed, has duly confirmed the said sale:

Now these presents witness that the said A. B., Fiscal of the Court, in consideration of the said sum of rupees so paid by (or credited to) the said (*purchaser*) as aforesaid, the receipt whereof the said A. B. doth hereby acknowledge, hath sold and assigned and by these presents doth sell and assign, unto the said (*purchaser*), his heirs, executors, administrators, and assigns, all that (*name and description of the land by metes and bounds*), containing, and described in the diagram or map annexed to (*some title deed delivered to the purchaser, or if there is none, then*) these presents, and marked, to have and to hold the same with their and every of their appurtenances to him, the said (*purchaser*), his heirs, executors, administrators, and assigns for ever.

In witness whereof the said (*Fiscal*) hath hereunto subscribed his name at this day of, 19

Witnesses :

Annexures., Fiscal, Court of

(*In cases where the sale has been effected in execution of a decree specifically directing a sale, the conveyance will be in accordance with the terms of the decree.*)

No. 57

FORM OF ORDER OF DELIVERY OF POSSESSION TO A PURCHASER WHERE PROPERTY IN OCCUPANCY OF JUDGMENT-DEBTOR

[Section 287.]

(*Title.*)

To the Fiscal, Court of

Whereas has become the purchaser of (*land*) 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.

(*Signed*)
(*Name and office of Judge.*)

The day of, 19

*No. 60

FORM OF WARRANT FOR ARREST OF A JUDGMENT-DEBTOR

[Section 298.]

(*Title.*)

To the Fiscal of the Court of

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 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

* Forms Nos. 58 and 59 are omitted as having ceased to be applicable to section 296, as replaced by Law No. 20 of 1977.

No. 60A

[Section 299.] FORM OF NOTICE ON JUDGMENT-DEBTOR TO SHOW CAUSE WHY HE SHOULD NOT BE COMMITTED TO JAIL

(Title)

To (judgment-debtor).

Rs. c. Whereas you were adjudged by a decree in the above-named action, dated the day of
Principal 19, to pay to the plaintiff above-named the sum of rupees, as noted in the
Interest margin:
Costs

Total 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

No. 60B

[Section 303.] FORM OF WARRANT FOR ARREST OF A JUDGMENT-DEBTOR UNDER SECTION 303

(Title)

Rs. c. To the Fiscal of the Court of

Principal Whereas was adjudged by a decree in the above-named action, dated the
Interest day of, 19, to pay to the above-named plaintiff the sum of rupees, as
Costs noted in the margin:
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 section 299 was
issued):

And whereas the said was required by a notice issued by this court, dated the
day of, 19, to appear before the court on the day of
19, at o'clock in the forenoon to show cause (if any) why he, the said,
should not be committed to jail in execution of the decree entered in the above-named action:

And whereas the said failed to appear before this court on the day and at the time specified
in the notice:

These are to command you to arrest the said and unless he, the said
shall pay to you the said sum of rupees, together with rupees for the cost of
executing this process, to bring the said before this court as soon as practicable after his arrest.

You are further commanded to return this warrant on or before the day of
19, with an endorsement showing the day on and the manner in which it has been executed or the reason why
it has not been executed.

(Signed)

(Name and office of Judge.)

The day of, 19

No. 61

FORM OF WARRANT OF COMMITTAL TO JAIL

[Section 311.]

(Title.)

To the Fiscal of the Court of

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. 62

FORM OF WRIT FOR DELIVERY OF A SPECIFIC MOVABLE

[Section 320.]

(Title.)

To the Fiscal of the Court of

Whereas by a judgment of this court dated the day of, 19, in the above-named action, the said (plaintiff) recovered against the said (defendant) (or the said defendant was ordered to deliver to the said plaintiff) the following (specify movable property): These are to command you that without delay you cause the said (articles) to be delivered to the said (plaintiff), or to such person as he shall authorize to receive the same. And in what manner you shall have executed this writ make appear to this court immediately after the execution thereof, and have you there, &c.

(Signed)

The day of, 19

No. 63

FORM OF WRIT FOR DELIVERY OF IMMOVABLE PROPERTY

[Section 323.]

(Title.)

To the Fiscal,

Whereas (recite "mutatis mutandis" as in last form): These are to command you that without delay you enter the same and cause the said to have possession of the said land and premises, &c. And in what manner (conclude as in last form).

No. 64

FORM OF NOTICE WHERE A SUM OF MONEY IN COURT IS CLAIMED

[Section 350.]

To (names of parties and claimants).

Take notice: That whereas the sum of rupees (recovered under a writ of execution issued from this court on the day of, 19, has been carried to the separate account of the plaintiff in the above-named action, or as the case may be) and is now in court standing to the credit of the said plaintiff, and whereas the said (name or names of claimants) has (have) given notice to this court of a claim on their behalf to the said sum of rupees (or to rupees, part of the said sum of rupees) on the ground (state ground):

This court will, on the day of, 19, at o'clock of the forenoon, proceed to hear and entertain the said claim, and determine the respective rights of the parties in the said sum.

By order of court,

(Signed), Registrar.

The day of, 19

No. 65

[CH. XXIV.]

FORM OF PETITION IN AN ACTION OR APPLICATION OF SUMMARY PROCEDURE

In the District Court of , 19

(Where the application is not incidental to a pending action, set out, as in a plaint, name and description, &c., of parties, thus.)

Between A. B. &c., petitioner, and C. D. &c., respondent.

(Where the application is incidental to a pending action say—)

In the matter of an action between (set out the title) and (in the matter of A. B., deceased, or as the case may be.)

The humble petition of the above-named (plaintiffs, or as the case may be) sheweth as follows:

(Set out a plain and concise statement of the facts constituting the ground of application and its circumstances, and of the petitioner's right to make it, e.g. :)

1.—That the said A. B., of, lately deceased, was one of the plaintiffs in the above-named action.

2.—That the said A. B. died on the day of, 19, (and go on to show that the right of action survives to the remaining plaintiff alone).

(Your petitioner therefore humbly prays for an order that the above-named action do proceed at the instance of the said petitioner, or for such other order in the premises as to this court seems meet. And your petitioner will ever, &c.)

[Annex to the petition any affidavits, &c. (see section 376), requisite to furnish prima facie proof of the material facts set out.]

No. 66

[Section 377.]

FORM OF (a) ORDER "NISI" OR (b) INTERLOCUTORY ORDER ON A PETITION IN AN ACTION OF SUMMARY PROCEDURE

(Title.)

This matter coming on for disposal before (name and office of Judge) on the day of 19, after reading (the affidavit of, or as the case may be) and hearing the evidence of (as the case is) (recite petition and exhibits, &c., adduced in support).

(a) [It is ordered that (state the order, as that the said action do proceed at the instance of the said), unless sufficient cause be shown to the contrary on the day of 19

(b) [It is ordered that the day of 19, be and the same is hereby appointed for the determination of the matter in the said petition contained, and that the said (respondent) be heard in opposition to the prayer of the same if he appear before this court on the said day.]

In the alternative (a)—

[It is further ordered that the (respondent) do pay to the (petitioner) his costs of, and occasioned by, this application.]

..... (Signed, &c., as in No. 41.)

No. 67

FORM OF ORDER REFUSING PETITION WHERE GROUNDS ADDUCED INSUFFICIENT TO SHOW
PRIMA FACIE CASE

[Section 380.]

(Proceed as in No. 66, and the order will be—)

It is ordered that the prayer of the said petition be and the same is hereby refused.

No. 68

FORM OF ORDER DISMISSING PETITION WHERE PETITIONER DOES NOT APPEAR

[Section 382.]

(Proceed as in No. 66, reciting the order made under (b) of section 377, and continue—)

And the said (petitioner) not having appeared either in person or by counsel before this court in support of his said petition:

It is ordered that the said petition be and the same is hereby dismissed. [It is further ordered that the said (petitioner) do pay to the said (respondent) his costs of, and occasioned by, this application.]

No. 69

FORM OF ORDER WHERE RESPONDENT DOES NOT APPEAR

[Section 383.]

(Proceed as in 66, reciting the order made under section 377, and continue—)

And the petitioner having appeared (in person, or by registered attorney or by counsel) in support of his said petition, and the respondent not having appeared either in person or by registered attorney or counsel, although the said recited order was duly served upon him as appears by the (oath or affidavit) of

(Then, if the order is an order " nisi " under section 377 (a)—)

The above order is made absolute.

(But if the order was an interlocutory order under section 377 (b)—)

It is ordered (state the order : and where costs have been prayed in the petition, and the court thinks right to allow them, further order as to costs).

No. 70

FORM OF ORDER WHERE BOTH PARTIES APPEAR

[Sections 384,
386, and 387.]

(Proceed as in No. 66, reciting the order under section 377, and continue—) And both parties appearing (in person, or as may be) and (the affidavit of having been read) and (the evidence of taken) and both parties heard: It is ordered on the application of (petitioner) that this matter be adjourned to the day of 19, to enable the said (petitioner) to adduce additional evidence in support of his said petition, or that the questions or issues of fact arising in this matter be tried and determined.

The questions or issues of fact to be so tried and determined on such day are:

- 1.—Whether, &c.
- 2.—Whether, &c.

(Formal conclusion as in No. 41)

No. 71

[Section 398.]

FORM OF SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT

(Title.)

To, of

Whereas the above-named has, as plaintiff, instituted the above-named action in this court against the above-named who has since deceased, and has made an application to the court alleging you to be the legal representative of the said deceased and desiring that you be made defendant in his stead: You are hereby summoned to attend (in person, or by registered attorney, 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), Registrar.

The day of, 19

No. 72

[Section 406.]

FORM OF APPLICATION FOR PERMISSION TO WITHDRAW FROM AN ACTION

(Title.)

I,, plaintiff in the above-named action, hereby request the permission of the court to withdraw from the said action, with liberty to bring a fresh action in the same matter; on the ground (*state sufficient grounds for withdrawing*).

(Signed), Plaintiff.

The day of, 19

No. 73

[Section 410.]

FORM OF NOTICE OF PAYMENT INTO COURT

(Title.)

To (*plaintiff*).

Take notice that the defendant in the above-named action has paid into court rupees, and that that sum is enough to satisfy the plaintiff's claim (*or the plaintiff's claim for*).

(Signed), Party (*or Registered Attorney*).

The day of, 19

No. 74

[Section 416.]

FORM OF SECURITY FOR DEFENDANT'S COSTS WHERE PLAINTIFF RESIDES OUT OF JURISDICTION OF THE COURT

(Title.)

Know all men by these presents that we, A. B., of and C. D., of are jointly and severally held and firmly bound to E. F., (*here insert name of Registrar of court, or as the case is*) in the penal sum of rupees (*the sum mentioned in the order*) to be paid to the said E. F., or his

successors in the said office of (as the case is), for which payment to be well and faithfully made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, firmly by these presents, hereby renouncing, &c.

Dated this day of, 19

Whereas by an order of the said Court of, dated the day of, 19, made in the above-named action, wherein is plaintiff and is defendant, it was, on the application of the said defendant (or as the case may be), ordered (recite the mandatory part of the order): And whereas the above-bounden A. B. and C. D. have, at the request of the said (person required to give security), agreed to enter into the above-written obligation subject to the condition hereinafter contained.

Now the condition of the above-written obligation is such that if the above-bounden A. B. and C. D., or either of them, their or either of their heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to, the defendant in the said action, all such costs as the said court shall think fit to award to the said defendant in the said action, then the above-written obligation to be void, or else to remain in full force and virtue.

A. B.
C. D.

Signed by the above-bounden A. B. and C. D. in the presence of

X. Y., of—,
Y. Z., of—.

(Use the same form with alterations where defendant resides outside Sri Lanka.)

No. 75

FORMAL PARTS OF AN AFFIDAVIT IN AN ACTION

[Section 438.]

In the Supreme Court of the Republic of Sri Lanka.

(or)

In the { District Court }
 { Primary Court } of Colombo (or as the case may be).

(Title.)

I, A. B. (full name and description of deponent, and if a married woman, full name and description of her husband), of (place of residence) (and if a party, say so, and in what capacity), being a Buddhist (or being a Hindu or being a Muslim etc., as the case may be, or having a conscientious objection to making an oath) solemnly, sincerely, and truly affirm and declare (or if the deponent is a Christian, make oath and say) as follows:—

1.
2.

Affirmed (or Sworn), [or if there are more than one deponents, Affirmed (or Sworn) by the deponents A. B.] at, this, day of, 19

Before me (name and office of person administering the affirmation or oath).

[Section 461.]

*No. 79

FORM OF NOTICE TO ATTORNEY-GENERAL, MINISTER, DEPUTY MINISTER, OR PUBLIC OFFICER OF THE
INSTITUTION OF AN ACTION

To the Hon. the Attorney-General (or the Minister or Deputy Minister or public officer concerned).

Take notice that I, A. B., of, am about to institute an action against you as representing the State (or, in the case of a Minister or Deputy Minister or public officer, in your official capacity as) for (state the cause of action and the relief claimed).

(Signed) A. B.

The day of, 19

(Where the notice is issued by an attorney-at-law, alter the wording accordingly.)

No. 80

[Section 503.]

FORM OF AUTHORITY TO SUE OR DEFEND GIVEN BY A MEMBER OF A MILITARY, NAVAL OR AIR FORCE

I, A. B., presently of, being a (rank) in the Sri Lanka (Army or Navy or Air Force, as the case may be), actually serving Government in such capacity, and unable to obtain leave for the purpose of (prosecuting or defending) a certain action brought (by or against) me (against or by) one of in the Court of for (state what for), do hereby authorize C. D., of, to (sue or defend) for me and on my behalf in the said action, and for that purpose to make every appearance and application, and do every act which I might if present make or do, or be required or authorized by law to make or do, therein.

(Signed) A. B.

The day of, 19

In the presence of

(Signed) E. F. (the Commanding Officer, or if the party himself is the Commanding Officer, then the next subordinate in rank to him. Where the party is in staff employ, the witness must be the head

Witnesses: of the office.)

No. 81

[Section 516.]

FORM OF AFFIDAVIT TO BE PRODUCED WITH WILL

(Formal parts as in No. 75.)

1.—I knew and was well acquainted with A. B. of, who died on the day of, 19, at

2.—The said A. B. duly executed his last will dated the day of, 19

3.—The said A. B. deposited his said will in my custody (or, if the case is so, state the circumstances under which the deponent found the will).

4.—The said testator has left property within the jurisdiction of this (or any other, as the case may be) court of the nature and value shown in the schedule hereto annexed (or has left no property in Sri Lanka).

5.—I produce the said will.

(Formal conclusion.)

(The Schedule.)

* Forms Nos. 76, 77 and 78 are omitted consequent on the repeal of sections 443, 447 and 454 by Law No. 20 of 1977.

No. 82

FORM OF APPLICATION BY WAY OF SUMMARY PROCEDURE FOR PROBATE OR FOR ADMINISTRATION WITH THE WILL ANNEXED

[Sections 518—525.]

In the matter of the will of *A. B.*, deceased.

C. D., of, petitioner.

vs.

(For respondent, name any person likely or competent to oppose the application.)

(Formal parts as in No. 65)

1.—*A. B.*, late of, died on the day of, 19

2.—The said *A. B.* duly executed his last will dated the day of, 19 (now deposited in this court, or, and the said will is appended hereto, or as the case is—see section 524.)

3.—To the best of your petitioner's knowledge the heirs of the said *A. B.*, deceased, are:

4.—Full and true particulars of the property left by the deceased, so far as your petitioner has been able to ascertain the same, are contained in the schedule hereto annexed.

5.—Your petitioner claims as (executor, creditor, &c., as the case is).

Your petitioner therefore humbly prays for an order declaring the said will proved, and that he may be declared executor of the said will, and that probate thereof may be issued to him accordingly (or where the case is so, for a grant of administration with copy of the will annexed, &c.). (If a limited grant is asked for, set out to that effect.)

(Formal conclusion.)

(The Schedule.)

(Support paragraphs 2 and 5 by affidavit or oral evidence. Where no respondent is named, state the reasons to be that no opposition is apprehended, and support with an affidavit.)

No. 83

FORM OF APPLICATION FOR ADMINISTRATION WHERE THERE IS NO WILL

[Section 530.]

(Formal parts.)

(Proceed as in last form, substituting a statement that the will cannot be found, or that there is none, for paragraph 2.)

Your petitioner therefore humbly prays for an order declaring that he is entitled as such (creditor, or as the case is) to administer the estate of the said intestate, and directing that letters of administration of the said estate be granted to him accordingly. (If a limited grant is asked for, set out to that effect.)

(Formal conclusion.)

No. 84

FORM OF ORDER "NISI" DECLARING WILL PROVED, &c.

[Sections 526—529.]

(Title.)

This matter coming on for disposal before (name and office of Judge), on the day of, 19 (in the presence of on the part of the petitioner, and on the part of the respondent), (and the affidavit of dated, having been read, and the evidence of taken), (and all parties heard):

It is ordered that the will of, deceased, dated (and now deposited in this court, or as the case is), be and the same is hereby declared proved, unless (the respondent or any person on whom the court directs the order to be served) shall, on or before the day of, 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, &c.)

(Where there is no respondent, the order may be absolute in the first instance.)

(Where there is no will, this form can be adapted. In either case the order is to be served on the respondents or on any other person on whom the court directs service. Where the grant is to be limited say so, and how far.)

[§ 125, Law 20 of 1977.]

No. 84A

FORM OF NOTICE OF ORDER "NISI"

[Sections 524-532.]

In the District Court of
 In the matter of the Last Will/Intestate
 Estate of the late
 Deceased
 Petitioner.

Testamentary }
 Jurisdiction } No.

It is hereby notified that the above-numbered testamentary action has been instituted in the above court for proof of the Last Will/the administration of the Estate of the above-named deceased and order nisi has been entered accordingly therein.

Any person interested is hereby required to appear before this court on the day of 19 at o'clock in the forenoon and show cause, if any, why the order nisi so entered should not be made absolute.

By order of court,
 Registrar.

Dated this day of, 19

[§ 125, Law 20 of 1977.]

No. 84B

FORM OF NOTICE OF ORDER ABSOLUTE IN THE FIRST INSTANCE

[Sections 525 and 529.]

In the District Court of
 In the matter of the Last Will of the late
 Deceased
 Petitioner.

Testamentary }
 Jurisdiction } No.

It is hereby notified that the above-numbered action has been instituted in the above court for proof of the Last Will of the above-named deceased and order absolute in the first instance has been entered accordingly therein on the day of, 19

By order of court,
 Registrar.

Dated this day of, 19

No. 85

FORM OF ORDER MAKING ABSOLUTE OR DISCHARGING THE ORDER "NISI"

[Section 534.]

(Title.)

This matter coming on for final determination before on in the presence of (and the affidavits of having been read and the evidence of taken), (and all parties heard):

It is ordered [that the order of this court made on the day of 19, be made absolute, and that probate of the will of be issued to (or as the case may be)] or (that the order be discharged and the petition of be and the same is hereby dismissed).

(And it appearing to this court that (respondent or objector) has established his right thereto, it is further ordered that (probate or administration, as the case may be) be issued to the said accordingly.)

(Signed, &c.)

(When the grant is to be limited, say so, and how far.)

No. 86

FORM OF PROBATE

[Section 519.]

(Title.)

In the District Court of

Be it known to all men that on the day of 19, the last will and testament of deceased, a copy of which herewith 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 designation), 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 a true full, and perfect inventory of the said property on or before the day of 19, and to file a true and just account of executorship on or before the day of 19

Given under my hand and the seal of the Court this day of 19

(Signed) District Judge.

(When probate is limited, insert the limitation.)

No. 87

FORM OF LETTERS OF ADMINISTRATION (WITH THE WILL ANNEXED AND OTHERWISE)

[Sections 519, 530, &c.]

In the District Court of

To (widow, widower, next of kin, Public Trustee, 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 herewith annexed; and whereas no executor is named in that will, or without leaving any will):

You are therefore fully empowered and authorized by these presents to administer and faithfully dispose of the property and estate, rights and credits, of the said deceased, and to demand and recover whatever debts may belong to estate, and to pay whatever debts the said deceased did owe (and also the legacies contained in the said will), so far as such property and estate, rights and credits, shall extend, you having been already (affirmed or sworn) well and faithfully to administer the same and to render a true and perfect inventory of all the said property and estate, rights and credits, to this court on or before the day of 19, next, and also a true and just account of your administration thereof on or before the

..... day of, 19..... And you are therefore by these presents deputed and constituted administrator (with a copy of the will annexed) of all the property and estate, rights and credits, of the said deceased (You are nevertheless hereby prohibited from selling any immovable property of the estate unless you shall be specially authorized by the court so to do).

(Signed, &c.)

No. 88

[Section 538.]

FORM OF OATH BY EXECUTOR OR ADMINISTRATOR REFERRED TO IN THE TWO PRECEDING FORMS

You solemnly, sincerely and truly affirm and declare (or make oath and say) that you believe the writing now produced to you, bearing date, and marked, to be the last will and testament of deceased. (That you are the executor named therein, *where the case is so.*) That you will faithfully execute the said will (or that you will administer and faithfully dispose of the property and estate, rights and credits of deceased) by paying the debts (and legacies) of the deceased as far as the property will extend and the law bind, and by demanding and recovering whatever debts may belong to estate. That you will exhibit into this court a true, full, and perfect inventory of all the property, movable and immovable, and all the rights and credits of the deceased, on or before the day of, 19....., and that you will file a true account of your executorship (or administration) on or before the day of, 19.....

No. 89

[Section 542.]

FORM OF AFFIDAVIT WHERE DECEASED IS INTESTATE

(Formal parts as in No. 75.)

1.—I am (*widow, next of kin, &c.*) of, late of, deceased, and knew and was well acquainted with the said during his lifetime.

2.—The said died on the day of, 19....., at, without having made a will, and leaving property within the jurisdiction of court of the nature and value shown in the schedule hereto annexed.

(Formal conclusion.)

(Schedule.)

No. 90

[Sections 521, 538, and 541.]

FORM OF SECURITY BOND TO BE GIVEN BY EXECUTOR OR ADMINISTRATOR WHEN REQUIRED

In the District Court of

Know all men by these presents that we (executor or administrator), and and (*sureties*), are held and firmly bound unto, Registrar of the District Court of (or to the Registrar 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 (Registrar or Registrar for the time being), for which payment well and truly to be made we and each of us do hereby bind ourselves, our heirs, executors, and administrators firmly by these presents, hereby renouncing

Whereas by order of the said court of the day of, 19....., it is ordered that (probate of the will or letters of administration of the property and estate of deceased) be granted to the said (executor or administrator) on his giving security for the due (execution or administration) thereof :

And whereas the estate of the said deceased has been appraised and valued at the sum of rupees :

Now the condition of this obligation is such, that if the above-bounden (executor or administrator) do render into this court a true and perfect inventory of all the property and estate, rights and credits, of the said deceased, which have or shall come to the possession or knowledge of the said, or of any other

person for him, on or before the day of, 19, and shall well and truly administer the same; that is to say, shall pay all and singular the debts of the said deceased which (he) did owe at (his) decease fairly and justly according to their respective degrees or in equal proportion if the estate should prove insufficient to satisfy all the debts in full (and shall then pay the legacies contained in the said will annexed to the said letters of administration) so far as the said property will extend and the law charge (him) and further shall render to this court a true and just account of (his) said administration on or before the day of, 19, and shall deliver and pay over the rest and residue of the said property and estate, rights and credits, which shall be found remaining upon the said administration, to the person or persons lawfully, entitled to the same: Then this obligation to be void and of none effect, otherwise to remain in full force.

(Dated and signed by all the obligors.)

No. 91

FORM OF LETTERS "AD BONA COLLIGENDA"

[Section 546.]

In the District Court of

To and

Whereas it has been verified to this court that late of, died leaving property within the jurisdiction of this court: You and each of you are hereby empowered and authorized to take, collect, demand, and receive all and every the said property, and the rents, issues, and profits thereof, and safely to keep the same until administration thereof be granted in due form of law to such person or persons as shall appear entitled to the same, or until you receive further orders from this court in the premises.

By order of court,

..... Registrar.

The day of, 19

No. 92

FORM OF VERIFICATION OF INVENTORY AND VALUATION

[Section 538.]

I, A. B., of, executor of the last will of, deceased (or administrator of the estate, &c., if so) solemnly, sincerely, and truly affirm and declare (or make oath and say) as follows:

1.—To the best of my knowledge, information, and belief, the above-written inventory contains a full, true, and correct account of all the property, movable and immovable, and rights and credits of the said, deceased, so far as I have been able with due diligence to ascertain the same.

2.—I have made a careful estimate and valuation of all the property, the particulars of which are set forth and contained in the said inventory, and to the best of my judgment and belief the several sums respectively set opposite to the several items in the said inventory fully and fairly represent the present values of the items to which they are so respectively set opposite.

No. 93

FORM OF "CAVEAT"

[Section 535.]

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, Registered Attorney for parties having interest, or as the case may be).

.....
(Signed by the party, and dated.)

[§ 125, Law 20 of 1977.]

No. 93A

[Section 554K.]

FORM OF ORDER *nisi* DECLARING ESTATE INSOLVENT

In the District Court of
 In the matter of the Last Will/Intestate Estate
 of the late
 Deceased.
 Petitioner.
 vs.
 Respondents.

Testamentary }
 Jurisdiction } No.

(1) Name and office of Judge. This matter coming on for disposal before (1) on the day of 19 (in the presence of on the part of the petitioner, and on the part of the respondents) (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 Chapter XXXVIII of the Civil Procedure Code unless the respondents 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)
 District Judge.

Dated this day of 19

[§125, Law 20 of 1977.]
 [Section 554L.]

No. 93B

FORM OF NOTICE OF ORDER *nisi* DECLARING ESTATE INSOLVENT

In the District Court of
 In the matter of the Last Will/Intestate Estate
 of the late
 Deceased.
 Petitioner.

Testamentary }
 Jurisdiction } No.

It is hereby notified that the above-numbered testamentary action has been instituted in the above court for the administration of the estate of the above-named deceased as an insolvent estate and order *nisi* has been entered accordingly therein.

Any person interested is hereby required to appear before this court on the day of 19 at o'clock in the forenoon and show cause, if any, why the order *nisi* so entered should not be made absolute.

By order of court,

 Registrar.

Dated this day of 19

No. 93C

[§125, Law 20
of 1977.]

FORM OF ORDER ABSOLUTE DECLARING ESTATE INSOLVENT

[Section 554N.]

In the District Court of
 In the matter of the Last Will/Intestate Estate
 of the late
 Deceased.
 Petitioner.

 Respondents.

Testamentary }
 Jurisdiction } No.

It is hereby notified that the order nisi entered on in the above-numbered
 testamentary action has been made absolute on

By order of court,

.....
 Registrar.

Dated this day of, 19

No. 94

FORM OF CERTIFICATE OF CURATORSHIP AND GUARDIANSHIP

[CH. XL.]

In the Family Court of

In the matter of the estate of A. B., a minor.

1.—Whereas this court has, under the provisions of Chapter XL of the Civil Procedure Code, appointed you,
, of, to be curator of the estate of, a minor, until the said
 shall have attained the age of twenty-one years:

You are hereby entrusted with the charge of the property of the said; you may exercise the
 same powers in the management of the estate as might have been exercised by the said if not a
 minor; and you may collect and pay all just claims, debts, and liabilities due to or by the estate of the said

(2.—You are authorized to retain from the estate of the said rupees a
 month assigned by this court as a suitable remuneration for the trouble and responsibility connected with the
 discharge of your trust.)

3.—You are to keep regular accounts of all moneys received or disbursed by you on account of the estate, and
 to preserve all vouchers and other documents necessary to prove the correctness of such accounts.

4.—In the event of this certificate being recalled under the provisions of section 591 of the said Code, you will be
 required to make over the property in your hands to your duly appointed successor, and to account to such your
 successor for all sums of money or other property received or disbursed by you.

5.—In the event of your desiring to resign your trust, this court will give you a discharge therefrom on your
 accounting to your duly appointed successor for all sums of money or other property received or disbursed by you,
 and on your making over the property in your hands to such your successor.

(6.—You are also hereby appointed guardian of the person of the said, and are authorized
 to retain from the estate of the said the sum of rupees a month assigned by
 this court as a suitable remuneration for the trouble and responsibility connected with the discharge of your trust.)

7.—You are bound to provide for the education of the said In a suitable manner under the general superintendence and control of this court.

8.—You are authorized to expend the sum of rupees a month fixed by this court as an allowance for the maintenance and education of the said (Here may be inserted, if the court is satisfied of its expediency, a direction to raise the allowance out of corpus.)

9.—You may, for any sufficient cause, be removed from your trust by this court.

(Signed), Judge of the Family Court.

(When some person other than the curator is appointed guardian of the person, the above form must be modified. The heading will be the same; the recital will be that the appointee is entrusted with the charge of the person and maintenance (and education) of the minor: paragraph 2 of the last form must be adopted thus: "You are authorized to receive from the curator, " &c.; paragraphs 7, 8 and 9 may be used as they stand. In this event the preceding form may be easily adapted.)

No. 95

FORM OF DECREE FOR SEPARATION "A MENSA ET THORO"

[CH. XLII.]
[Section 608.]

(Begin as in an ordinary decree, see No. 41, and continue—)

And it appearing to the court that the defendant has been guilty of (state act justifying separation) so as to render it unsafe and improper under existing circumstances for the plaintiff to cohabit with him or be under his dominion and control: It is thereupon ordered and decreed that the plaintiff and defendant be separated from bed and board for ever: Provided, however, that the parties may at any time hereafter, by their joint and mutually free and voluntary act, apply to this court for leave to be discharged from this decretal order. And it is hereby declared that it will be criminal and an act void in law for either of them, during the life of the other, to contract matrimony with any other person. [And it is further decreed that the plaintiff, according to the prayer of plaint, be entitled to, and charged with the custody, care, and education of (mention the children) in the pleadings mentioned:

Provided always that this order for the custody, care and education of the said infant (infants) may at any time hereafter be modified, varied, or annulled upon sufficient cause shown.] [And it is further decreed that the defendant do pay to the plaintiff (set out amount of alimony decreed, and manner of payment, &c.) to be applied towards the maintenance of the plaintiff and her said, and that this allowance is to continue until further order, and be subject to variation as future circumstances may require.] And it is further ordered (state order as to costs).

(Signature, &c.)

No. 96

FORM OF DECREE OF NULLITY OF MARRIAGE

[Section 607.]

(Proceed as in last form, and continue—)

And it appearing to this court that on the day of, 19, a pretended marriage was had and solemnized between the said A. B. C. and E. F. G., otherwise called E. F. C., but that at the time of the solemnization of the said pretended marriage (she, the said E. F. G., otherwise called E. F. C., was insane and incapable of entering into such a contract, or state other grounds making the marriage a nullity):

It is thereupon pronounced, declared, and decreed that the said pretended marriage so had and solemnized between the said (names as before) was and is wholly and absolutely null and void to all intents and purposes whatsoever: And that the said A. B. C. was, and is, free from all bond of marriage with the said E. F. G., otherwise called E. F. C. (State order as to costs.)

(Signature, &c.)

No. 97

FORM OF DECREE FOR DIVORCE A VINULO MATRIMONI

[CH. XLII.]
[Section 602.]

Use the necessary parts of the foregoing forms. The decree will be: That the bonds of matrimony heretofore entered into between the said and be and are hereby set aside, dissolved, and annulled, and that the woman may resume her maiden name (and be restored to the rights, &c., of a feme-sole).

The form given under No. 95 may be adapted for the orders as to custody, &c., of children, alimony, costs, &c.

*No. 100

FORM OF WARRANT OF ARREST BEFORE JUDGMENT

[Section 650.]

(Title)

To the Fiscal of

Arrest and seize, the above-named defendant, and keep him safely, so that you have his body before this court forthwith to answer the above-named plaintiff in an action to recover (as the case may be), whereof of the said plaintiff has filed his plaint in this court, unless and until the said defendant shall give you good and sufficient security to the amount of rupees (or shall deposit, &c., see section 650) to appear and answer the said plaintiff's claim, and to abide by and perform the judgment of this court, or to surrender himself or be surrendered to be charged in execution for the same; and on his giving such security you are hereby authorized to discharge the said defendant. And have here this mandate on the return day thereof.

(Signed)

Memorandum.—This warrant is to be executed within one calendar month from the date thereof, including the day of such date, and not afterwards.

No. 101

FORM OF SECURITY, &c., TO BE GIVEN BY DEFENDANT ARRESTED BEFORE JUDGMENT

[Section 651.]

(Title)

Know all men by these presents that we and, &c. (making the Fiscal the obligee and proceeding according to the forms Nos. 74 and 90).

The condition, &c., is, that if above-bounded do appear before the Court of on the day of, 19, to appear and answer and abide by and perform the judgment, &c. (describe claim), then this obligation, &c.

No. 102

FORM OF BAIL ON APPEARANCE

[Section 651.]

Bond, as in last preceding form, making the Registrar of the court obligee. The condition is to appear and answer, &c., in terms of section 651.

* Forms Nos. 98 and 99 are omitted as sections 645 and 646 have been repealed by Act No. 7 of 1949.

No. 103

[Section 651.]

FORM OF WARRANT OF COMMITMENT

(Title)

To the Fiscal of Court of

Receive into your custody the body of, taken under a warrant of arrest at the suit of, and keep him safely until he give good and sufficient security in the sum of rupees to abide by and perform the judgment of this court in the premises, and pay all such sum or sums of money as shall be decreed, or surrender himself or be surrendered to be charged in execution for the same.

(Signed, &c.)

No. 104

[Section 653.]

FORM OF MANDATE OF SEQUESTRATION

(Title)

Whereas it appears that is fraudulently alienating his property, &c. (set out the necessary averments), and the plaintiff above named has verified his demand to the satisfaction of this court; you are therefore commanded (proceed as in No. 38, with the necessary modifications).

No. 105

[Section 654.]

FORM OF SECURITY TO BE GIVEN BY PLAINTIFF

Bond in ordinary form, the Registrar being obligee; the condition is to pay all sums of money awarded by the court to defendant as costs, damages, or otherwise sustained by reason of arrest or sequestration.

No. 106

[Section 676.]

FORM OF AUTHORITY TO REGISTERED ATTORNEYS TO APPLY FOR REFERENCE TO ARBITRATION

(Title)

Whereas we (plaintiff and defendant) are desirous that (here state the particular matter sought to be referred) in the action above specified, should be referred to the final decision of the arbitrator (or arbitrators) herein below named, namely, (names):

Therefore we, the said and, do hereby specially authorize our registered attorneys, that is to say, on the part of the said plaintiff, and on the part of the said defendant, to apply to the said court for an order of reference accordingly.

Witness our hands, this, &c., Plaintiff.

Witnesses., Defendant.

No. 107

[Section 677.]

FORM OF ORDER OF COURT REFERRING MATTER TO ARBITRATION

(Title)

Upon (&c.), it is ordered, by and with the consent of all parties, that (state the matter) in difference between them in this action (including all dealings and transactions between all parties) be referred to the final determination of and, who are to make their award in writing and submit the same to this court, together with all proceedings, depositions, and exhibits in this action, within from the date hereof. And it is further ordered, by and with the like consent, that if the said arbitrators are unable to agree upon any award in the premises within the time so fixed for the making of their award (state whether any particular umpire is to be appointed, or that the arbitrators are empowered to appoint an umpire, or as the case may be; and in case an umpire is appointed, limit the time for his award). And it is further ordered, by

and with, &c., that the said arbitrators (or umpire) shall be at liberty to examine the parties and their witnesses upon oath or affirmation which they (or he) are (is) empowered to administer, and shall have all such powers or authorities as are vested in arbitrators (and umpires) under the Civil Procedure Code, including therein power to call for all books of account they (or he) may consider necessary. And it is further, &c., that the costs of this action, together with the costs of this reference up to and including the award of the said arbitrators (or umpire), and the enforcement thereof, do abide the result of the finding of the said arbitrators (or umpire). And it is further, &c., that the said arbitrators (or umpire) be at liberty to appoint a competent accountant to assist them (or him) in the investigation of the several matters so referred as aforesaid, and that the remuneration of such accountant and other charges attending the same be in the discretion of the said arbitrators (or umpire).

(Signed as an order.)

No. 108

FORM OF ORDER OF REFERENCE TO THE ABOVE

[Section 677.]

(Title.)

To and

Whereas the above-named plaintiff and defendant have agreed to refer all matters in difference between them (or state the particular matter) in the above-named action to your arbitration and award: You are hereby appointed arbitrators accordingly to determine all the said matters in difference between the parties, and with power to determine which party shall pay the costs, &c. (Direct the delivery of the award as in preceding form; give power to appoint an umpire in cases of difference, specifying particular umpire if necessary; give power to appoint an accountant as in preceding form, and continue.) Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this court on your application, and you are empowered to administer to such witnesses oath or affirmation.

Given, &c.

....., Judge.

No. 109

FORM OF NOTICE TO ARBITRATORS TO APPOINT AN UMPIRE

[Section 680.]

(Title.)

To (arbitrators).

Whereas by an order of court made in the above-named action on the day of, 19....., you were appointed arbitrators for the decision of the matters therewith referred to you, and were by the terms of the said order of reference empowered to appoint an umpire in the event of your failing to agree upon an award within the time therein limited, and such time has elapsed and no umpire has yet been appointed by you:

This is to give notice that I hereby require you to appoint an umpire forthwith.

(Signed and dated)

Party Plaintiff (or Defendant).

No. 110

FORM OF NOTICE OF FILING OF AWARD

[Section 685.]

(Title.)

To (parties).

This is to give you notice that the arbitrators (or umpire) appointed in the above action have (has) this day filed their (his) award in this court.

Given, &c.

....., Judge.

No. 111

[Section 712.]

FORM OF CITATION

(Title.)

To

Whereas one *A. B.* (executor of the last will of deceased or administrator of the estate and effects of deceased), has presented a petition to this court praying that you may be cited to attend an inquiry whether (set out shortly the substance of the application); and whereas the said *A. B.* has satisfied this court that there are reasonable grounds for such inquiry: You are hereby cited and required personally to be and appear before this court on the day of, 19....., at o'clock of the forenoon, then and there to answer (set out what the subject of the inquiry is).

(Signed, &c.) District Judge.

No. 112

[Section 713.]

FORM OF ORDER TO BE ANNEXED TO, OR ENDORSED ON, THE PRECEDING

(Title.)

On reading and filing the petition of *A. B.*, dated (and on reading the affidavit, &c., and hearing the evidence, &c.): It is ordered that a citation returnable on the day of, 19....., at o'clock of the forenoon, do issue to requiring him to (set out as in last form).

(Signed, &c.) District Judge.

No. 113

[Section 718.]

FORM OF AFFIDAVIT OF FAILURE TO RETURN INVENTORY

(Formal part as in No. 75.)

1.—(Allege residence and interest in estate.)

2.—That (probate was granted of the will or letters of administration issued of the estate and effects) of deceased, by a decree of this court dated, &c., to one, of

3.—That more than has elapsed since the said appointment, and the said has not returned any inventory of the property and effects of the said (or any sufficient inventory, &c., specifying the defects).

(Formal conclusion.)

No. 114

[Section 720.]

FORM OF PETITION FOR PAYMENT OF DEBT

(Title.)

The petition of *A. B.* sheweth as follows:—

1.—Your petitioner resides at in, and is a creditor of the estate of deceased, late of (probate of whose will was, or letters of administration to whose estate and effects were) duly issued to one of, by a decree of this court dated the day of, 19....., and more than twelve months have elapsed since such (grant or letters).

2.—That the said has filed an inventory of the property and effects of the said

3.—(*Allege claims, as e.g. :*) On the day of, 19, your petitioner, in an action brought by him in the Court of against the said as (executor or administrator) of the said, upon a debt then justly due to him from the estate of the said deceased, recovered a judgment duly given by the said court against the said as such (executor, &c.) for the sum of rupees. And no part of the same has been paid (except

4.—Your petitioner is informed and believes that the said has sufficient assets in hand applicable to the payment of your petitioner's claim (or to pay one th thereof), and that the same can be so applied without injuriously affecting the rights of others entitled to priority or equality of payment with your petitioner.

5.—Your petitioner has applied to the said for payment of his said claim, and the same has not been paid.

Wherefore, &c., that a decree be made requiring the said to (render an account of his proceedings and) pay the said claim, and that the said be cited to show cause why he should not pay the same.

(Conclusion.)

No. 115

FORM WHERE APPLICANT IS A LEGATEE

[Section 720.]

Proceed as in last preceding form, substituting in paragraph 1 : " Legatee named in the will of " for " creditor of the estate of " ; and add " and by the said will a legacy of rupees was bequeathed to your petitioner. " Omit paragraph 3. In paragraphs 4 and 5 for " claim " substitute " legacy (or distributive share) " ; and in the prayer make the corresponding alterations.

No. 116

FORM OF CITATION ON PRECEDING APPLICATIONS

[Section 721.]

(Title as in No. 111)

Proceed as in No. 111. The citation is " to show cause why a decree should not be made directing you as (executor or administrator, &c.) of, deceased, to pay the claim of against the estate of the said deceased in the sum of rupees "

No. 117

FORM OF DECREE ON THE PRECEDING CITATION

[Section 721.]

(Title.)

A. B. of, having presented to this court a petition dated the day of, 19, asking that a decree be made herein directing the said (executor, &c.) to pay (state claim ; and if petition was by a creditor, add statement of issue and return of service of citation). And it having been proved to the satisfaction of this court by the said petition and the affidavit of, &c., that the assets of the said deceased in the hand of the said exceed the debt (and where the petitioner is a creditor ; and that the petition may be granted without injuriously affecting the rights of others entitled to priority or equality of payment or satisfaction) : It is decreed that the said, the (executor, &c.) of the said deceased, pay to the said A. B. (the full) amount of his said claim, to wit, rupees, with interest thereon at per centum per annum from the day of, 19, the whole amounting to rupees

(Signed) District Judge.

No. 118

[Sections 723
et seq.]

FORM OF ACCOUNT TO BE FILED BY EXECUTOR OR ADMINISTRATOR

(Title)

(The only difference between a voluntary account and an account ordered by the court will be that the former will be headed "In the matter of the voluntary account of, executor (or administrator, &c.) of, deceased," and the latter "In the matter of the judicial settlement of the account of ", &c.)

To the District Court of

I, A. B., of, do hereby render the following account of my proceedings as executor of the will (or administrator, &c.) of, late of, deceased (if not brought down to date, add "to and including the day of last").

On the day of, 19, (recite grant of probate or administration) were issued to me.

I subsequently caused an inventory of the property and estate of the deceased to be filed in this court, which property amounts as therein set forth, by appraisalment, to rupees.

Schedule A hereto annexed contains (here enumerate the schedules. As many schedules and in such order and relation as will best exhibit clearly all transactions had, whatever they may be, should be annexed; such as statement of property sold, with prices and manner of sale; statement of debts collected and not collected; property unsold and perished by loss, &c.; moneys paid for funeral and other expenses; and in referring to them show that things done have been properly done, and give the reasons why certain things have not been done).

On or about the day of, 19, I caused a notice for claimants to present their claims against the said estate (show manner of notice and publication).

Schedule contains a statement of all the claims of creditors presented and allowed, or disputed by me (&c.).

(Go on to show that there are schedules containing statements of payments to legatees, names of persons entitled as widow, next of kin, legatees, &c., and finally:)

Schedule hereto annexed contains a statement of all other facts affecting my administration of the said estate, and my rights and those of others interested therein.

Rs.

I charge myself as follows:

With amount of inventory	..	..
With amount of increase as shown by Schedule A	..	..

I credit myself as follows:

With amount of loss on sales as shown by Schedule B	..	..
With debts not collected as shown by . . . . .	..	..

Leaving a balance of rupees to be distributed to those entitled thereto, subject to the deductions of the amount of my compensation and the expenses of this accounting. The said schedules, which are severally signed by me, are part of this account.

(Signed, &c.)

(Schedules in order, each signed.)

(Affidavit as in Form No. 119.)

CIVIL PROCEDURE CODE

[Cap. 105

No. 118A

FORM OF FINAL ACCOUNT

[§125, 20 of
1977.]
[Section 724A.]

Date of Death

Testamentary
No.

ASSETS

LIABILITIES, PAYMENTS AND DISTRIBUTIONS

Valuation as per Inventory	Receipts and Transactions	Liabilities as per Inventory	Payment and Distributions	Ref. to Court Order or Transaction	Voucher or Receipt No.
Immovable Property	Funeral expenses and alms giving, Income Tax, Estate Duty at . . . % Costs of Administration Debts due and payable as per Inventory, Debts Paid as per Schedule				
Movable Property	—	—	—	—	—

No. 119

FORM OF AFFIDAVIT OF ACCOUNTING PARTY

[Section 733.]

(Title and formal parts, "In the matter", &c., as in Form No. 118.)

I, *A. B.*, (executor, or as may be) of deceased, being (&c.), say that the charge made in the foregoing account of proceedings and schedules annexed, for moneys paid by me to creditors, legatees and next of kin, and for necessary expenses, are correct; that I have been charged therein all the interest for moneys received by me and embraced in the said account, for which I am legally accountable; that the moneys stated in the said account as collected were all that were collectible according to the best of my knowledge, information, and belief, on the debts stated in such account at the time of this settlement thereof; that the allowances in the said account for the decrease in the value of any assets and the charges therein for the increase in such value are correctly made; and that I do not know of any error in the said account or anything omitted therefrom which may in any wise prejudice the rights of any party interested in the said estate. And I further say that the sums under twenty rupees charged in the said account for which no vouchers or other evidences of payment are produced or for which I may not be able to produce vouchers or other evidences of payment, have actually been paid and disbursed by me as charged, and that the said account contains to the best of my knowledge and belief a full and true statement of all my receipts and disbursements on account of the estate of the said deceased, and of all moneys and other property belonging to the said estate which have come into my hands, or which have been received by any other person by my order or authority for my use, and that I do not know of any error or omission in the account to the prejudice of any creditor or of person interested in the estate of, the said deceased.

(Formal conclusion.)

No. 119A

FORM OF RECEIPT AND DISCHARGE IN FAVOUR OF EXECUTOR OR ADMINISTRATOR

[§125, 20 of
1977.]
[Section 724B.]

(Title.)

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 abovenamed, and do hereby grant a full discharge to the executor (or administrator) abovenamed in respect of the said devises and legacies (or distributive shares or debts, *as the case may be*).

Sgd.
Respondent.

Sgd.
Respondent.

Sgd.
Respondent.

Witness to the identity and signature of the abovenamed respondents.

Sgd.
Attorney-at-Law.

No. 120

[Section 726.]

PETITION FOR JUDICIAL SETTLEMENT OF EXECUTOR'S ACCOUNT

(Adopt form No. 114, adding:)

That has elapsed since issue of (probate, &c.), but the said (executor, &c.) has not rendered any account of his proceedings as such.

No. 121

[Section 727.]

FORM OF ORDER ON EXECUTOR, &C. TO RENDER ACCOUNT

(Title of the action, " and in the matter of the judicial settlement of the account ", &c.)

A citation having been heretofore issued on the petition of, requiring to show cause before this court on, at, &c., why he should not render his account as (executor &c.) of, late of, deceased, and the said citation having been returned on that day together with proof of due service on the said and the said having failed to appear (or to show cause to the contrary and to present a petition that his account be judicially settled: It is ordered that the said render an account of his proceedings as (&c.) to this court on the (&c. at &c.), and file the same herein on or before that time; and that the said personally be and appear before this court at that time and attend from time to time for the purpose of the said account as the court may order; and that in case of disobedience to this order an attachment may issue against him.

(Signed, &c.) District Judge.

No. 122

[Section 729.]

FORM OF EXECUTOR'S PETITION FOR A JUDICIAL SETTLEMENT

(Title.)

To the District Court. &c. *(formal heading.)*

1.—More than one year since *(recite issue of probate or administration to petitioner)*.

2.—The persons interested in the estate of the said deceased as creditors, wife (husband), next of kin (legatees), or otherwise, and their places of residence, to the best of the knowledge, information, and belief of your petitioner, are as follows, to wit: *(Set out. If necessary, negative the existence of any more; and where an address cannot be ascertained, show that it is so.)*

Wherefore (&c.) that his account of his proceedings as such may be judicially settled, and that the creditors or persons claiming to be creditors of the deceased, and the said wife (husband) next of kin (legatees), [and that said as executor (or otherwise) of the said] (and your petitioner's co-executor, C. D.) be cited to attend such settlement.

(Formal conclusion.)

(Signed, &c.)

No. 123

[Section 729.]

FORM OF CITATION ON SUCH APPLICATION

(Adopt No. 111. The citation is "to attend the final judicial settlement of the account of the proceedings of &c., of the said deceased")

No. 124

FORM OF ANSWER BY PARTY CONTESTING AN ACCOUNT

[Section 730.]

(Title as in form of account.)

A. B., a creditor (or a legatee or otherwise) of the said, deceased, contesting the account filed by, executor, (or as the case may be) of, &c. alleges that the said account is erroneous in the following particulars:

(Here set forth objections, e.g., thus:)

- 1.—That the item of rupees for is extravagant, &c.
- 2.—That the item of rupees is without vouchers, &c. (as the case may be).
- 3.—That the said account should be surcharged by the following items:
 - (1) That it does not include (and so on).
- 4.—The item of rupees is erroneous (and so on with regard to all the items to which objection is taken).

Lastly.—Your contestant further reserves the right and privilege of making the foregoing objections more definite and certain, and of interposing other and further objections to the said account, or to any of the acts of the said (executor, &c.).

.....
(Signature and address of contestant.)

The day of, 19

No. 125

FORM OF DECREE ON FINAL SETTLEMENT OF ACCOUNT

[Section 740.]

(Title, &c. "and in the matter", &c.)

A. B., (executor or administrator, &c.), of, late of, deceased having heretofore made application to this court for a judicial settlement of his final account as such (or, where the application was made by someone else, recite accordingly), and a citation having been thereupon issued (recite terms of citation), and the said citation having been returned and filed with proof of the due service thereof on (names), and the said (executor) having appeared on the return day of the said citation, and the said (executor) having rendered his account under affirmation (or oath) 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 the said matter having been duly adjourned to this day, this court, after having examined the said account and vouchers, now finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof made by the said court, as finally settled and adjusted by the court to be recorded with and taken to be a part of the decree in this matter, to wit:

A summary statement of the account of A. B., (executor &c., set out) made by this court as finally and judicially settled and allowed.

Rs.

The said (executor) is chargeable as follows:

With amount of inventory	.....
With amount of increase as per Schedule A	.....

He is credited as follows:	Rs.
With amount of loss on sales as per Schedule B &c. &c. &c. . . . .	.....
Leaving a balance of . . . . .	.....
The said balance consists of:	
.....
.....
.....

And it appearing that the said (executor) has fully accounted for all the moneys and property of the said deceased which have come into his hands as such, and his final account having been adjusted by the said court and a summary settlement of the same having been made as above recorded: It is hereby ordered and decreed:

That the said account be and the same is hereby finally and judicially settled and allowed as filed and adjusted.

And it is further ordered and decreed that out of the balance so found, as above, remaining in the hands of the said (executor), he retain the sum of rupees for the compensation to which he is entitled on this account; and that he pay into the court the sum of rupees for the expenses of this accounting.

(Other recitals and directions will have to be inserted according to circumstances.)

And it appearing that after retaining the amounts above specified a balance of rupees will remain in the hands of the said (executor): It is therefore further ordered and decreed that the said (&c.) distribute the said remaining balance of rupees as follows, namely:—That he pay (&c. *setting out how the balance is to be distributed.*)

And it is further ordered and decreed that the said (&c.) pay the remainder of the said balance, being the sum of rupees to (the residuary legatee named in the said will).

(Formal conclusion)

*No. 129

[Section 757.]

FORM OF SECURITY BOND IN APPEAL

(Follow the ordinary form of bond, making the Registrar, &c. obligee and making the condition: "to pay all costs which shall be incurred and taxed in prosecution of the said appeal if the said appellant shall be decreed to pay the same.")

†No. 132

[Section 793.]

FORM OF SUMMONS TO PERSONS ACCUSED OF CONTEMPT OF COURT

In the Court of

Whereas your attendance is necessary to answer to a charge of contempt committed against the authority of this court in that you having duly attended the same in obedience to a summons requiring you to testify on behalf of one in *(title of case, &c.)*, departed from the said court in contravention of the provisions of section 136 of the Civil Procedure Code *(or as the case may be)*, as appears from *(state how)*: You are hereby required to appear in person before this court on the day of, 19, at o'clock of the forenoon, to answer to the said charge.

(Signed and dated) Judge.

* Forms Nos. 126 to 128 are omitted as having ceased to be applicable to section 756, as replaced by Law No. 20 of 1977.

† Form No. 130 is omitted as having ceased to be applicable to section 761, as replaced by Law No. 20 of 1977. Form No. 131 is omitted as section 783 has been repealed by Ordinance No. 31 of 1909.

No. 133

FORM OF WARRANT IN THE LIKE CASE

[Section 794.]

(Heading as in last form)

To, Fiscal, &c.

Whereas of has been summoned to attend in person before this court on the day of 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. 134

FORM OF CONVICTION FOR CONTEMPT

[Section 797.]

In the Court, &c.

A. B., being this day before this court on a charge of having committed contempt of the authority thereof in that he on the day of (state charge), and it appearing (after reading in evidence the minute recorded by the court, &c., or as the case may be, and where the fact is so, and after hearing the evidence of of) that (state here the material facts of behaviour, language, &c., which under the circumstances amount to contempt).

The said A. B. is therefore hereby convicted of the offence of having committed contempt of the authority of this court, and he is sentenced therefore to undergo (state term of imprisonment, or to pay a fine of rupees, &c.).

(Signed and dated) Judge.

SECOND SCHEDULE

[Section 214.]
[§21, 53 of
1980.]

Part I

DISTRICT COURTS

Scale of costs and charges to be paid to Registered Attorneys in the District Courts as well between party and party as between Registered Attorney and Client.

Where the cause of action, title to land or property, value of estate or subject-matter of the action is	Class I	Class II	Class III	Class IV
	Under Rs. 1,500	Rs. 1,500 and under Rs. 5,000	Rs. 5,000 and under Rs. 10,000	Rs. 10,000 and under Rs. 100,000
Conference with client and receiving instructions to sue, defend, intervene or interplead, to obtain or to oppose the grant of Letters of Administration or Letters of Guardianship or Probate, or to take any other proceedings provided for under this Ordinance	.. 25 00	.. 35 00	.. 50 00	.. 65 00
Proxy to Registered Attorney for any of the above purposes	.. 10 00	.. 15 00	.. 20 00	.. 25 00
Letter of Demand	.. 20 00	.. 25 00	.. 30 00	.. 40 00
Every necessary attendance on client in the progress of an action or proceeding	.. 10 00	.. 15 00	.. 20 00	.. 25 00
Every necessary attendance on Counsel	.. 10 00	.. 15 00	.. 20 00	.. 25 00

* Forms Nos. 135 and 136 are omitted consequent on the repeal of sections 809 and 825 by Law No. 20 of 1977.

	<i>Class I</i>	<i>Class II</i>	<i>Class III</i>	<i>Class IV</i>
	<i>Under</i>	<i>Rs. 1,500</i>	<i>Rs. 5,000</i>	<i>Rs. 10,000</i>
<i>Where the cause of action, title to land or property, value of estate or subject-matter of the action is</i>	<i>Rs. 1,500</i>	<i>Rs. 5,000</i>	<i>Rs. 10,000</i>	<i>Rs. 100,000</i>
Every necessary attendance on the Judge, Registrar, Fiscal, Justice of the Peace, Commissioner for Oaths, adverse party or his Registered Attorney or Counsel or any other person in the progress of an action or proceeding	.. 10 00	.. 15 00	.. 20 00	.. 25 00
Every necessary attendance on Registrar of lands or any other Officer of a Government Department, Corporation, Board or any other authority in the progress of an action or proceeding	.. 10 00	.. 20 00	.. 30 00	.. 40 00
Drawing plaint, answer, replication, plea or any other pleading, petition or application	.. 25 00	.. 35 00	.. 50 00	.. 65 00
Preparing written instructions for Counsel to draw or settle the above and attendance therewith	.. 20 00	.. 25 00	.. 30 00	.. 40 00
Attending Court and filing plaint, answer, replication, plea or any other pleading, petition or application	.. 10 00	.. 15 00	.. 20 00	.. 25 00
Making and serving copy of same or translation thereof for service, per folio*	.. 1 00	.. 1 50	.. 1 50	.. 2 00
Making copies of documents to be filed with pleading, or for service on parties, per folio*	.. 1 00	.. 1 50	.. 1 50	.. 2 00
Drawing, summons, notice, subpoena, writ or other process, order of Court, decree, or judgment	.. 3 00	.. 4 00	.. 6 00	.. 10 00
Making copy or translation thereof	.. 1 50	.. 2 00	.. 3 00	.. 4 00
Attending Registrar to get the same signed	.. 10 00	.. 15 00	.. 20 00	.. 25 00
Drawing motions and other ordinary applications when necessary	.. 5 00	.. 10 00	.. 15 00	.. 20 00
Every necessary attendance at Court Offices and Record Room to make all necessary applications, to file all motions, to peruse orders thereon and to search for return to summons or notice or any other process	.. 3 00	.. 5 00	.. 6 00	.. 10 00
Attending Court without Counsel to support or oppose application or motion for judgment or any other special motion or application	.. 25 00	.. 35 00	.. 50 00	.. 65 00
Attending Court to support or oppose all necessary ordinary applications or motions	.. 25 00	.. 35 00	.. 50 00	.. 65 00
Drawing and fair-copying affidavit	.. 15 00	.. 20 00	.. 30 00	.. 65 00
Drawing decrees, applications for execution, probate, Letters of Administration, interrogatories, cross interrogatories, commissions, special case, injunction, sequestration, proclamation bonds, reference citations, inventories and accounts	.. 15 00	.. 25 00	.. 40 00	.. 50 00
Drawing brief for Counsel and fair-copy, per folio*	.. 1 00	.. 1 50	.. 1 50	.. 2 00
Making copy of pleadings and documents to accompany brief, per folio*	.. 1 00	.. 1 50	.. 1 50	.. 2 00
Where two or more Counsel are engaged, for drawing second brief (no charges for further brief), per folio*	.. 1 00	.. 1 50	.. 1 50	.. 2 00
Attending Court with Counsel on trial, if cause argued or heard	.. 50 00	.. 70 00	.. 100 00	.. 125 00
Attending Court with Counsel on trial, if cause adjourned, postponed or struck off	.. 30 00	.. 50 00	.. 80 00	.. 100 00
Attending Court without Counsel on trial and conducting cause	.. 50 00	.. 100 00	.. 150 00	.. 190 00
Attending Court without Counsel on trial, if cause adjourned, postponed or struck off	.. 30 00	.. 50 00	.. 80 00	.. 100 00
Where judgment is deferred, attending Court to hear it	.. 25 00	.. 35 00	.. 50 00	.. 65 00
Attending arbitration without Counsel, each sitting (no fees after sixth sitting)	.. 50 00	.. 100 00	.. 150 00	.. 190 00
Attending arbitration with Counsel, each sitting (no fees after sixth sitting)	.. 30 00	.. 50 00	.. 80 00	.. 100 00
Attending Commissioner to examine or cross-examine witnesses on local examination of accounts or for any other purpose with Counsel	.. 20 00	.. 30 00	.. 50 00	.. 65 00
Attending Commissioner as above without Counsel	.. 40 00	.. 50 00	.. 70 00	.. 90 00
Drawing Bill of Costs and fair-copy	.. 1 50	.. 30 00	.. 50 00	.. 50 00

*A folio to consist of 120 words.

	Class I	Class II	Class III	Class IV
<i>Where the cause of action, title to land or property, value of estate or subject-matter of the action is</i>	<i>Under Rs. 1,500</i>	<i>Rs. 1,500 and under Rs. 5,000</i>	<i>Rs. 5,000 and under Rs. 10,000</i>	<i>Rs. 10,000 and under Rs. 100,000</i>
		<i>irrespective of the number of folios</i>	<i>irrespective of the number of folios</i>	<i>irrespective of the number of folios</i>
Attending taxation	.. 10 00	.. 20 00	.. 30 00	.. 40 00

Perusing and considering papers, exhibits, or documents furnished or used in any action or proceeding by the adverse party or furnished by a party to his own Registered Attorney for the purpose of being used as evidence in any action or proceeding

Such sum as the Registrar shall consider fair and reasonable subject to review and appeal as provided in this Ordinance.

Examining witnesses preparatory to trial or for instructions for brief (per witness)	.. 10 00	.. 20 00	.. 30 00	.. 40 00
For every necessary letter vouched by letter book, exclusive of postage	.. 5 00	.. 10 00	.. 15 00	.. 20 00

Maps, Surveys, Plans or models, when necessary, such sum as the Registrar shall deem reasonable subject to review and appeal.

Witnesses' expenses, as the Court may determine.

All necessary instructions, applications, and motions and all necessary attendance at consultations, and copies of documents and all fees and charges not otherwise provided for (including letters) such sums as the Registrar shall deem reasonable, subject to review and appeal.

In all actions involving Rs. 100,000 and over the taxable charges to be one-third (1/3) higher than in Class IV.

Part 2

Scale of fees to be paid to Counsel in the District Courts.

	I	II	III	IV
<i>Where the cause of action, title to land or property value of estate or subject matter of the action is</i>	<i>Under Rs. 1,500</i>	<i>Rs. 1,500 and under Rs. 5,000</i>	<i>Rs. 5,000 and under Rs. 10,000</i>	<i>Rs. 10,000 and over</i>
Retainer	.. 30 00	.. 50 00	.. 70 00	.. 100 00
Advising action, defence or appeal	.. 30 00	.. 50 00	.. 70 00	.. 100 00
Drawing, perusing, settling, and signing any pleading application or petition	.. 50 00	.. 70 00	.. 100 00	.. 200 00 to .. 300 00
Drawing, perusing and settling special case	.. 50 00	.. 70 00	.. 100 00	.. 200 00
Drawing, perusing, and settling interrogatories, decree, etc.	.. 50 00	.. 70 00	.. 100 00	.. 150 00
Consultation fee	.. 50 00	.. 70 00	.. 100 00	.. 200 00
Supporting or opposing any special motion or application	.. 50 00	.. 70 00	.. 100 00	.. 200 00
Brief fee on trial or argument	.. 100 00	.. 150 00	.. 200 00	.. 300 00 to 1,000 00
Brief fee where trial or argument is resumed	.. 50 00	.. 100 00	.. 150 00	.. 200 00 to 700 00

- N. B. (1) The fee of a Junior Counsel will not be allowed where two Counsel are engaged in Classes I and II.
 (2) No fees will be allowed for a third Counsel in any class.
 (3) The brief fee of a Junior Counsel, where two Counsel are engaged will be half of the Senior Counsel's brief fee.

The Registrar may allow any charges or fees as he shall deem reasonable (not otherwise provided for) on special application being made to him, subject to review and appeal as provided in this Ordinance.

* A folio to consist of 120 words.

Part 3

COURT OF APPEAL

In Appeal

Counsel's fees

Appeals where value of action is Rs. 1,500/- or under—

Brief fee on argument Rs. 100 00

Appeals where value of action is over Rs. 1,500/-

Retainer Rs. 100 00
 Consultation fee Rs. 100 00 to 300 00
 Making or opposing any special motion Rs. 100 00 to 300 00
 Brief fee Rs. 200 00 to 2,000 00
 Drawing, perusing, settling and signing any application or petition Rs. 100 00 to 300 00

Registered Attorney's Fees as well between party and party as between Registered Attorney and client.

	<i>Class I</i> <i>Rs. 1,500</i> <i>and under</i>	<i>Class II</i> <i>Rs. 5,000</i> <i>and under</i>	<i>Class III</i> <i>Rs. 10,000</i> <i>and under</i>	<i>Class IV</i> <i>Rs. 100,000</i> <i>and under</i>
Proxy	.. 7 50	.. 10 00	.. 15 00	.. 20 00
Instructing Counsel to make or oppose any special motion, or for advice on appellant's or respondent's case	.. 50 00	.. 75 00	.. 100 00	.. 125 00
Drawing brief for Counsel or any bond, affidavit, petition or application and fair-copy, per folio*	.. 2 50	.. 5 00	.. 5 00	.. 7 00
Close copy of pleading, evidence and documents to accompany brief, per folio*	.. 1 25	.. 1 25	.. 1 25	.. 1 50
Attending Court	.. 50 00	.. 75 00	.. 100 00	.. 125 00
Every necessary attendance on Registrar	.. 25 00	.. 25 00	.. 25 00	.. 35 00
Drawing of Bill of Costs	.. 22 50	.. 22 50	.. 22 50	.. 30 00
Servicing copy with notice of taxation	.. 7 50	.. 7 50	.. 7 50	.. 10 00

Note 1. In all actions involving over Rs. 100,000/- the taxable charges to be one third (1/3) higher than in Class IV.

Note 2. The Registrar may allow any charges or fees not specially provided for, as he shall deem reasonable on special application being made, subject to an appeal to the Court.