CHAPTER 105

CIVIL PROCEDURE CODE

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

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[1st August , 1890]

CHAPTER I

PRELIMINARY

Short title.

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

[section 2 and 3 - Omitted]

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 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any such court can lawfully take cognizance, except in so far as any such provisions are by this Ordinance expressly repealed or modified.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.
[2, 8 of 2017]
[7, 27 of 2023]
[2, 43 of 2024]

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;

[2,20 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 fulfill 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;

[2, 8 of 2017] "court expert" shall mean a person specially skilled or knowledgeable in any subject, field or disciplines;

"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.)

[2, 43 of 2024] "electronic" shall have the same meaning assigned to it by the Electronic Transactions Act, No.19 of 2006;".

[2, 29 of 2023] "document" includes a document in electronic form;

"document in electronic form" includes -

(a) any information consisting of any contemporaneous recording or reproduction thereof or any information contained in a statement produced by a computer within the meaning of the Evidence (Special Provisions) Act, No. 14 of 1995;

(b) any information contained in a data message, electronic document, electronic record, electronic communication or other information or transaction in electronic form within the meaning of the Electronic Transactions Act, No. 19 of 2006;

(c) such other document or information or record or communication or transaction in electronic form that may be specified by any other written law;

(d) such other document or information or record or communication that is stored on devices, servers and back-up systems in any medium that encompasses computer technology or any such document or information or record or communication that has been deleted; or

(e) any metadata and other embedded data which is not typically visible on a computer screen or print out;

[2,79 of 1988] "Fiscal" includes a Deputy Fiscal

"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;

[2,20 of 1977] "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;

"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 favor 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;

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

[2, 8 of 2017] "local authority" means any Municipal Council, Urban Council or Pradeshiya Sabha and includes any Authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council or Sabha;

"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;

[2, 8 of 2017] "Provincial Council" shall mean a Provincial Council established under Article 154A of the Constitution of the Democratic Socialist Republic of Sri Lanka 1978;

"Public Corporation" means any corporation, board or other body which was or is established by or under any written law other than the Companies Act, No. 7 of 2007, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise;

"Public Office" shall have the same meaning as defined in the National Archives Law No. 48 of 1973;

[2,20 of 1977] "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;

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

[2,20 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;

[2,20 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;

[2,20 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.

PART I

OF ACTIONS IN GENERAL

CHAPTER II

GENERAL PROVISIONS

Action.

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

Procedure of an action.

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

Illustrations

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

In actions of which the procedure is summary, the applicant simultaneously with preferring his application supports with proper evidence the statement of fact made therein; and if the court in

its discretion considers that a prima facie case is thus made out

(a) either the order sought is immediately passed against the defendant before he has been afforded an opportunity of opposing it, but subject to the expressed qualification that it will only lake effect in the event of his not showing any good cause against it on a day appointed therein for the purpose;

(b) or a day is appointed by the court for entertaining the matter of the application on the evidence furnished, and notice is given to the defendant that he will be heard in opposition to it on that day if he thinks proper to come before the court for that purpose.

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

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.

CHAPTER III

OF THE COURT OF INSTITUTION OF ACTION

Institution of actions: in what court.
[3, 43 of 2024]

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 -

[3, 43 of 2024] (a) a party plaintiff or a party defendant resides; or

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

(c) the cause of action arises; or

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

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

When it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any immovable property is situate, any one of those courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect, and thereupon proceed to entertain and dispose of any action relating to that property; and its decree in the action shall have the same effect as if the property were situate within the local limits of its jurisdiction:

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

Of application for withdrawal and transfer of action. [3,20 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.

Where joint tenants or tenants in common.

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

Substituted and added plaintiffs.

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

Defendants.

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

Substitution where person against whom a right to any relief is alleged to exist dies and the right to sue for relief survives.
[2,6 of 1990]

14A.

(1) Where a person against whom the right to any relief is alleged to exist is dead and the right to sue for such relief survives, the person in whom such right is alleged to exist, may make an application by way of summary procedure supported by affidavit to the court in which an action for the same may be instituted, in the following manner:-

(a) Where such person has died intestate leaving an estate, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative, as defined in section 394 (2), of the deceased and whom he desires to be made the defendant in the proposed action in place of the deceased. Such application shall also specify the name, description, and place of abode of the person or persons whom the applicant alleges to be the other heir or heirs of the deceased; or

(b) Where probate of the will or letters of administration to the estate of the deceased has not been issued or its issue is likely to be unduly delayed, specifying, the name, description, and place of abode of any person whom he alleges to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued and whom he desires to be made the defendant in the proposed action in place of the deceased. Such application shall also specify the name, description, and place of abode of the person or persons whom the applicant alleged to be the heir or heirs of the deceased.

(2) Upon receipt of an application under paragraph (a) of subsection (1), and the court where it is satisfied that there are grounds therefor, and, after the issue of notice on the representative named in such application and such other persons, if any, and after causing notice of such

application, (in the form No.2A in the First Schedule) to be advertised in a local newspaper to be selected by the court, or by such other mode of advertisement in lieu of such publication as to the court seems sufficient, and after such inquiry as the court may consider necessary and upon such terms as it thinks fit, the court may order that such representative or such other person as the court may consider fit be appointed in place of the deceased, for the institution of such action:

Provided, that the person to be so appointed in place of the deceased may object that he is not the legal representative of the deceased or that he should not be appointed in place of the deceased.

(3) Upon receipt of an application under paragraph (b) of subsection (1), the court may, where it is satisfied that probate of the will or letters of administration to the estate of the deceased has not been issued or is likely to be unduly delayed, and, after the issue of notice on the person alleged in such application to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued and such other persons, if any, causing notice of such application, (in the form No. 2A in the First Schedule) to be advertised in a local newspaper to be selected by the court or by some other mode of advertisement in lieu of such publication as to the court seems sufficient, and after such inquiry as the court may consider necessary and upon such terms as it thinks fit, order that the person, who appears to the court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued, be appointed in place of the deceased, for the institution of such action:

Provided, that the person to be so appointed may object that he is not the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued or that he should not be appointed in place of the deceased.

(4) Notwithstanding the provisions of subsection (2) or subsection (3), the court may make an order under any one of those subsections, only where-

(a) it is satisfied that the delay in the institution of the action would render such action not maintainable by reason of the provisions of the Prescription Ordinance; or

(b) a period of six months had lapsed after the death of the deceased.

(5) Where after an order appointing a representative in place of the deceased has been made under subsection (2) or subsection (3) and an action instituted against such

person in place of such deceased, an executor of the will, or an administrator of the estate, as the case may be, of such deceased, is appointed in proceedings instituted under Chapter XXXVIII of this Code, such executor or administrator shall, on the application by way of summary procedure, supported by affidavit, made by the plaintiff or any other party to such action or by such executor or administrator, be substituted in place of the person appointed under subsection (2) or subsection (3), and the action shall thereupon proceed in the same manner as if such executor or administrator had originally been made a defendant, and had been a party to the previous proceedings in the action.

Who may be joined as parties defendant.

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

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

16. Where there are numerous parties having a common interest in bringing or defending an action, one or more of such parties may, with the permission of the court, sue or be sued, or may defend in such an action on behalf of all parties so interested. But the court shall in such case give, at the expense of the party applying so to sue or defend, notice of the institution of the action to all such parties, either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable, then) by public advertisement, as the court in each case may direct.

Misjoinder not to defeat action.

17. No action shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Nothing in this Ordinance shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

If the consent of anyone who ought to be joined as a plaintiff cannot be obtained, he may be made a defendant, the reasons therefor being stated in the plaint.

Parties improperly joined may be struck out.
[3, 29 of 2023]

18.

Addition of parties.
[3, 29 of 2023]

(1) The court may on or before the day first fixed for the pre-trial conference, 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.

(2) Every order for such amendment or for alteration of parties shall state the facts and reasons which together form the ground on which the order is made. And in the case of a party being added, the added party or parties shall be named, with the designation " added party ", in all pleadings or processes or papers entitled in the action and made after the date of the order.

Intervention not otherwise allowed.

19. No person shall be allowed to intervene in a pending action otherwise than in pursuance of, and in conformity with, the provisions of the last preceding section. And no person shall be added as plaintiff, or as the next friend of a plaintiff, without his own consent thereto;

Except in under section 16.

Provided however that any person on cases whose behalf an action is instituted or under section defended may apply to the 16. court to be made a party, and all parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons.

Conduct of the action.

20. The court may give the conduct of the action to such plaintiff as it deems action proper.

Amendment of plaint.

21. Where a defendant is added, the plaint shall, unless the court direct otherwise, be amended in such manner as may be necessary, and a copy of the amended plaint shall be served on the new defendant and on the original defendants.

Objections for non-joinder or mis joinder to be taken before theday first fixedfor pre-trial conference.
[4, 29 of 2023]

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 day first fixed for pre-trial conference. And any such objection not so taken shall be deemed to have been waived by the defendant.

Plaintiffs (or defendants) may authorize one of them to act for them.

23. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any proceeding under this Ordinance; and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any such proceeding. The authority shall be in writing signed by the party giving it, and shall be filed in court.

CHAPTER V

OF RECOGNIZED AGENTS AND 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;

[4,20 of 1977]

(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.

Processes served on the recognized agent, effectual.

26.

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

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

Appointment of registered Attorney.

27.

[3, 8 of 2017]
[4, 43 of 2024]

(1) The appointment of a registered attorney to make any appearance or application, or to do any act as aforesaid, shall:-

(a) be substantially in such form specified in Form No. 7 of the First Schedule to this Code and shall be filed in court;

[4, 43 of 2024]

(b) contain an address at which service of any process under the provisions of this Chapter may be served on such registered attorney, instead of the party whom he represents;

[4, 43 of 2024]

(c) include an electronic mail address and a mobile phone number to which service of any process, notice or any other legal documents may also be served on a registered attorney;

[4, 43 of 2024]

(d) contain a memorandum substantially in the Form No. 16A of the First Schedule in duplicate setting out the address, mobile phone number and the electronic mail address, if any, of such party which shall be considered as the registered address, the registered mobile phone number and the registered electronic mail address, respectively of such party. The registered attorney shall with such memorandum tender to the Registrar stamps to the value required to cover cost of service of such notices or other legal document by registered post and the registered attorney shall bear the cost of courier service or service through electronic means;

(2)

(a) Where a party who appoints a registered Attorney is a natural person, a memorandum nominating a legal representative for the purpose of the legal proceedings in the event of the death of such party before the final determination of the proceedings, shall also submitted.

(b) The memorandum referred to above shall, substantially be in the form specified in Form No.7A of the First Schedule hereto.

(c) The provisions of section 393 shall apply in regard to the nomination of such legal representatives and filing of such memorandum.

[4, 43 of 2024]

(2A)

(a) Where a party is represented by a registered attorney, such attorney shall in the appointment,

state the national identity card number, passport number or any other mode of identification, as the case may be, of the party and shall also make an endorsement thereon certifying the identity of such party. Where the party is a company or a body corporate the appointment shall be made under the seal of such company or a body corporate as the case may be.

(b) In the event a person who resides outside Sri Lanka is unable to meet his registered attorney to sign the appointment under subsection (1), such appointment shall be signed in the presence of any of the following authorized persons who shall certify the identity of such person: -

(i) an Attorney-at-Law, a solicitor, a lawyer or a Notary of the country where such party resides; or

(ii) the High Commissioner, the Ambassador, a diplomatic officer or a consular officer of the Sri Lankan High Commission, Embassy or Consular Office in the country in which such party resides.

(c) In the case of any delay or any difficulty to produce the original of the appointment within the specified time, a copy of the original in electronic form may be produced in court subject to production of the original of such appointment within a reasonable time as the court may direct.".

(3) When an appointment under subsection (1) is filed, an appointment of a registered attorney shall be in force until -

(a) revoked by the client in writing with the leave of the court and after notice to the registered attorney in writing signed by the client and filed in court;

(b) revoked by the registered attorney-

(i) in writing signed by the client and filed in Court;

(ii) with leave of the court having given thirty days' notice to the client;

(c) the client dies;

(d) the death or incapacity of registered attorney; or

(e) all proceedings in the action are ended and judgment satisfied so far as regards the client.

(4) No Counsel shall be required to present any document empowering him to make any appearance or application or to do any 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.

Death or incapacity Of registered attorney.

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 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. [4, 8 of 2017]

29. [4, 8 of 2017] (1) 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.

(2) Service of any process, notice or any other document at the address given under paragraph (b) of subsection (1) of section 27 and sent to the electronic mail address given under paragraph (c) of subsection (1) of section 27 shall be deemed to be sufficient delivery to the party who has appointed the registered attorney, unless the court otherwise directs.

(3) Service of process, notice or any other document at the address given in the memorandum submitted under section 27(2) shall be deemed to be sufficient delivery to the nominee or nominees appointed under section 393.

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. [2,12 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.

[Sections 31 and 32 repealed by Law No. 20 of 1977]

CHAPTER VI

OF THE SCOPE AND SUBJECT OF ACTION

Regular action how to be framed.

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

Every action shall include whole claim.

34.

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

(2) If a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of, his claim, he shall 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. 1000. The rent for the whole of the two years 1886 and 1887 is due and unpaid. A sues B only for the rent due for one of those years. A shall not afterwards sue B for the rent due for the other year.

Joinder of claims in actions for immovable property.

35.

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

(a) claims in respect of mesne profits or arrears of rent in respect of the property claimed;

(b) damages for breach of any contract under which the property or any part thereof is held; or consequential on the trespass which constitutes the cause of action; and

(c) claims by a mortgagee to enforce any of his remedies under the mortgage. Example. A sues B to recover land upon the allegation that the land belongs to C, and that he. A, has bought it of C. A makes C a party defendant; but he cannot, without leave of the court, join with this claim an alternative claim for damages against C for non-performance of his contract of sale.

In actions against executors, & c.

(2) No claim by or against an executor, administrator, or heir, as such, shall in any action be joined with claims by or against him personally unless the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator, or heir, or are such as he was entitled to or liable for jointly with the deceased person whom be 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 an 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-matter at the date of instituting the action, whether or not an order has been made under the second paragraph of subsection (1).

Application by defendant in such cases.

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

Order of court thereon.

38.

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

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

CHAPTER VII

OF THE MODE OF INSTITUTION OF ACTION

Regular action to commence by plaint.
[6,20 of 1977]
[3,79 of 1988]

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 that behalf. The plaint shall be accompanied by such number of summonses in Form No, 16 in the First Schedule as there are defendants, and a precept in Form" No. 17 of the said Schedule.

Requisites of Plaint
[7,20 of 1977]

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

(a) the name of the court and date of filing the plaint;

(b) the name, description, and place of residence of the plaintiff;

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

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

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

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

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits. In an action for a specific chattel, or to establish, recover, or enforce any right, status, or privilege, or for mesne profits, or for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the value of the chattel, right, status, or privilege, or the amount sued for.

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

41. When the claim made in the action is for some specific portion of land, or for some snare or interest in a specific portion of land, then the portion of land must be described in the plaint so far as possible by reference to physical metes and bounds, or by reference to a sufficient sketch, map, or plan to be appended to the plaint, and not by name only.

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

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

Illustrations

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

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

Plaint must show defendant's interest and liability to be sued.

43. The plaint must show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiffs demand.

Exemption from bar from lapse of time to be shown.

44. If the cause of action arose beyond the period ordinarily allowed by any law for instituting the action, the plaint must show the ground upon which exemption from such law is claimed.

Jurisdiction of court to be averred.

45. Every plaint shall contain a statement of facts setting out the jurisdiction of the court to try arid determine the claim in respect of which the action is brought.

Subscription of plaint

46.

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

Court may refuse to entertain plaint.

(2) Before the plaint (whether presented by the plaintiff or by a 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:

(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;

[4,79 of 1988] (j) When the plaint having been returned for amendment within a time fixed by the court is not amended within such time,

[4,79 of 1988] (k) When the plaint is not accompanied by such number of summonses as there are defendants,

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

Where plaint presented to wrong court.

47. In every case where an action has been instituted in a court not having jurisdiction by reason of the amount or value involved, or by reason of the conditions made necessary to the institution of an action in any particular court by section 9 not being present, the plaint shall be returned to be presented to the proper court.

Order on rejection of plaint.

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

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

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.

(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.

Plaintiff to produce with plaint document sued on.

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

To annex list of other documents.

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

And to state where document not in his possession is.

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

Action on lost negotiable instrument.

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

Document not produced with plaint inadmissible afterwards without leave.
[9,20 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.
[10,20 of 1977]
[2,14 of 1997]
[5, 43 of 2024]

55.

(1) Upon the plaint being filed and the copies of 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, such day, being a day

not later than three months from the date of the institution of the action in court.

[5, 43 of 2024] (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 in duplicate setting out the address, mobile phone number and the electronic mail address if any, which shall be considered as the registered address, the registered mobile phone number and the registered electronic mail address respectively of such party for the service of the notices or any other legal document required to be served on such party under the provisions of this Code unless otherwise provided. Every party shall inform the Registrar forthwith of any change in the address, the mobile phone number or the electronic mail address.

(b) Every party shall with such memorandum tender to the Registrar stamps to the value required to cover cost of service of such notices or other legal document by registered post. He shall bear the cost of courier service or service through electronic means.

(3) Where a party appears by a registered attorney, the address, the mobile phone number and the electronic mail address of the registered attorney contained in his appointment under section 27 shall be deemed to be the registered address, the registered mobile phone number and the registered electronic mail address of such Attorney-at-Law so long as the appointment is in force.

(4) Any notice or other legal document required to be served on any party shall be deemed sufficient service if served by registered post or courier service or through electronic means-

(i) on such party on the registered address, the registered mobile phone number or the registered electronic mail address of such party; or

(ii) on such registered attorney, where a party appears by a registered attorney and such appointment is in force, on the registered address, the registered mobile phone number and the registered electronic mail address of such registered attorney.

(5) The Registrar shall file one copy of the memorandum substantially in the Form No. 16A furnished to him as part of the record of the case and keep and maintain the other copy by way of a separate ledger.

[Sections 56,57 and 58 is repealed by Law No. 20 of 1977]

SERVICE

Service of summons [6, 43 of 2024]

59. (1)

(a) Summons shall ordinarily be served by the process server, registered post or courier service.

(b) Where the plaintiff wishes summons may also be served through electronic mail, all necessary documents shall be submitted by the plaintiff to the relevant court in electronic form.

(2) In the case of a company or a body corporate summons may be delivered by the process server, registered post, courier service or electronic mail if any to the registered office or to the principal place of business of such company or body corporate.

(3) Where the defendant is a public officer, the court may send summons by the process server, registered post or courier service to the head of the department in which the defendant is employed, and it shall be the duty of such head of department to cause the summons to be served personally on the defendant.

(4) Where the court is prima facie satisfied that the defendant is in the employment of another person, the court may send the summons by the process server, registered post or courier service to the employer at his place of business or, where the employer is a company or a body corporate, to any secretary, manager or other like officer of the company or the body corporate, and it shall be the duty of such employer or officer, as the case may be, to cause the summons to be served personally on the defendant.

(5) Where a defendant appears in court in person on summons being served on him in the manner referred to above, he shall produce the national identity card or passport or any other mode of identification as the court may deem fit.

(6) In this section-

" head of department "-

(a) when used with reference to a member of any unit of the Sri Lanka Army, Navy or Air Force, means the Commanding Officer of that unit;

(b) when used with reference to a person employed in a local authority, where the local authority is a Municipal Council, means the Municipal Commissioner of that Council and where the local authority is an Urban Council or a Pradeshiya Sabha, means the Chairman or the Secretary of that Council or Sabha;

(c) when used with reference to any other public officer means the head of the department of Government in which such person is employed; and

"national identity card" means the identity card issued to such person under the Registration of Persons Act, No. 32 of 1968.".

Service by the process server [7, 43 of 2024]

60. (1)

(a) Where the summons are served by the process server, the summons shall be accompanied by a precept in the Form No. 17 of the First Schedule.

(b)

(i) The process server may, upon the summons being served on the defendant, obtain the signature or the thumb impression of such defendant on the precept as acknowledgment of the service of summons.

(ii) The process server shall return the precept to the court, together with a report setting out the manner in which the summons was served on the defendant containing particulars relating to the identity of the person, date, time and place the summons were served. The report shall also state whether defendant, placed or refused to place his signature or thumb impression, on the precept as

acknowledgment of the service of summons.

(iii) The refusal by any defendant to place the signature or thumb impression, as the case may be, on the precept shall not be considered as an invalidation of the service of summons.

(2) If the service referred to in the preceding provisions of this section cannot by the exercise of due diligence be effected, the court may having obtained an affidavit from the plaintiff stating that to the best of his knowledge the defendant resides in the captioned address and not living outside Sri Lanka, order the process server to affix the summons at some conspicuous part of the house in which the defendant ordinarily resides or in the case of a company or a body corporate, at the registered office or at the usual place of business or office of such company or a body corporate and in every such case the summons shall be deemed to have been duly served on the defendant.

(3) The Court may authorise the process server to serve the summons outside the local limits of the court as directed by the court.

(4) Where it is reported by the process server that the summons could not be affected personally on the defendant on the last known address given by the plaintiff and the plaintiff informs Court by filling affidavit that the plaintiff is unaware of the place where the defendant resides, the court upon being satisfied on the contents of such affidavit, order that the summons be served by way of publication in newspapers in all three languages as the court may in each case direct.

(5) For the purpose of this chapter-

"process server" means a fiscal, a deputy fiscal, an officer authorized by the Judge or Registrar of the court to serve documents of the court within the local limits or outside the local limits of the court as directed by the court, or the Grama Niladhari within whose division the defendant resides.".

Proof of service
[8, 43 of 2024]

61. When summons are served by-

(a) registered post or courier service, the registered post article receipt or proof of delivery of courier service;

(b) electronic mail, the proof of sending of the electronic mail by the Registrar and filed as part of the case record;

(c) publication in newspapers, copies of such publications; or

(d) in any other manner, an affidavit of such service,

shall be sufficient evidence of the service of the summons and of the date of such service, and shall be admissible in evidence and the statements contained therein shall be deemed to be correct unless and until the contrary is proved.

Substituted service. [12,20 of 1977] [4,14 of 1997]

62. Whenever service is substituted by order of the court, the court shall fix a day, not being a day later than three months from the day on which the defendant was earlier required to answer the plaint, on or before which the defendant shall file his answer and comply with the other requirements of section 55.

When more defendants than one, service on each.

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

Agents to accept service; partners and manager.

64. When a defendant has an 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.

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.

Service on agent in mortgage action.

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

When defendant out of jurisdiction has manager within it.

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

Service on agent or affixing on immovable property. [9, 43 of 2024]

66. In an action to obtain relief or compensation for wrong in respect of an immovable property or connected thereto, if the service cannot

be made on the defendant in person, it may be made on any agent of the defendant in charge of the property and in cases where such agent cannot be found the court may direct that the summons shall be affixed at some conspicuous part of such property.

Misdescription not to vitiate summons, & c.

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

Service on defendant in jail
[10, 43 of 2024]

68.

(1) If the defendant be in jail, the summons shall be delivered by the process server to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served personally on the defendant and obtain an acknowledgement of receipt of the summons by the defendant.

(2) The precept shall be returned through the process server 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.

(3) Where any defendant is in prison on the summons returnable date the officer in charge of the prison shall produce the defendant to the Court .

Service out of Sri Lanka. Application for, how made.

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.

Order granting leave for service of summons out of Sri Lanka.
[6,79 of 1988]
[11, 43 of 2024]

70. Every order granting leave to effect service of summons out of Sri Lanka shall direct the mode by which such service shall be effected, and also direct that the defendant shall on or before the date specified in the summons, such date being a date not later than six months from the date of the order for service outside Sri Lanka, file his answer and comply with the other requirements of section 55. Such service can be effected by courier service or by any legal firm authorised by the laws of such country where the defendant resides and the proof of personal service of summons shall be submitted to the court.

Communication of Orders

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

CHAPTER VIIIA
SERVICE OF ORDERS

Communication of Orders
[12, 43 of 2024]

71A. The Court may, in addition to the service of documents, direct the Registrar to communicate any order of court including an enjoining order, an injunction, an interim injunction, a sequestration order and an interim order to the parties concerned by way of electronic or telephone devices.

CHAPTER IX
OF FILING ANSWER

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

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.

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

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

[Section 74 is repealed by Law No. 20 of 1977]

Requisites of answer.
[17,20 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 1977] constituted representative as in the case of a plaint is provided for the plaintiffs subscription, or if he is represented by a registered attorney, by such registered attorney, and shall contain the following particulars:-

(a) the name of the court, the number of the case, and the date of filing the answer;

(b) the name of the plaintiff;

(c) the name, description, and residence of the defendant;

(d) a statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence; this statement shall be drawn in duly numbered paragraphs, referring by number, where necessary, to the paragraphs of the plaint;

(e) when the defendant sets up a claim in reconvention the answer must contain a plain and concise statement of the facts constituting the ground of such claim which the defendant makes in reconvention. A claim in reconvention duly set up in the answer shall have the same effect as a plaint in a cross action so as to enable the court to pronounce a final judgment in the same action both on the original and on the cross claim; but it shall not 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.
[7,79 of 1988]

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 period not exceeding one month from the date on which the answer was so returned, and the court may impose such terms as to costs or otherwise as it 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.
[18,20 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

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

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.

CHAPTER XA

FIXING DAY OF PRE-TRIAL CONFERENCE

Date for pre-trial conference order
[5, 8 of 2017]
[5, 29 of 2023]

79A. The court shall-

(a) upon the filing of the answer; or

(b) where a replication is permitted, on the last day of the period of time allowed for the filing of the replication, whether such replication is filed or not,

appoint a date not less than three months and not exceeding five months from such date, for pre-trial conference to be commenced, either in the presence of all parties to the action or such parties as are present.

CHAPTER XB

PRE-TRIAL STEPS TO BE TAKEN BEFORE THE PRE-TRIAL CONFERENCE

Pre- trial steps to be taken before the date fixed for the pre-trial conference

79B. The parties shall, in addition to any other pre-trial step that may be taken by such parties before the case is fixed for pre-trial conference, tender -

(a) their proposed admissions and issues of fact and law in writing;

(b)

(i) lists of witnesses to be called by such parties at the trial; and

(ii) lists of documents relied upon by such parties and to be produced at the trial;

(c) copies of documents listed in the lists of documents which are in the possession of or under the control of such parties,

to the registry of the court, not less than thirty days before the date first fixed for the pre-trial conference and after giving notice to all other parties with proof of service thereof.

Tendering of documents in electronic form

79C.

(1) Notwithstanding anything to the contrary contained in the Evidence (Special Provisions) Act, No. 14 of 1995, Electronic Transactions Act, No. 19 of 2006 or any other written law, where any party proposes to tender any document in electronic form, the provisions of this section shall apply in relation to the tendering of such documents.

(2) Any party proposing to tender documents in electronic form shall, not less than thirty days before the date first fixed for pre-trial conference, file in court, after giving notice to the opposing party or parties -

(a) the list of such documents in electronic form together with an index thereof; and

(b) a copy or copies of such documents as is sufficient to enable the party to understand the nature of such evidence.

(3) Any party to whom a notice has been given under subsection (2) may, within fifteen days of the receipt of such notice apply for permission from the party giving such

notice, to access and inspect -

(a) the documents in electronic form, sought to be tendered in court under subsection (2);

(b) the machine, device, computer or information system, as the case may be, used to produce, reproduce, generate, create, send, receive, store, display, communicate or process the documents in electronic form referred to in paragraph (a); and

(c) any records relating to the production, reproduction, generation, creation, sending, receipt, storage, display, communication or processing of the documents referred to in paragraph (a).

(4) Upon receipt of an application for permission to access and inspection under subsection (3), the party proposing to tender such documents in electronic form shall, within reasonable time, but not later than fifteen days after the receipt of such application, provide a reasonable opportunity to the party applying or his agents or nominees, to have access to, and inspect such documents in electronic form, machine, device, computer, information system or records referred to in the application.

(5) Where -

(a) the party proposing to tender documents in electronic form is unable to give permission or does not give permission for access and inspection as applied for under subsection (3); or

(b) the parties are unable to agree on any matter relating to -

(i) the notice given under subsection (2); or

(ii) an application for access and inspection made under subsection (3) or the manner and extent of such access and inspection,

the court may on application made by either party, make such order or give such direction, as the interest of the justice may require.

(6) The time period referred to in subsection (3) or (4) may be extended at the discretion of the court, based on the special circumstances of each case.

(7) Where any party proposing to tender any document in electronic form under this section -

(a) fails to give notice under subsection (2);

(b) upon application being made for access and inspection under subsection (3), fails to provide a reasonable opportunity therefor; or

(c) fails to comply with any order or direction given by court under subsection (5),

such party shall not be permitted to tender such documents in electronic form, in respect of which the failure was occasioned:

Provided however, the steps or applications referred to in this Chapter shall be followed prior to the conclusion of the pre-trial conference.

(8) Where any party objects to the admissibility of any document in electronic form tendered under this section, such party shall file in court, objections with reasons therefor in writing with copies to all other parties, either before the pre trial conference or at the pre trial conference, as the case may be.

(9) Where any party files objections under subsection (8), the court shall hear the parties to ascertain whether the parties can admit such documents in electronic form, and where no such admission is recorded, the court shall make an appropriate pre-trial order under section 142B with regard to the admissibility of such documents at the pre-trial conference.

CHAPTER XI
OF FIXING DAY OF TRIAL

Fixing the case for trial
[7, 29 of 2023]

80. (1) After the issues are settled and the Judge conducting the pre-trial conference is satisfied that the case is ready for trial, the Judge shall forthwith appoint a date not later than fourteen days from the date of the conclusion of the pre-trial conference for the case to be called in order to fix a date for the trial, in the trial court.

(2) The trial shall be conducted by a Judge appointed for such purpose, other than the Judge who conducted the pre-trial conference:

Provided that, where a Judge has not been separately appointed to conduct the pre-trial conference, the Judge

who has been appointed for such court shall conduct both pre-trial conference and the trial of such action.

(3) The Judge who is fixing the case for trial may, in any appropriate case, fix several dates for trial.

80A. Repealed by [§8, 29 of 2023]

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 there for, 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.

Un disposed 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.

[21,20 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

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

Default of defendant.
[23,20 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 (or 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 pane forthwith, or on such other day as the court may fix.

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

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 1977] 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.

(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.
[23,20 of 1977]
[[3, 53 of 1980]
[13, 43 of 2024]

86.

[13, 43 of 2024]

(2) Where,

(a) at anytime after the case is fixed for ex-parte trial against the defendant for default; or

(b) any time after the decree is entered against him for default but without the service of the decree on him; or

(c) 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 did not receive the summons or that he had reasonable grounds for such default, the court shall set aside the order fixing the case for ex-parte trial, the judgement and decree as the case may be 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 deem fit.

[3, 53 of 1980] (2A) At any time prior to the entering of judgment against a defendant for default, the court may, if the plaintiff consents, but not otherwise, set aside any order made on the basis of the default of the defendant and permit him 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 fit.

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

Non-appearance of Plaintiff.
[23,20 of 1977]

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.

(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.

No appeal against Judgment for default but order setting aside or refusing to set aside judgment appealable.
[23, 20 of 1977]
[2, 5 of 2022]

88.

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

[2, 5 of 2022] (2) The order setting aside or refusing to set aside the judgment entered upon default shall accompany the facts upon which it is adjudicated and specify the grounds upon which it is made, and shall be liable to an appeal to the relevant High Court established by Article 154P of the Constitution, with leave first had and obtained from such High Court.

[4, 53 of 1980] (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.

Where two or more defendants severally liable.

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

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

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

CHAPTER XIII
OF MOTIONS

Motions.
[23,20 of 1977]

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.

Postponements, adjournments and extensions of time.
[25,20 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.
[9,79 of 1988]
[3,9 of 1991]
[8, 8 of 2017]
[9, 29 of 2023]

93.

[8, 8 of 2017]
[9, 29 of 2023]

(1) Upon application made to it before the day first fixed for pre-trial conference of the action, in the presence of, or after reasonable notice to all the parties to the action, the Court shall have full power of amending in its discretion, all pleadings in the action, by way of addition, or alteration, or of omission.

[8, 8 of 2017]
[9, 29 of 2023]

(2) On or after the day first fixed for pre-trial conference, of the action and before final judgement, no application for the amendment of any pleadings shall be allowed unless the Court is satisfied, for reasons to be recorded by the Court, that grave and irremediable injustice will be caused if such amendment is not permitted, and on no other ground, and that the party so applying has not been guilty of laches.

(3) Any application for amendment of pleadings which may be allowed by the Court under subsection (1) or (2) shall be upon such terms as to costs and postponement or otherwise as the Court may think fit.

(4) The additions or alterations or omissions shall be clearly made on the face of the pleading affected by the Order ;or if this cannot conveniently be done, a fair copy of the pleading as altered shall, be appended in the record of the action to the pleading amended. Every such addition or alteration or omission shall be signed by the Judge.

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

Interrogatories.
[10, 29 of 2023]

94.

[10, 29 of 2023]

(1) Any party may, fifteen days before the date first fixed for the pre-trial conference, by leave of the court to be obtained on motion ex parte, deliver through the court interrogatories in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

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

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

Service of interrogatories.

95. Interrogatories delivered under the last section shall be served on the 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.

Cost of unreasonable interrogatories to be borne by party in fault.

96. The court, in adjusting the costs of the action, shall at the instance of any party, inquire, or cause inquiry to be made, into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, exatiously, 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
[11, 29 of 2023]

101.

[11, 29 of 2023] (1) Either party may, by a notice issued by order of court, to be obtained on motion ex-parte not less than fifteen days before the date first fixed for the pre-trial conference, require the other party to admit (saving ail 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.

Order for discovery of documents.
[12, 29 of 2023]

102.

[12, 29 of 2023] (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 parties to the action may, fifteen days before the date first fixed for the pre-trial conference, apply to the court for a like order.

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

Orders for preservation, disclosure or production of documents or documents in electronic form.
[13, 29 of 2023]

103.

(1) The court may, at any time during the pendency therein of any action, order the production or preservation by any party thereto or 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 or preserved in such manner as appears just.

(2) A party intending to institute any proceeding before court may, prior to the institution of such proceedings, make an application ex parte, by way of petition supported by an affidavit, for an order to be made requiring a person

or entity having possession of any document in electronic form, who shall be made the respondent in such application, to preserve, disclose or produce such document, as may be specified in such order.

(3) The court may, upon the receipt of an application under subsection (2), make an order as prayed for in such application, if –

(a) the person or entity against whom an order is sought is likely to be a party to the proceeding to be instituted subsequently;

(b) the applicant is also likely to be a party to such proceeding to be instituted subsequently;

(c) the document in electronic form sought to be preserved, disclosed or produced is relevant to the matter in dispute in respect of which the proceedings are intended to be instituted and is in the possession or control of such respondent;

(d) the duty to preserve, disclose or produce any electronic document upon the receipt of such order extends to the document in electronic form of which the applicant seeks preservation, disclosure or production, if proceedings had commenced against such person or entity;

(e) preservation, disclosure or production of such document in electronic form is desirable in order to –

(i) dispose the intended proceedings in a fair manner;

(ii) assist the dispute to be resolved without proceedings; or

(iii) save costs.

(4) Any person who or entity which receives an order made under subsection (3) shall have a duty to comply therewith and in the event of non- compliance, such person or entity shall be guilty of the offence of contempt of court.

(5) Any party to any proceeding pending before a court may, not less than forty-five days before the date first fixed for the pre-trial conference, make an application for an order to be made requiring any other party to such action to preserve, disclose or produce any relevant document in electronic form, as may be specified in such order.

(6) Any party making an application under subsection (5) of this section shall -

(a) describe with reasonable particularity each item or category of items to be preserved or disclosed or produced; and

(b) specify the manner of preservation, disclosure or production and by whom such preservation, disclosure or production is to be performed.

(7) A party who receives an order made under subsection (5) shall have a duty to comply therewith and in the event of non-compliance, the court may-

(a) where the restoration of such document in electronic form is possible, order for the restoration of the same and award costs;

(b) where the restoration of the document in electronic form is not possible and where the court is of the opinion that prejudice has been caused to the party making the application, due to the loss of such document and that non-complying party has acted with the intention of depriving the use of such document by the other party-

(i) impose costs in a sum as may be deemed reasonable by the court; or

(ii) where the prejudice cause cannot be cured by way of costs, in case of a plaintiff, order to have his action dismissed for want of prosecution, and in case of 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.

(8) A party or person failing to comply with an order made under subsection (5) of this section shall not be entitled to produce any such document in electronic form in evidence on his behalf in such action, unless he satisfies the court that such electronic document relates only to his own title, or that he had some other sufficient cause for not complying with such order.

(9) A party to any proceeding may make an application ex-parte by way of a petition supported by an affidavit, not less than forty-five days before the date fixed for pre-trial conference, for an order to be made requiring any person or entity who is not a party to such proceeding, to preserve, disclose, or produce any document in electronic form in the possession or control of such person or entity. The person

or entity against whom such order is sought shall only be made the respondent in such application.

(10) Upon receipt of an application under subsection (9), the court may make an order as prayed for in such application, if -

(a) the document in electronic form of which the preservation, disclosure or production is sought is likely to support the case of the applicant or adversely affect the case of any party to such proceeding;

(b) preservation, disclosure or production is necessary in order to disprove the claim in a fair manner or to save costs.

(11) An order made under subsection (10) may-

(a) specify the documents in electronic form which the respondent is required to preserve, disclose or produce;

(b) if relevant, specify the time and place of preservation, disclosure or production to take place;

(c) specify the format or formats in which document in electronic form is to be produced; and

(d) require the respondent, when making preservation or disclosure, to specify the documents, if any, which are or not in his control or possession with reasons therefor.

(12) Any person or entity who fails to comply with an order made under subsection (10), shall be guilty of the offence of contempt of court.

(13) Where a person, entity or party from whom preservation, disclosure or production of a document is sought under subsection (2), (5) or (9) objects to such preservation, disclosure or production from the source of such document for not being reasonably accessible due to the burden of cost, the court may limit the extent of such preservation, disclosure or production otherwise allowed under the said subsections where -

(a) the preservation, discovery or production sought is unreasonably cumulative, duplicative, disproportionate or excessive to the material facts of the case;

(b) the requested document in electronic form can be obtained from any other source which is more convenient, less burdensome or less expensive;

(c) the party seeking preservation, disclosure or production has had ample opportunity to obtain such document by discovery in the action; or

(d) the requested document in electronic form is irrelevant or not proportionate to the issues in dispute or the party's resources or the burden of expense of the proposed discovery outweighs the possible benefits and importance in resolving the issues:

Provided however, the court may order preservation, disclosure or production from the sources of such document in electronic form, if the party making the application for preservation, disclosure or production is able to show good cause, subject to such limitations as may be imposed by the court.

(14) Unless otherwise agreed or ordered, electronic copies of the disclosed documents in electronic form shall be produced -

(a) in their native format;

(b) in a manner which preserves metadata relating to the date of creation of each such document; and

(c) organised and labeled in a manner that corresponds with the categories of such documents as requested."; and

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

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.

(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.
[14, 29 of 2023]

104.
[14, 29 of 2023] (1) Any party to an action may, fifteen days before the date first fixed for the pre-trial conference 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.

Protective orders
[15, 29 of 2023]

104A. A party, person or an entity against whom the discovery, production or preservation of a document or document in electronic form is sought, may apply for a protective order to the court within which such action is pending. The court may, for good cause, make one or more of the following orders to protect any such document or the interests of a person, entity or party: -

(a) prohibiting the disclosure or discovery;

(b) specifying terms, including the time, place, forms and manner of the disclosure or discovery;

(c) prescribing a discovery method other than the one selected by the party seeking discovery;

(d) prohibiting inquiry into certain matters or limiting the scope of disclosures or discovery to other matters;

(e) designating persons or experts who may be present while the discovery is conducted;

(f) appointing persons or experts who shall conduct the disclosure, discovery, preservation, inspections, keep custody, examination, analysis, reporting and presenting them in court;

(g) directing that a confidential research, development or trade secret or undisclosed or confidential information of commercial nature not to be disclosed or disclosed only in a specified manner; or

(h) directing that a document in relation to undisclosed confidential research, development or trade secret or undisclosed or confidential information of commercial nature not to be disclosed or disclosed only in a specified manner.".

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

105A. 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.

Court may reserve question as to discovery or inspection.

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

Consequence of not complying with order under this Chapter.
[16, 29 of 2023]

109.

[16, 29 of 2023] (1) If any party fails to comply with any order under this Chapter to answer interrogatories, or for discovery, production, inspection, preservation or protection, which has been duly served, he shall, if a plaintiff, be liable to have his action dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not appeared and answered. And the party interrogating or seeking discovery, production, or inspection may apply to the court for an order to this effect, and the court may make such order accordingly.

(2) Any party failing to comply with any order under this Chapter to answer interrogatories, or for discovery, production, or inspection which has been served personally

upon him, shall also be deemed guilty of the offence of contempt of court.

Court may inspect records of other courts.

110.

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

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

Proved documents to be marked and filed.

(2) Every document so proved or admitted shall be endorsed with some number or letter sufficient to identity 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.

Documents which are not proved to be returned to parties.

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

Court may order any document to be impounded.

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

When document admitted in evidence may be returned.

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

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

Certain documents not to be returned.

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

Receipt for returned documents.

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

Provisions as to documents apply to other material objects and

117. The provisions of this Chapter as to documents shall, mutatis mutandis, apply to all other material objects producible as evidence

documents in electronic form [17, 29 of 2023]

and to all documents in electronic form, to the extent not inconsistent with the provisions of this Chapter.

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.

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 fulfill the duties of a translator, and shall have taken an oath before such Judge faithfully to perform the duties of his office.

Fees of translators.

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

[27,20 of 1977]

For every folio of 120 words .. Rs. 1.25.

For every fractional part of a folio .. Rs. 1.25.

CHAPTER XVII

OF WITNESSES AND DOCUMENTS

Summonses to witnesses. [18, 29 of 2023]

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.

(2) Repealed by [§18, 29 of 2023]

Payment of witness's expenses.

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

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

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

Witness's expenses to be paid before he gives evidence.

123. The sum so paid into court, or so secured, shall at 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.

Court may order a sufficient sum to be paid.

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

Expenses of detention.

125. If it is necessary to detain the person summoned for a longer period than one day, the court may from time to time order the party at whose instance he was summoned to pay into court such sum as is sufficient to defray the expenses of his detention for such further period; and in default of such deposit being made, may, by writ issued to the Fiscal, order such sum to be levied by sequestration and sale of the movable property of the party at whose instance he was summoned; or the court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

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

126.

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

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

Summons to produce document.

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

Person in court may be required to produce a document.

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

Service of summons.

129. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in the manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in this Ordinance as to proof of service of summons on the defendant shall apply in case of all summonses served under this section.

Service must afford reasonable time for attendance.

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

Procedure to be followed when summons cannot be served.

131.

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

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

Proclaimed Witness how dealt with.

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

If witness appears sequestration may be withdrawn.

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

Procedure when witness fails to appear.

133. If such person does not appear, or appearing, fails to satisfy the court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the 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.

Witness may be arrested for non-compliance with summons.

137.

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

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

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

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

Court may release arrested witness on bail.

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

Procedure when witness absconds.

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

Court may pass decree against party refusing to give evidence.

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

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

141.

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

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

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 XVIIA

PRE -TRIAL CONFERENCE AND PRE-TRIAL ORDERS [§19, 29 of 2023]

Pre-trial conference. [19, 29 of 2023]

142A.

(1) The court shall conduct a pre-trial conference with the Attorneys-at-law representing the parties and the parties not so represented, for the following purposes :-

(a) to facilitate a settlement between the parties as specified in subsection (2), ensuring that the matters not so settled shall only be fixed for trial;

(b) to expedite the disposition of the action through judicial case management;

(c) improving the quality of the trial through prior preparation and case management orders so that the action will not be protracted due to lack of trial management;

(d) to identify the key issues at an early stage, in order to discourage unnecessary pre-trial applications;

(e) to facilitate the discovery of evidence;

(f) to identify the witnesses and documents and avoid unnecessary production of evidence at the trial; and

(g) to fix strict time limits for pre-trial orders and enforcement thereof.

(2)

(a) The Judge shall, at the pre-trial conference, make every effort to persuade the parties to arrive at a settlement of the dispute and where the parties agree for a settlement, such settlement shall be recorded and signed by the parties and an order shall be made in accordance with the terms of such settlement.

(b) The Judge in an appropriate case, may direct the parties to appear either in person or in the case of a party being a legal person, an authorized representative thereof to be present at the pre-trial conference in order to facilitate a settlement, adjustment, compromise or other agreements.

(3) The judge at the pre-trial conference may determine unresolved jurisdictional and legal issues.

Pre-trial orders. [19, 29 of 2023]

142B. Subject to the provisions of section 104A, the Judge shall, at the pre-trial conference, discuss with the parties, and make appropriate pre-trial orders on the following matters: -

(a) identifying and obtaining admissions of facts or documents;

(b) identifying the number of witnesses to be called at the trial based on the relevancy and admissibility to the case and dispensing with calling of unnecessary witnesses;

(c) identifying the documents to be produced at the trial based on the relevancy, admissibility, to the case and authenticity of documents and in appropriate instances dispense with proof of such documents;

(d) with regard to the discovery, inspection, protection, preservation and production of documents and tangible things including specification of terms, time, place, manner and form in which such documents and tangible things to be discovered, protected, preserved and produced in court and authentication of documents and signatures;

(e) the protection of trade secrets, other confidential research information and undisclosed commercial information subject to privileges and limitations;

(f) issuing of certified copies of documents in the custody of any public office, public corporation, provincial council, local authority, bank, body incorporate or unincorporate, partnership, hospital, medical institute, court, tribunal or any such similar institution:

Provided that, the provisions of this paragraph shall not prejudice the right of the State to withhold any document on the ground that in the opinion of the Minister assigned in terms of Article 44 or 45 of the Constitution the subject to which the document relates, the public interest would suffer by such disclosure;

(g) upon the agreement of the parties, issuing of commissions to a single, joint or court appointed independent experts to inquire and report on any question of fact and express an opinion thereof:

Provided that, any application for the issue of a commission for local investigation as referred to in Chapter XXIX shall be made prior to the day first fixed for the pre-trial conference:

Provided further, that the court may, in its discretion, issue a commission for such local investigation after the day first fixed for pre-trial conference if it is satisfied, for reasons to be recorded and subject to terms as to costs or otherwise, that a commission is necessary for the determination of the matters in dispute or settlement of the dispute between the parties;

(h) recording of any agreement of parties with regard to any matter, including any issues of facts or law, mode of proof of any fact or document or the number of witnesses to be called or number of documents to be produced at the trial, and entering of orders or judgment in accordance with such agreement of parties:

Provided that, the court shall read out and explain the effect of such agreement to the parties concerned and record the fact that the parties understand the contents of such agreement and the effect thereof and the parties shall sign the agreement or the case record where such agreement is recorded orally in open court;

(i) consolidating two or more actions, subject to the provisions of section 149A;

(j) withdrawal of actions;

(k) the use of technology or employing a special interpreter at the trial;

(l) identifying the number of trial dates or period within which a trial may be concluded and how the time available for the trial will be used; or

(m) any other step as may be necessary or desirable for the just and expeditious disposal of the action.

Parties to be ready with original documents. [19, 29 of 2023]

142C. The parties or their registered attorneys shall, at the pre-trial conference, bring with them and have in readiness at the pre-trial conference, original or certified copies of all documents specified in the list of documents and tendered to the registry of the court under section 79B.

Permission of court to call additional witnesses and additional documents identified or discovered at pre-trial conference. [19, 29 of 2023]

142D.

(1) The court shall, at the pre-trial conference, on application of any party, grant permission to such party, to call any witness or produce any document at the trial, if such witness or document is identified at such conference to be relevant to the matters in dispute, notwithstanding such witness or document not being included in the list of witnesses or documents filed under paragraph (b) of section 79B:

Provided that, the pre-trial Judge may award costs against the party seeking to tender documents or summon witnesses which had not been included in the list filed under paragraph (b) of section 79B unless such party can adduce sufficient reasons for the failure to include such documents or witnesses in the said list.

(2) The court may, at its discretion, grant permission at the pre- trial conference, to any party to produce any document at the trial and call any witness in proof thereof, if such document is discovered under Chapter XVI relevant to the matters in dispute.

(3) Where the court grants permission to call any additional witness or document under subsection (1) or (2), the court shall, at the pre- trial conference, record the fact that such party is entitled to call such witness or produce such document at the trial and no further list of witnesses or documents is required to be filed thereafter.

Pre-trial steps not to be allowed after fixing the date of trial.
[19, 29 of 2023]

142E. Subject to the provisions of this Act, any application for pre-trial steps shall not be allowed after the conclusion of the pre-trial conference of an action unless the court is satisfied for reasons to be recorded and subject to costs that a grave and irremediable injustice would be caused if such steps are not permitted and the party applying for such steps is not guilty of laches.

Determination of issues.
[19, 29 of 2023]

142F.

(1) Where the judge is satisfied that all the pre-trial steps have been taken, the Judge shall determine the issues, taking into consideration the pleadings, proposed admissions and issues of the parties, interrogatories, documents, agreement of the parties and reports if any, submitted to court during the pre-trial conference.

(2) Where issues both of law and facts arise in the same action, and the court is of the opinion that the case may be disposed of on the issues of law only, the court shall try such issues first and for that purpose the court may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Advancement or postponement of pre-trial.
[19, 29 of 2023]

142G. The Judge conducting the pre-trial conference may, either on his own motion or on the application of any party and for sufficient cause shown, advance or postpone the date fixed for the pre-trial conference:

Provided that, the Judge conducting the pre- trial conference shall conclude the hearing within four months from the commencement of such conference, unless the Judge is prevented from acting accordingly for reasons which shall be recorded, including delays in adducing evidence or discoveries.

Default of parties.
[19, 29 of 2023]

142H. Where any party-

(a) fails to diligently take steps according to the provisions of Chapters XB and this Chapter or diligently prosecute or defend the case during the pre- trial conference or fails to comply with any pre-trial order without any reasonable ground; or

(b) fails to appear without sufficient cause on the day fixed for the pretrial conference or on any other day to which it is adjourned,

the Judge conducting the pre-trial conference may, taking into consideration all appropriate circumstances -

(i) subject to the payment of costs or pre-payment of costs, make such appropriate order as he may think fit, including, directing such party to comply with the requirement which was not complied with, unless such non-compliance was substantially justified;

(ii) continue further proceedings notwithstanding such default was made by any party who has obtained any pre- trial order, disregarding any such pre- trial order and upon such terms as to costs being awarded against such defaulting party; or

(iii) proceed to dispose of the action in one of the methods specified in Chapter XII:

Provided that, the Judge shall make every endeavor to make orders in terms of paragraph (i) or (ii), prior to an order being made under paragraph (iii), unless a party is absent and unrepresented at the pre-trial conference.".

CHAPTER XVIII
OF ADJOURNMENTS

Adjournments.

143.

[10,79 of 1988] (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:

Provided however, that no adjournment in excess of Six weeks may be granted except in exceptional circumstances, and for reasons to be recorded.

(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.

[Section 146, 147 and 148 is repealed by Law No. 8 of 2017]

Amendment of Issues.

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

Consolidation of actions.
[11, 8 of 2017]

149A.

(1) The court may order, two or more actions in which the questions of law or fact in issue are substantially the same, to be consolidated upon such terms as the court may deem fit and on the agreement of Parties.

(2) The Court may order -

(a) several actions to be tried at the same time and on the same evidence; or

(b) the evidence in one action to be used as evidence in another; or

(c) one of several actions to be tried and other actions to be stayed to abide by the result,

with the consent of the parties:

Provided that on the application of any party the court shall have power to try another of the actions so stayed where the selected action fails to be a real trial of the issues involved.

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.

Explanation 1

Rules as to right to begin

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

which he seeks, in which case the defendant has the right to begin.

Explanation 2

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

Party having right to begin to produce his evidence.

151. After stating his case in person, or by his 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.

Affidavit may be substituted.
[12, 8 of 2017]

151A.

(1) Notwithstanding the provisions of section 151, the court may, on its own motion or at the request of one of the parties to the action, order that an affidavit be substituted for an oral examination in chief of a witness and direct the party calling such witness to tender such affidavit on a date fixed by the court which date shall be at least one month prior to the date of trial, to enable the opposite party to prepare for the trial.

(2) Where an order is made by the court under subsection (1), the party who is responsible for tendering the affidavit shall tender it together with the documents referred to therein, to the Registrar of the court with the proof of service of a copy of the affidavit with copies of all documents of the opposite party.

(3) On the date of the trial, the party tendering the affidavit shall produce the affidavit through the witness who has affirmed to or sworn to it, including all documents referred therein. The opposite party is entitled to object to its being received, either on the inadmissibility of such evidence or a part of the evidence or on the inadmissibility or authenticity of any documents annexed to such affidavit. In such event, the court may make a ruling on such objection, prior to the witness being cross examined by the opposite party:

Provided that, the court may, in appropriate circumstances, permit the leading of oral evidences, in addition to the evidence contained in the affidavit.

(4) If an affidavit contains evidence of matters of hearsay or any matter which is scandalous, the court may order deletion of such matters and may proceed with the rest of the matters in the affidavit or may order the party who filed such affidavit to tender a fresh admissible affidavit and the party filing such inadmissible affidavit shall be liable to the payment of costs.

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 there from, but a certified copy thereof shall be used in evidence instead.

Records of other actions not to be admitted in bulk.

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

Documents admitted to be read aloud in court.

(3) The document or writing being admitted in evidence, the court, after marking it with a distinguishing mark or letter by which it should, when necessary, be ever after referred to throughout the trial, shall cause it, or so much of it as the parties may desire, to be read aloud.

Explanation

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

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

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

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

The latter question in general is matter of argument only, but the first must be supported by such testimony as the party can adduce. If the

court is of opinion that the testimony adduced for this purpose, developed and tested by cross-examination, makes out a prima facie case of authenticity and is further of opinion that the authentic document is evidence admissible against the opposing party, then it should admit the document as before.

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

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

Proof of deed or document unnecessary in certain events [2, 17 of 2022]

154A.

(1) Notwithstanding the provisions of the Evidence Ordinance (Chapter 14), in any proceedings under this Code, it shall not be necessary to adduce formal proof of the execution or genuineness of any deed, or document which is required by law to be attested, other than a will executed under the Wills Ordinance (Chapter 60), and on the face of it purports to have been duly executed, unless-

(a) in the pleadings or further pleadings in an action filed under regular procedure in terms of this Code, the execution or genuineness of such deed or document is impeached and raised as an issue; or

(b) the court requires such proof:

Provided that, the provisions of this section shall not be applicable in an event, a party to an action seeks to produce any deed or document not included in the pleadings of that party at any proceedings under this Code.

(2) The provisions of subsection (1), shall mutatis mutandis apply in the actions on summary procedure under this Code.

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 slate the mode in which this knowledge was acquired.

Cross-examination as to knowledge.

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

Court to see witness thus tested.

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

And to decide on his competency.

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

Signature by a mark how proved.

159.

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

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

Proof in the case of an illiterate person.

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

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

Case of documents whose execution need not be proved.

161. When the document purports on the face of it to be so old that proof of the actual execution is not required by law, it is not proved until sufficient evidence has been given to prove both that it comes into court from the proper custody, and that it has continued to be in proper custody throughout the period during which it can be reasonably accounted for.

Copy of absent original how proved.

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

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

On termination of beginning party's case the opposing party to state and prove his in like manner. Reply. When rebutting evidence is admissible.

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.

Court may question witness at any time.

164. The court may at any time, whether before or after the examination of a witness by the respective parties or during such examination, put and interpose such questions as it may consider conducive to the attainment of truth and justice. And the answers to such questions shall be made to appear on the face of the record as having been given to the court.

Court may recall Witness.

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

When may court permit departure from above Rules.

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

Evidence of witness to be given orally in open court.

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

Witness to be examined on oath, or affirmation.

168. Witnesses professing to be Christians or Jews, who have discretion to understand the nature of an oath, shall be examined

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

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

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.

Any particular question and answer may be taken down.

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

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

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

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

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

Court may record remarks on demeanour of witness.

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

Witnesses may be kept out of court.

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

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

No witness to be called or document to be produced unless included in list of witnesses or documents.
[20, 29 of 2023]

175.

[20, 29 of 2023] (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 subparagraph (i) of paragraph (b) of section 79B or permitted by court under section 142D:

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.

[31,20 of 1977] [20, 29 of 2023] (2) A document which is required to be included in the list of documents filed in court by a party as provided by subparagraph (ii) of paragraph (b) of section 79B and which is not so included or not permitted by court under section 142D shall not, without the leave of the court, be received in evidence at the trial of the action:

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.

[20, 29 of 2023] (3) Where an order is made under this section, the court shall take into consideration any order made under section 142B.

Court may forbid indecent or scandalous questions.

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

Court shall forbid insulting questions.

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

Evidence de bene esse.

178.

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

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

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

Evidence taken on affidavit or on commission.

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

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

Court may examine witness viva voce notwithstanding affidavit or commission.

180. In the event of an order having been made for the proof of facts by affidavit, or by deposition taken on commission, the court may, nevertheless, at the instance of either party order the attendance of the declarant or deponent at the hearing of the action for viva voce cross-examination, if he is in 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.
[11,79 of 1988]

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.

(c) any person qualified to administer an Oath or affirmation according to the law of the country, in which the affidavit is sworn or affirmed.

Who may make affidavits in lieu of the parties to the action.
[12,79 of 1988]

183A. Where any person is required under the provisions of this Code, or under any other law for the time being in force, to make an affidavit, then-

(a) where the action is brought by or against the Attorney-General, any officer of the State, and

(b) where the action is brought by or against a corporation, board, public body, or company, any secretary, director or other principal officer of such corporation, board, public body or company; and

(c) where any party to the action is absent from Sri Lanka, his attorney duly authorized to bring, conduct or defend the action, as the case may be; and

(d) where any party to the action, or where there is more than one party to the action such of the parties as are in Sri Lanka, or when such attorney of the parties as is just above mentioned, is or are unable, for want of personal knowledge or bodily or mental infirmity, to make the required affidavit, any recognized agent of such party,

may make an affidavit in respect of these matters, instead of the party to the action:

Provided that in each of the foregoing cases the person who makes the affidavit instead of the party to the action, 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 party to the action would have been, if the affidavit had been made by such party.

Punishment for willful false statement made under section 183A. [12,79 of 1988]

183B. Where any person wilfully makes any false statement by affidavit or otherwise, in the course of any of the proceedings aforesaid he 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.

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.

Judge may pronounce judgment written by predecessor.

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

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

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.

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

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.

Requisites of Judgment.

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

Decree.

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

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.
[33,20 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]
[3,6 of 1990]

192.

(1) When the action is for a sum of rate may interest on money due to the plaintiff, the court may, 192 of the 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 legal rate, to be paid, on the principal sum adjudged from the date of action to the date of the decree, in addition to any interest adjudged on such principal superior 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) For the purposes of this section, "the legal rate " means the rate per centum per annum determined by the Monetary Board established by the Monetary Law Act, by Notification published in the Gazette, having regard to current rates of bank interest.

(3) Where such decree is silent with regard 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 i separate action therefor shall not lie.

When may court decree specific performance.

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

When may court decree payment by instalments.

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

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

Provided also, that if the party ordered to pay by instalments shall appeal against the decree, and the appeal shall be decided against him, his right to pay by instalments shall cease, and the whole amount shall be immediately payable, unless the 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.

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

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

Decree when claim in respect of mesne profits from date of action is allowed. [6, 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 preemption & 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.

[Section 201 is repealed by Ordinance No. 21 of 1927]

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

Persons to be entitled to certified copies of judgment, decree or proceedings in any action
[2, 20 of 2023]

205.

(1) The Registrar of the court shall, where the respective parties to an action apply for a certified copy of the judgment or final decree of the action or both, issue one certified copy of the same to each such party free of charge.

(2) Subject to the provisions of subsection (1), the Registrar of the court shall, upon any person-

(a) making an application accompanied by such fee as may be determined from time to time by the Secretary to the Ministry of the Minister assigned the subject of Justice by Notification published in the Gazette and supplying the necessary stamps, furnish to such person copies of the judgment, decree or proceedings in an action or any part thereof; or

(b) making an application and producing the necessary stamps, examine and certify to the correctness of any such copies made by such person:

Provided that, a person other than a party to a matrimonial action, an adoption application or a custody application shall not be entitled to obtain certified copies of any proceedings or documents of such action or application, except the judgment, order or decree thereof:

Provided further that, upon being satisfied as to the requirement of an applicant who is not a party to such matrimonial action, adoption application or custody application, the court may direct the Registrar of such court to issue to such applicant, certified copies of the proceedings or documents of such action or application.

(3) Notwithstanding anything to the contrary in section 76 of the Evidence Ordinance (Chapter 14) or any other written law, a document issued or transmitted electronically by a court shall be deemed for the purposes of authentication and verification, to have been signed, sealed and dated by court, where such document-

(a) if originally created in electronic form, contains the electronic signature and electronic seal of the Registrar or such other officer authorized by law to place the signature together with his name and official title, the electronic seal of the court, and the date; or

(b) if originally created in paper form and converted into an electronic copy in portable document format (PDF) or by similar file converter technology, contains the signature and seal of the Registrar or such other officer authorized by law to place the signature, together with his name and official title, the seal of the court, and the date.

Decree or copy to be primary evidence of decision.

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

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

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

Explanation

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

cannot afterwards be made the subject of action for the same cause between the same parties.

CHAPTER XXI
OF COSTS

Costs.

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

Court always to have Power to give or reserve costs.
[5,14 of 1997]

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. The court may in its order, fix the amount of the costs of such application or action, so however, that the amount so fixed shall not be less than fifty per centum of the amount of costs that may be given in an application or action of that category, at such rates as may be prescribed for the purposes of section 214, and not more than two hundred per centum of the amount of costs that may be given in an application or action of that category, at such rates as may be prescribed for the purposes of section 214. Any order for the payment of costs only, is a decree for money within the provisions of section 194 as to payments by instalments.

Court shall direct by whom costs are be paid and estimate value in certain cases.
[6,14 of 1997]

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. The court shall, in decrees entered in such classes of action as are prescribed, give its estimate of the value of the action, and such estimate shall be deemed to be the value of the action, for the purposes of applying the rates prescribed for the purposes of section 214, to that action.

Court may apportion costs.
[7,14 of 1997]

211.

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

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

(2) Without prejudice to the generality of the powers of the court under subsection (1), the court may give costs to a party, in the case of any frivolous or vexatious action or

application or defence by the other party or in the case of expense to such party, occasioned by the delay or default of the other party or by the making of any unnecessary or unreasonable application by the other party, so however, that the costs so ordered shall in no case exceed five hundred per centum of the costs that may be ordered in an application or action of that category, at the rates prescribed for the purposes of section 214.

Set-off costs.

212. The court may direct that the costs of payable to one party by another shall be set off against a sum which is admitted or is found in the action to be due from the former to the latter. But such direction shall not affect the lien upon the amount decreed of any registered attorney in respect of the costs payable to him under the decree.

Court may give interest on costs.
[7, 53 of 1980]
[8,14 of 1997]

213. The court may give interest on costs at the legal rate per annum as specified in section 192 of the Ordinance, calculated from the date of the decree, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject matter of the action.

Costs to be taxed.
[9,14 of 1997]

214. All bills of costs, whether between party and parties, or between registered attorney and client, shall be taxed by the Registrar of the court in either case according to such rates as may be prescribed. 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 (except when it is the decision of the Court of Appeal) he 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.

EXECUTION OF DECREE TO PAY MONEY

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

218. When the decree falls under head (A) and is unsatisfied, the judgment-creditor has the power to seize, and to sell or realize in money by the hands of the Fiscal, except as hereinafter mentioned, all saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which the judgment-debtor has a disposing power, which he may exercise for his own benefit, and whether the same be held by or in the name of the judgment-debtor or by another person in trust for him or on his behalf; Provided that the following shall not be liable to such seizure or sale, namely-

Excepted property.

(a) the necessary wearing apparel, beds, and bedding of the judgment- debtor, or of his wife and children;

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

(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;

(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;

[35,20 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;

(l) a right to future maintenance and all maintenance, alimony and costs ordered in matrimonial suits or maintenance actions;

(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;

(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.

Examination of judgment-debtor as to debts owing to him.

219. (1) The party entitled to enforce any decree for the recovery or payment money may apply to the court for an order that the debtor (or, in the case of a him. 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.

Application need not to be supported by affidavit

220. It shall not be necessary to support any such application by affidavits of the applicant's belief that any debts are owing to the debtor, or that he has any other property or means of satisfying the decree.

Costs.

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

Execution of decree against legal representative of a deceased person.
[8, 53 of 1980]

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.

Court to satisfy itself as to conformity &c application. When application should be refused by the court.

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;

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. Disposal of property seized until sale.

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. 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 Proviso as to subject to speedy and natural decay, or perishable property. when the expense of keeping it in custody will exceed its value, the Fiscal may sell it at once. The Fiscal, Deputy Fiscal, or other officer may at his discretion permit the owner or possessor of the property or the writ-holder to take charge of the property until the time of sale, on giving security to the satisfaction of such officer that he will in the meantime safely and securely keep the same; or such officer may upon the necessary expenses therefor being advanced or secured to him by the debtor or the writ-holder, keep the property in his own custody or in the custody of one of his subordinates, or cause the same to be removed to some fit place of security. If such security is not given or such expenses are not advanced or secured, the Fiscal, Deputy Fiscal, or other officer shall make a special return thereof to the court, and shall not be responsible for the due custody of the property so seized. The expenses of keeping the property in such custody or of removing the same when certified by the Fiscal shall, if not paid by the debtor, be a first charge on the proceeds of the property seized or sequestered, provided that the court may, if it thinks fit, reduce the amount of expenses so certified as aforesaid:

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

As to attachment of negotiable instrument.

228. If the property is a negotiable instrument not deposited in a court, nor in the custody of a public officer, the instrument shall be seized

and brought into court and held subject to the further orders of the court.

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

229. In the case of-

(i) a debt not secured by a negotiable instrument,

(ii) a share in the capital of any public company or corporation,

(iii) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any court, or in the custody of a public officer,

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

(a) in the case of the debt, the creditor from recovering the debt, and the debtor from making payment thereof until the further order of the court from which the writ of execution authorizing the seizure issues;

(b) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;

(c) in the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

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

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

230.

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

(2) The costs of any application and of any proceedings arising from, or incidental to, any such application as aforesaid shall be in the discretion of the court.

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

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

Seizure of property deposited in any court. Question of priority.

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 :

Provided that, if such property is deposited in, or is in the custody of, a court, title or 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.

(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.

Notice by Fiscal.

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.

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

234.

(1) If the property is a decree for money passed in favour of the judgment- debtor by the court which passed the decree sought to be executed, the seizure shall be made by an order of the court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

(2) If the property is a decree for money passed by any other court, the seizure shall be made by a notice in writing to such court signed by the 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.

Seizure of immovable by written notice of prohibition.

237.

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

Publication of such notice .

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

seized, or receive the rents and profits thereof, unless expressly directed so to do by order made under Chapter I.

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

238. When a seizure of immovable property is effected under a writ of execution and made known as provided by section 237 and notice of the seizure is registered before the 1st day of January, 1928, in the book formerly kept under section 237 or is registered on or after the 1st day of January, 1928, under the Registration of Documents Ordinance, any sale, conveyance, mortgage, lease, or disposition of the property seized, made after the seizure and registration of the notice of seizure and while such registration remains in force is void as against a purchaser from the Fiscal selling under the writ of execution and as against all persons deriving title under or through the purchaser.

When seizure must be ordered to be withdrawn.

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

List to be made of property seized.

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

Claims to Property seized

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

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

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

decree or order, and shall be and become part of the record in the action;

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

Claim to be made at earliest opportunity.

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

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

Claimant to adduce evidence.

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

Discretion of court to release the property claimed.

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

When may court disallow the claim.

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

Court may continue seizure subject to mortgage or lien.

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

Action by party claiming right.

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

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

248. Whenever it shall appear to a competent court, and be so found and declared in any judgment pronounced by it in any action instituted

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

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 ah execution against his individual property, any other partner or former partner having an interest in the property may, at any time before the sale, apply to the court from which the writ of execution issued, upon an affidavit showing the facts, for an order directing the Fiscal to release the property and to deliver it to the applicant.

Undertaking to be given by applicant.

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

Undertaking, to whose benefit it.

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 ensures to the benefit of each judgment-creditor of the same judgment-debtor then having an execution in the hands of the Fiscal having authority to levy upon that interest, as if it had been given to obtain a release from a seizure made by virtue of such an execution.

Interest of judgment- debtor may be sold.

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

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

Coin or currency notes to seized how dealt with.

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

How may decree of court, seized be realized.

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

the decree in the manner hereinafter provided for the execution of a decree by an assignee thereof.

Procedure in case of other property sized by fiscal.

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

Notice of sale : I. - For movable property.

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

(a) the property to be sold ;

(b) the action in which, and

(c) the place, and

(d) day, and

(e) hour at which the sale is to take place;

(f) the amount of money for the levy of which the writ issued.

II.-For immovable property. [36,20 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. [37,20 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.

[Section 257 is repealed by Law No. 20 of 1977]

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.

Court may in certain cases postpone sale.

259.

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

(2) In such case the court shall grant a certificate to the judgment-debtor, authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 238, to make the proposed mortgage, lease, or sale; Provided that all moneys payable under such mortgage, lease, or sale shall be paid into court and not to the judgment-debtor ; Provided also that no mortgage, lease, or sale under this section shall become absolute until it has been confirmed by the court.

Deposit by purchaser.

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

Payment in full.

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

Fiscal to satisfy himself as to bona fides of bidder.

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

Deficiency on resale to be purchaser on Fiscal's certificates.

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.

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

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

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

Forfeiture of deposit.

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

Differences realized to augment the purchase money.

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

The amount certified by Fiscal to be recovered as by execution of decree. Cost of notice, publication, or proclamation.

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 tom-tom or in any other manner whatsoever, shall in every instance, where provision for the payment thereof is not otherwise specially made, be prepaid by the person at whose instance or in whose interest the same is required.

No officer conducting sale to bid.

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

attempt to acquire any interest in any property sold at such sale.

Holder of decree may be or purchase.

272. (1) A holder of a decree in execution of which property is sold may, with the previous sanction 01 and subject to such terms as to credit being given him by the Fiscal and otherwise as may be imposed by the court, bid for or purchase the property.

And purchase money may be set off against decree.

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

Place of sale of immovable property.

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

(2) Of Sales of Movable Property

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

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

Sale of other movable property.

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

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

What may vitiate sale.

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

Delivery to purchaser.

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

Delivery where third party is in possession.

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

Delivery of unsecured debt or share.

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

Endorsement of negotiable instrument or share certificate.

280.

(1) If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public company or corporation is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary. The endorsement or execution shall be in the following form or to the like effect:- " A. B. by C. D.. Judge of the District Court of (or as the case may be), in an action by E. F. against A. B."

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

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

281. In the case of any movable property not 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.

(3) Of Sales of Immovable Property

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

282.

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

and may be set aside for material irregularity.

(2) The decree-holder, or any person whose immovable property has been sold under this Chapter, or any person establishing to the satisfaction of the court an interest in such property, may apply by petition to the court to set

aside the sale on the ground of a material irregularity in publishing or conducting it; but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the court that he has sustained substantial injury by reason of such irregularity, and unless the grounds of the irregularity shall have been notified to the court within thirty days of the receipt of the Fiscal's report.

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

Order confirming the sale.

283.

(1) If no such application as is mentioned in the last preceding section is made within the thirty days, or if such application is made and the objection disallowed, the court shall at any time after the expiration of the thirty days, on the application of the decree-holder or of the purchaser, pass an order confirming the sale as regards the parties to the suit and the purchaser:

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

Order setting aside the sale.

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

When purchaser may apply to set aside sale.

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

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

When purchaser may get back his purchase money.

285.

(1) When a sale of immovable property is set aside under sections 282, 283, or 284, when it is found that the judgment- debtor had no saleable interest in the property which purported to be sold, and the purchaser is for that reason deprived of it, the purchaser 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. Conveyance to contain sufficient map of the premises.

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 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 officer.

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 tom- tom, or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser, and the cost (to be fixed by the court) of such proclamation shall in every case be prepaid by the purchaser.

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

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

Fiscal may enter property sold.

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

and retain possession of the same until the confirmation of the sale by the court and the execution of the conveyance in pursuance thereof.

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

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

(1) He may use it and enjoy it in like manner and for the like purposes as it was used and enjoyed before the sale, doing no permanent injury to the property.

(2) He may make the necessary repairs to a building or other erection thereupon. But this provision does not permit an alteration in the form or structure of the building or other erection.

(3) He may use and improve the land in the ordinary course of husbandry, and may collect, gather, harvest, and store the crops and produce thereof, but shall not be entitled to them.

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

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

292. On the sate 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 contempt of court.

Moneys paid to. and realized by, the Fiscal

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

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 Fiscal. [39,20 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.

(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

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

298.

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

(a) is about to abscond or leave the jurisdiction of the court with intent to defraud the judgment-creditor or with intent to obstruct or delay the execution of the decree ; or

(b) is about to leave 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. [40,20 of 1977]

301. No warrant under section 298 or notice under section 299 shall be issued in 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.

Woman not liable to arrest in execution.

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

Warrant to issue where debtor fails appear on notice.

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

Execution of warrant of arrest.

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,

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

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

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

(a) pays into court the amount of the decree and, if he has been brought before the court under a warrant, the costs of the arrest, or

(b) gives security for the payment of the same to the satisfaction of the judgment-creditor,

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

Debtor who has no cause to show to be discharged or 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.

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

310.

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

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

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

Issue of warrant of committal to jail.

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

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

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.

Sufficient interim subsistence money to be deposited before arrest.

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

Subsistence allowance during imprisonment to be fixed on commitment.

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

Allowance to be paid monthly in advance.

315.

(1) The monthly allowance fixed by the court shall be supplied to the Fiscal by the party on whose application the decree has been executed by monthly payments in advance before the first day of each month.

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

Power to vary allowance or additional payments.

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.

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

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

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

Disbursements by decree holder to be deemed costs.

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

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.

When debtor entitled to be discharged from jail.

317.

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

(a) on the decree being fully satisfied ; or

(b) at the request of the person on whose application he has been imprisoned ; or

(c) on such person omitting to pay the allowance as 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 :

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

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

Limit of imprisonment.

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

Endorsement on the warrant.

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

(B) DECREES FOR DELIVERY OF MOVABLE PROPERTY

Application for execution of decree for delivery of movable properly, how to be made. Form of writ.

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.

Amount to be leveled and manner of execution.

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).

(C) DECREES FOR POSSESSION OF IMMOVABLE PROPERTY

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

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.

Fiscal how to proceed thereunder.

324.

(1) Upon receiving the writ the Fiscal or his officer shall as soon as reasonably may 'be repair to the ground, and there deliver over possession of the property described in the writ to the judgment-creditor or to some person appointed by him to receive delivery on his behalf, and if need be by removing any person bound by the decree who refuses to vacate the property:

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

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

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

Resistance to Execution of Proprietary Decrees

Procedure in event of resistance to execution of writ or delivery of property.
[41,20 of 1977]
[[9, 53 of 1980]

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.

[9, 53 of 1980] (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,

[13,79 of 1988] (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. Every such investigation and inquiry shall be concluded within sixty days of the publication of the notice referred to in subsection (2).

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

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

(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;

[14,79 of 1988] (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 not in good faith; 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,

[41,20 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.
[41,20 of 1977]
[15,79 of 1988]

327. Where the resistance , obstruction , 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 making order dismissing the petition, if it finds that such right or interest has been established.

Where claim is established only to a share of the property.
[16,79 of 1988]

327A. Where any claim is established only to a share of any property, it shall be competent for the court in any order made under the preceding sections, 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.

Court shall investigate dispute if bona fide claimant be dispossessed in effecting the execution.
[41,20 of 1977]
[17,79 of 1988]

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. Every inquiry under this section shall be concluded within sixty days of the date fixed for the filing of objections.

Effect of order made under section 326 or section 327 or section 328.

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.

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

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 -

(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 whosoever, shall be punishable as a contempt of court.

DECREES FOR EXECUTION OF CONVEYANCE OR TRANSFER OF PROPERTY

Application for enforcement of decree for execution of any conveyance, how to be made.

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

Service of the draft conveyance on judgment-debtor. Objections to draft.

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. 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.

Meaning of conveyance m section 331 332, and 333.

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

(E) & (F) MANDATORY AND RESTRAINING DECREES

Application for enforcement of decrees, how to be made. Court may issue writ of execution by seizure and sale.

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. 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.

Amount to be levied under writ.

335. The amount of money directed to be levied on the writ of execution issuing under the preceding section shall be the amount of pecuniary loss, if any, as nearly as the court can estimate it, which is occasioned to the judgment-creditor by reason of the judgment-debtor's default in obeying the decree or order, and which the court shall award by way of compensation to the judgment-creditor by the order directing the writ to issue. And the execution of this writ and of the warrant of arrest issuing under the same section shall be effected according, and subject, to the rules prescribed for the writ of execution and warrant of arrest issued for the enforcement of decrees falling under head (A).

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 sat is tied.
[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

Application by one of several decree-holders for execution of the decree for the benefit of all.
[2,11 of 2010]

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.

[42,20 of 1977] (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-

(a) "estate" means the gross value of the estate of the deceased ; and

[2,14 of 1993] [2,11 of 2010] (b) ' "legal representative" means an executor or administrator or in the case of an estate below the value of rupees four million, the next of kin who have adiated the inheritance:

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

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

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

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

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

(2) In the case where one decree of court is seized in execution of another decree, the judgment-creditor of 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.

[19,79 of 1988] (1A) On an application made under subsection (1), the court shall enter the name of the legal representative on the record in place of the name of the deceased and shall proceed to determine the application for execution; and

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.

[19,79 of 1988] (3) If the judgment-creditor dies before the decree has been fully executed, the legal representative may apply to the court to have his name entered on the record in place of the deceased and the court shall thereupon enter his name on the record.

Fiscal may adjourn sale.

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

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

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

Stay of proceedings adjournment of sale by court.

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

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

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

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

Procedure where there are cross decrees between the parties.

345.

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

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

Explanation

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

Explanation

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

Explanation

3.-This section does not apply unless- (a) the decree-holder in one of the actions in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both actions, and (b) the sums due under the decrees are definite and unconditional.

Illustrations

(a) A holds a decree against B for one thousand rupees. B holds a decree against A for the payment of one thousand rupees in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross decree under this section.

(b) A and B, co-plaintiffs, obtain a decree for one thousand rupees against C; and C obtains a decree for one thousand rupees against B. C cannot treat his decree as a cross decree under this section.

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.

Proceedings here one year hat. elapsed from date of decree.

347. In cases where there is no respondent named in the petition of application for execution, if more than one year has elapsed between the date of the decree and the application for its execution, the court shall cause the petition to be served on the Judgment-debtor, and shall proceed thereon as if he were originally named respondent therein:

Provided that no such service shall be necessary if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed or from the date of the last order against the party, against whom execution is applied for, passed on any previous application for execution.

Execution against surety.

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

Decree-holder to certify payment to the court.

349.

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

(2) The judgment-debtor may also by petition inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree-holder to show cause on a day to be fixed by the court why such payment or adjustment should not be recorded as certified. And if after due service of such notice the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

(3) No such payment or adjustment shall be recognized by any court unless it has been certified as aforesaid.

Concurrence and preference.
[43,20 of 1977]

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.

(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.

Where the same property seized in execution of decrees of more courts than one.

351. Where property not in the custody of any court has been seized in execution of decrees of more courts than one, the court which shall receive or realize such property and shall determine any claim thereto and any objection to the seizure thereof shall be the court of highest grade, or, where there is no difference in grade between such courts, the court under whose decree the property was first seized.

Where several decree-holders are entitled to share rateably in proceeds of a sale of debtor's property.

352.

(1) Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have prior to the realization, applied to the court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons :

Provided that, when any property is sold which is subject to a mortgage or charge, or for any other reason remains subject to a mortgage or charge notwithstanding the sale, the mortgagee or incumbrancer shall not as such be entitled to share in any proceeds arising from such sale.

Share of such proceeds paid to wrong person may be recovered by action by person entitled.

(2) If all or any portion of the money realized in execution of a decree is in the distribution made under the last preceding section paid to a person not entitled to receive the same, any person who is so entitled may sue such person to compel him to refund the money.

Order for payment of money enforced as a decree.

353. Every order made by a court, in any action or proceeding between parties, for payment of money not being a fine, shall have the effect of a decree for the payment of money, and on default of payment according to its terms shall be enforceable upon the application of the party at whose instance it was made in like manner as a decree for money.

Fine imposed by civil court how to be levied.

354. In the event of an order being made by the civil court under the provisions of this Ordinance for the payment of a fine, and in the event of the fine not being paid into court at the time appointed therefore 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.

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 purpose of court not being writs or warrant be directed.

356. All processes of court not being writs, or warrants directed to the Fiscal or other person for execution, and all notices and orders required by this Ordinance to be given to or served upon any person, shall, unless the court otherwise directs, be issued for service to the Fiscal of the 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 executed 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.

Proceedings against Fiscal for contempt, & c.
[46,20 of 1977]

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.

Grama seva niladhari or constable to execute or serve processes in his own limits only.

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.

Endorsement of process by Fiscal.

360. It shall be competent to any Fiscal to whom any writ, warrant, or precept has been directed under the foregoing sections, and to the Fiscal's officer to whom the Fiscal may have entrusted such writ, warrant, or precept for execution, to endorse thereon the name of any 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.

Duty of every Fiscal to assist.
[48,20 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.
[49,20 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.

What acts not within last section.

363. The seizure or sale of property, which does not belong to the person whose property is authorized by a writ of levy to be seized and sold, shall not be deemed to be an act done by or in the course of, nor an immediate consequence of, the execution of such writ within the meaning of the first paragraph of the last preceding section. But no person charged as aforesaid shall be liable in damages for any such seizure or sale, if the same shall be shown to have been effected under the bona fide belief that the property did belong to the person whose property is authorized to be seized or sold.

Form of precept.

364. Unless otherwise in this Ordinance enacted the precept of the court to the Fiscal directing the service of any process, order, or notice, or other document, not amounting to a writ to levy money, or to take any person in arrest, or to detain any person in custody, or do

deliver possession of property shall be in the form No. 17 in the First Schedule.

When process may not be served.

365. Process in civil cases, whether at the suit of the 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.

Outer door not to be forced.

366. The outer door of any dwelling house shall not be forced open in order seize the person under civil process issued at the suit of a private individual, excepting such person shall have escaped or shall have been rescued after having been duly arrested.

In effecting seizure of movable property inner door may be opened.

367. If the person executing any process under this Ordinance, directing or authorizing seizure of movable property, has obtained entrance into a house or other building, he may unfasten and open the door of any room in which he has reason to believe any such property to be.

Person executing process always to have writ with him or copy.

368. The person employed in carrying into effect any process of execution against either person or property shall always have with him the writ, warrant, or mandate of execution, or a copy of the same authenticated by the Fiscal or Deputy Fiscal, which shall, if required, be produced and shown to the party against whom, or against whose property, it is sought to be put in force.

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

369. In all civil cases where process of execution may issue against the person of a party, it shall be necessary, in order to constitute an arrest, that the body of the person to be arrested shall be actually seized or touched by the officer executing the process, unless such person express his acquiescence in the arrest without being so seized or touched.

Fiscal's return of writ or precept.
[4,6 of 1993]

370.

(1) Every Fiscal or Deputy Fiscal or Grama Niladhari, as the case may be 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 or Grama Niladhari, as the case may be 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 or Grama Niladhari 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 initialed and dated by the Fiscal or Deputy Fiscal or Grama Niladhari.

Power of Fiscal or other person to administer oath therefor.

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.

PART II

OF SUMMARY PROCEDURE

CHAPTER XXIV

OF SUMMARY PROCEDURE

Summary procedure by petition [51,20 of 1977]

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.

Form of petition [52,20 1977]

374. The petition shall be distinctly written upon good and suitable paper, and shall contain the following particulars :-

(a) the name of the court and date of presenting the petition;

(b) the name, description, and place of abode of the petitioner or petitioners;

(c) the name, description, and place of abode of the respondent or respondents;

(d) a plain and concise statement of the facts constituting the ground of the application and its circumstances, and of the petitioner's right to make it. Such statement shall be set forth in duly numbered paragraphs;

(e) a prayer for the relief or order which the petitioner seeks.

If incidental to an action, petition to be entitled therein.

375. If the application is instituted in the course of, or as incidental to, a pending action, whether of regular or summary procedure, the petition shall be headed with a reference to its number in the court, and the names of the parties thereto, and shall be filed as part of the record of such action, and all proceedings taken and orders made on such petition shall be duly entered in the journal required to be kept by section 92.

Affidavits and exhibits to be attached to petition.

376. With the petition, and so far as conveniently can be attached thereto, shall be exhibited such affidavits, authenticated copy records, processes, or other documentary evidence as may be requisite to furnish prima facie proof of the material facts set out or alleged in the petition, or the court may in its discretion permit or direct the petitioner to adduce oral evidence before the court for this purpose, which shall be taken down by the court in writing.

If grounds are sufficient, order may be nisi, or interlocutory.

377. If the court is satisfied on the evidence exhibited or adduced that the material facts of the petition are prima facie established 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 Service on the manner and subject to the rules respondent hereinbefore prescribed for the service of the summons in a regular action.

If grounds are insufficient petition to be refused.

380. If the court is not satisfied on the evidence exhibited or adduced that the material facts of the petition are prima facie established or is of opinion that on the footing of those facts the petitioner is not entitled to the relief which he asks, then in either case the court shall refuse the petition.

Petition and order thereon to be filled.

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.

Non- appearance of petitioner on day appointed.

382. If on the day appointed in an order made under section 377 for the determination of the matter of the petition, the petitioner does not appear before the court either in person or by 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.

When court may take order nisi absolute.

383.

(1) If on such day the petitioner appears, and the respondent does not appear, and if the court is satisfied by the affidavit of the serving officer, stating the fact of the service, or by oral evidence, that the order has been duly served upon the respondent in time reasonably sufficient to enable him to appear, then if the order is an order nisi made under (a) of section 377, the court shall make it absolute, and shall pass no other order adverse to the respondent; but otherwise it shall make such order within the prayer of the petition as it shall consider right on the facts proved :

Provided, however, that in the latter case the court shall make no order to pay costs against the respondent, except in cases where the prayer of the petition expressly asks for the costs of the application, and the court thinks it fit that the respondent should pay them.

(2) Nothing in this section shall prevent the court from dismissing the petition at this stage in the absence of the respondent, if it sees reason to think that the order ought not to have issued in the first instance.

Proceedings where both parties appear.

384. If on such day both the petitioner and the respondent appear, the proceedings on the matter of the petition shall commence by the respondent in person, or by his 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.

Final order.

387. The court, after the evidence has been duly taken and the petitioner and respondent have been heard either in person or by their respective 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.

Endorsement on order nisi.

388.

(1) The final order so pronounced may be endorsed on the order nisi or on the interlocutory order, as the case may be.

(2) In the case of the order nisi, the final order, if endorsed, will be simpliciter either in the shape of " order discharged " or of " order made absolute ":

Provided that an order nisi, if it consists of separable parts, may be discharged in part and made absolute in part; and nothing herein enacted shall prevent any order being made by consent of the petitioner and respondent on the footing of the order nisi.

(3) In the case of the interlocutory order, the court may make such order within the prayer of the petition as it shall consider right on the facts proved, and it may make any such order upon the petitioner and respondent for the payment of costs as to the court shall seem just.

Final order made on non-appearance of respondent, not appealable, but may be set aside.

389. No appeal by a respondent shall lie against any final order which has been made, in the case of the respondent's non- appearance, on the footing of either an order nisi or an interlocutory order in the matter of a petition; but it shall be competent to the court, within a reasonable time after the passing of such order, to entertain an application in the way of summary procedure instituted by any respondent against whom such order has been made, to have such final order set aside upon the ground that the applicant had been prevented from appearing after notice of the order nisi or interlocutory order by reason of accident or misfortune, or that such order nisi or interlocutory order had never been served upon him. And if the ground of such application is duly established to the satisfaction of the court, as against the original petitioner, the court may set aside the final order complained of upon such terms and conditions as the court shall consider it just and right to impose upon the applicant, and upon the final order being so set aside, the court shall proceed with the hearing

and determination of the matter of the original petition as from the point at which the final order so set aside was made.

Parties to an action of summary procedure.

390. In an application, or action, of summary procedure the persons, petitioning or respondent, are the parties to the action.

Journal in an action of summary procedure.

391. On the institution of an application of summary procedure which is not made in, or incidental to, any already pending action, the court shall commence and keep a journal entitled as of the matter of the application, according to the rules prescribed in section 92, and this journal so kept shall be the record of the matter of the application.

PART III

INCIDENTAL PROCEEDINGS

CHAPTER XXV

OF THE CONTINUATION OF ACTIONS AFTER ALTERATION OF A PARTY'S STATUS

On death of a party action does not abate if right to sue survives.

392. The death of a plaintiff or defendant shall not cause the action to abate if the right to sue on the cause of action survives.

Memorandum.
[13, 8 of 2017]

393.

(1) A party who appoints a registered Attorney under section 27(2) (hereinafter referred to as the "nominator party"), shall nominate at least one person and not more than three persons, in order of preference, to be his legal representative for the purpose of proceeding with the action, in the event of his death pending the final determination of the action:

Provided that the court may, in the event the memorandum is not filed at any time before the final determination of an action, on its own motion or on the application made by any party, require a party to the action or any person eligible to file a memorandum under the provisions of this Code, to file such memorandum on or before a date appointed for such purpose by the court. In the event of failure to file such memorandum the court may impose an appropriate cost on the defaulting party.

(2)

(a) In the event of the death of the nominator party, pending the final determination of the action, the person nominated under subsection (1) shall, in the order of preference in which his name is set out in the memorandum, be deemed to be the legal representative of the party for the purposes of the action.

(b) In the event of the death or incapacity of the legal representative whose name is set out in the memorandum, the person nominated next in order of preference shall be deemed to be the

legal representative for the purposes of the action.

(c) The person nominated as legal representative shall subscribe his or her signature to the memorandum, signifying consent to be so appointed. The signature of the nominator party and those of the nominee or nominees consenting to be appointed, shall be witnessed by an Attorney-at-law, a Justice of the Peace or a Commissioner of Oaths.

(3) A nominee may at any time with notice to the nominator party, apply to court by way of a motion to withdraw his consent to be such nominee and in such event the court shall make an order that he ceases to be the nominee of the nominator and shall cause the name of such nominee to be removed.

(4) Subject to the provisions of subsection (1) of this section, a nominator party may at any time before the final determination of the action, make an application with notice to the nominees, to tender a fresh memorandum nominating one or more nominees. On the filing of such new memorandum, the previous memorandum of such nominator party shall be deemed revoked and the nomination contained in such fresh memorandum shall forthwith take effect.

(5) The legal representative of a deceased nominator shall be entitled to take all such steps as may be necessary, as the deceased nominator party would have been entitled to take, had he been alive, if the cause of action survives the death of the deceased nominator party.

(6)

(a) A nominee shall not refuse to act as the legal representative of a deceased nominator party. He may, with the leave of the court first had and obtained, by way of petition and after giving notice to the other nominees if any, apply for permission from court to be released from the office of legal representative of such nominator party.Such application may be made not later than two months from the date of the death of the nominator party.

(b) Where the court grants permission to release from the office of legal representative, the nominee who is next in order of preference in the memorandum filed by the nominator party, shall be deemed to be the legal representative of such deceased nominator party, for the purposes of the action.

(c) Where an application under paragraph (a) of this subsection is made by a nominee who is the sole nominee or the sole remaining nominee of deceased nominator party, such nominee shall notify the heirs of such deceased nominator party regarding his application and in the event of the court granting permission as aforesaid, the court shall appoint an heir of such deceased nominator party to act as the legal representative of such deceased nominator party for the purposes of the action.

Failure to file a Memorandum. [13, 8 of 2017]

394. (1) On the death of a party to the action who had failed to file a memorandum, any party to the action may apply to the court by an ex parte application by way of a petition supported by an affidavit, requesting that an executor or administrator or in the case of an estate which is below the administrable value, the next of kin who have adiated the inheritance of the deceased party be substituted in the place of such deceased party.

(2) The court may, on being satisfied that such appointment is necessary and the cause of action survives on the death of such party, shall appoint such person.

(3) The person so appointed shall be bound by proceedings prior to his appointment:

Provided that, the person appointed and made a substituted party in the action, may object that he is not the executor or administrator or in the case of an estate which is below the administrable value, the next of kin who have adiated the inheritance of the deceased party or make any defence appropriate to his character as such representative.

Application for legal representative's removal. [13, 8 of 2017]

395. (1)

(a) An executor or administrator or in the case of an estate which is below the administrable value the next of kin who have adiated the inheritance of the deceased party may apply to court for the removal of the legal representative of such deceased nominator and for the appointment of a person named in such application or the next person named in order of preference in the memorandum filed by the deceased nominator, as such legal representative. The person who is the legal representative of the deceased

nominator for the time being, shall be the respondent to such application.

(b) The court may, upon being satisfied that it is in the interests of an executor or administrator or in the case of an estate which is below the administrable value the next of kin who have adiated the inheritance of the deceased party may remove such legal representative and appoint the person named next in order of preference in the memorandum filed by the deceased nominator party or if there are sufficient grounds for doing so, appoint the person named in the application, as the legal representative of the deceased nominator party.

(c) An application under this sub-section shall be by way of petition and affidavit and the court may issue notice of the application to the other heirs, if any, of the deceased nominator party.

(2) No proceedings shall be postponed or adjourned or any step in the action postponed by reason of the death of a nominator party.

For the purposes of this Chapter-

"estate" means the gross value of the estate of the deceased; and

"legal representative" means a person who represents the estate of a deceased party or person, for the purposes of the action, by virtue of a nomination made in a memorandum filed under subsection (1).

Court to make order that action to proceed. [13, 8 of 2017]

396. If there be more than one plaintiff or defendant and any of them dies, and if the right to sue on the cause of action survives to the surviving plaintiff alone, or against the surviving defendant alone, the court shall on the ex-parte application by petition supported by affidavit, make an order to the effect that the action be proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, as the case may be.

Legal representative to be made a substituted plaintiff. [13, 8 of 2017]

397. If there are more plaintiffs than one and any one of them dies, and if the right to sue does not survive on the surviving plaintiff or plaintiffs alone, but survives on the legal heirs of the deceased plaintiff jointly, the court may cause the legal representative of the deceased plaintiff to be made a substituted plaintiff in the place of the deceased plaintiff, and shall thereupon cause an entry to that effect to be made on the record and proceed with the action.

Legal representative may apply to have name entered.
[13, 8 of 2017]

398. 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 substituted on the record in place of the deceased plaintiff and the court shall thereupon cause an entry to that effect to be made on the record and proceed with the action.

Where no application is made by the legal representative of a deceased plaintiff.
[13, 8 of 2017]

398A. If no application is made to the Court by any legal representative of a deceased plaintiff within six months from the death of such plaintiff, the court may make 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. However, the court may, if it may deem appropriate, on the application of the defendant, made any time after the death of the plaintiff, and upon such terms as to costs or otherwise as it thinks fit, make an order appointing the legal representative of the deceased plaintiff, in the place of the deceased plaintiff for the purpose of proceeding with the action in order to arrive at a final determination of the matter in dispute.

Legal representative of deceased sole plaintiff to apply to be made the plaintiff.
[13, 8 of 2017]

398B.

(1) If there be more defendants than one, and any one of them die before entering a decree and the right to sue on the cause of action does not survive against the surviving defendant or defendants alone, without substitution of the legal representative of the deceased defendant and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives to the plaintiff, the plaintiff may apply to the court to substitute the legal representative of the deceased defendant in place of such deceased defendant for the purpose of the continuance of the action. The court shall thereupon, enter the name of such legal representative on the record in the place of the deceased defendant, and shall issue notice on such legal representative to appear on a day to be therein mentioned, to defend the action.

(2) The legal representative of a deceased defendant nominated in the memorandum, may apply to be a defendant in place of the deceased defendant, and the provisions of this section, in so far as they are applicable, shall apply in respect of such application and to the proceedings and consequences ensuing thereon.

Action not abated by marriage of female party.

399.

(1) The marriage of a female plaintiff or defendant shall not cause the action to abate, but the action may, notwithstanding, be proceeded with to Judgment; and where the decree is against a female defendant, it may thereupon be executed against her alone.

(2) If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the court, be executed against the husband

also; and in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

Effect of bankruptcy of plaintiff.

400. The bankruptcy or insolvency of a plaintiff in any action which his assignee might maintain for the benefit of his creditors shall not bar the action, unless such assignee declines to continue the action and to give security for the costs thereof, within such time as the court may order,

When assignee does not continue action.

401. If the assignee neglects or refuses to continue the action and to give such security within the time so ordered, the defendant may apply for the dismissal of the action on the ground of the plaintiffs 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 plaintiffs estate.

When court itself may order action to abate.

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.

No fresh action to be brought where action has abated; but court may set aside order.

403. When an action abates or is dismissed under this Chapter, no fresh action shall be brought on the same cause of action. But the plaintiff or the person claiming to be the legal representative of a deceased or insolvent plaintiff may, within such period of time as may seem to the court under the circumstances of the case to be reasonable, apply for an order to set aside the order for abatement or dismissal; and if it be proved that he was prevented by any sufficient cause from continuing the action the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Continuation of action in other cases of assignment of party's interest.

404. In other cases of assignment, creation, or devolution of any interest pending the action, the action may, with the leave of the court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come, either in addition to or in substitution for the person from whom it has passed, as the case may require.

[Section 405 is repealed by Law No. 8 of 2017]

CHAPTER XXVI

OF THE WITHDRAWAL AND ADJUSTMENT OF ACTION

Withdrawal and adjustment of action.

406. (1) If, at any time after the institution of the action, the court is satisfied on the application of the plaintiff-

(a) that the action must fail by reason of some formal defect, or

(b) that there are sufficient grounds for permitting him to withdraw from the action or to abandon part of his claim with liberty to bring a fresh action for the subject-matter of the action, or in respect of the part so abandoned, the court may grant such permission on such terms as to costs or otherwise as it thinks fit.

(2) If the plaintiff withdraw from the action, or abandon part of his claim, without such permission, he shall be liable for such costs as the court may award, and shall be precluded from bringing a fresh action for the same matter or in respect of the same part.

(3) Nothing in this section shall be deemed to authorize the court to permit one of several plaintiffs to withdraw without the consent of the others.

Permission to bring fresh action not to affect prescription.

407. In any fresh action instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of prescription or limitation in the same manner as if the first action had not been brought.

Adjustment of actions out of court.

408. If an action be adjusted wholly or 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.

CHAPTER XXVII

OF PAYMENT OF MONEY INTO COURT

Payment of money into court.

409. The defendant in any action brought to recover a debt or damage may, at any stage of the action, deposit in court such sum of money as he considers a satisfaction in full of the plaintiffs claim.

Notice thereof.

410. Notice in writing of the deposit shall be given by the defendant to the plaintiff, and the amount of the deposit shall (unless the court otherwise directs) be paid out of court to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice.

411. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Procedure where plaintiff accepts payment in part satisfaction of his claim.

412. If the plaintiff accepts such amount only as satisfaction in part of his claim, he may prosecute his action for the balance; and if the court eventually decides that the deposit by the defendant was a full satisfaction of the plaintiffs 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 plaintiffs 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

Security for costs where plaintiff resident out of Sri Lanka. [54, 20 of 1977]

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 defendant resident out of Sri Lanka. [54,20 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.

Amount of security for payment of costs. [10,14 of 1997]

417A. The security for payment of costs fixed by order made under section 416 or 417 shall in no case exceed the aggregate of the following :-

(a) the total costs that can be ordered in an action of that category, at the rates prescribed for the purposes of section 214; and

(b) five hundred thousand rupees to meet incidental expenses, such as expenses that may be incurred in pro curing the evidence and attendance of witnesses living abroad.

If security not furnished when ordered, action may be dismissed.

418.

(1) In the event of such security not being furnished within the time so fixed, the court shall dismiss the action, unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 406, or show good cause why such time should be extended, in which case the court may extend it.

Dismissal may be set aside.

(2) When an action is dismissed under this section the plaintiff may within thirty days, and after due notice in writing to the defendant, apply for an order to set the dismissal aside, and if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs, or otherwise as it thinks fit, and shall appoint a day for proceeding with the action.

What amounts to residing out of Sri Lanka.
[55,20 of 1977]

419. Whoever leaves, or is about to leave, Sri Lanka under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs, shall be deemed to be residing outside Sri Lanka within the meaning of section 416 or 417.

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 :

Provided that, under special circumstances, the commission may be directed to any person whom the court issuing the commission thinks fit to appoint.

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.

Evidence taken under commission when admissible.

426. Evidence taken under a commission shall not be read as evidence in the action without the consent of the party against whom the same is offered, unless-

(a) the person who gave the evidence is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined ; or is a person whom the court, in accordance with the customs and manners of the country, sees reason to exempt from personal appearance in court ; or

(b) the court in its discretion, for good cause to be assigned by it, dispenses with the proof of any of the circumstances mentioned in the last preceding section and authorizes the evidence of any person being read as evidence in the action, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Foreign courts to which provisions apply.
[56,20 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.

B.-COMMISSIONS FOR LOCAL INVESTIGATIONS

Commission to make local investigation.

428. In any action or proceeding in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, and the same cannot be conveniently conducted by the Judge in person, the court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report to the court.

Return thereof.

429. The commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him,

shall return such evidence, together with his report in writing, subscribed with his name, to the court.

C-COMMISSIONS TO EXAMINE ACCOUNTS

Commission to examine accounts.

430. In any action in which an examination or adjustment of accounts is necessary, the court may issue a commission to such person as it thinks fit, directing him to make such examination.

Court to furnish instructions.

431. The court shall furnish the commissioner with such part of the proceedings of the action and such detailed instructions as appear necessary, and the instructions shall distinctly specify whether the commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

"D. - COMMISSIONS FOR MEDICAL EXAMINATIONS

Commissions for medical examinations
[2, 7 of 2023]

431A.

(1)

(a) Where the action is one for damages for injury to person, the court shall, on application made by any party and subject to such terms and conditions as it may determine, order the injured person to submit himself to medical examination by one or more but not exceeding three medical practitioners, nominated by the court.

(b) Upon such examination, the report shall be submitted to court on or before such date as may be specified. The court shall forthwith cause a copy of each such report to be served on each of the parties.

(2) It shall be lawful for any party to an action to have one or more medical practitioners of such party's choice to be present at such examination as an observer or observers.

(3) Where the injured person fails or refuses to comply with an order of court made under subsection (1), the court shall be entitled to draw all such inferences against such person as in all the circumstances of the case can properly be drawn by reason of such failure or refusal.

(4) Such report or reports may, without further proof be used as evidence of the facts stated therein at the trial:

Provided that, the court shall, on application made by any party to the action and upon such terms as to costs or otherwise as it may determine, order that the medical practitioner be summoned and examined orally on any matter arising from or in connection with the report or any

statement of fact therein or any relevant fact which is alleged by any party to have been omitted therefrom.

(5) Every court shall, from time to time, prepare a list of medical practitioners residing in or engaged in the practice within the jurisdiction of such court, to whom an order may be made under subsection (1)(a) for a medical examination:

Provided however, the court shall, prior to the inclusion of the name of any medical practitioner in such list, make such inquiries as may be necessary to ascertain the regular availability of such medical practitioner to undertake such medical examination.

(6) For the purpose of this section, "medical practitioner" means a medical practitioner registered with the Sri Lanka Medical Council established under the Medical Ordinance (Chapter 105).".

GENERAL PROVISIONS

Evidence taken on commission shall be filed and recorded in the action.

432. (1) The commission in every case within this Chapter shall be entitled as in the action, whether of regular or summary procedure, in which it issued, and on its return shall, with all the proceedings, evidence, and documents, if any, taken therein, be filed and recorded as of that action.

Commissioner matters maybe examined personally.

(2) The report of the commissioner or commissioners in each case within (B) and (C), and the evidence taken by a commissioner (but not the evidence without the report) shall be evidence in the action; but the court, or, with the permission of the court, any of the parties to the action, may examine the commissioner personally in open court touching any of the referred to him, or mentioned in his report, or as to the manner in which he has made the investigation or conducted his proceedings.

Court may order payment into court of expense.

433. Before issuing any commission under this Chapter the court may order such sum (if any) as it thinks reasonable for the expenses of the commission, to be paid into court by the party at whose instance or for whose benefit the commission is issued.

Powers of commissioners.

434. Any commissioner appointed under this Chapter shall have authority to administer an oath or affirmation, and may, unless otherwise directed by the order of appointment-

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the commissioner thinks proper to call upon to give evidence in the matter referred to him:

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

Provisions of this Ordinance as to witnesses to apply.

435. The provisions of this Ordinance relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Chapter, whether the commission in execution of which they are so required has been issued by a court situate within, or by a court situate beyond, the limits of Sri Lanka.

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.
[21,79 of 1988]

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, or in the case of an affidavit sworn or affirmed In a country outride Sri Lanka, before any person qualified to administer oath or affirmation according to the law of that country, and the fact that the affidavit bears on its face the name of the court, the number of the action and the names of the parties shall be sufficient authority to such court or Justice of the Peace, or Commissioner for oaths or such person qualified to administer the oath or affirmation.

Affidavit to be signed by declarant.
[22,79 of 1988]

438. Every affidavit made in accordance with the preceding provisions shall be signed by the declarant in the presence of the court. Justice of the Peace or' Commissioner for oaths, or person qualified before whom it is sworn or affirmed.

Case of illiterate person.
[23,79 of 1988]

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, Commissioner for Oaths, or person qualified before whom it is sworn or affirmed, 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, Commissioner for Oaths, or person qualified before whom it is sworn or affirmed. 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 for Oaths, or person qualified before whom it is sworn or affirmed.

Alteration of affidavit.
[24,79 of 1988]

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 interlineations, not by superposition or alteration; and every excision and interlineations shall be initialed by the Judge, Justice of the Peace or Commissioner for oaths, or the person qualified before whom the affidavit is affirmed or sworn.

CERTIFIED COPIES

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.
[58,20 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.

(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.

[Sections 441 to 455 (both inclusive) repealed by Law No. 20 of 1977]

Obtaining copies of the documents maintained by any Public Office, Corporation etc.
[15, 8 of 2017]

440B.

(1) Where a party to any proceedings in a civil court requires for the purposes of such proceedings a certified copy of any document, or of any register either deposited or maintained or kept in the custody, (or a certified copy of any register or book) maintained in the ordinary course of business, at any Public Office, Public Corporation, Provincial Council or Local Authority in the ordinary course of business, the Judge conducting the Pre-Trial hearing or the court, as the case may be may upon application made in that behalf by a party by motion supported by an affidavit affirming the relevancy of such certified copy in the proceedings direct the officer in charge of such office, Public Corporation, Provincial Council or Local Authority, as the case may be to issue such certified copy. Upon production of the order of court or Judge conducting the Pre-Trial hearing and upon payment of the relevant charges, such party shall be entitled to obtain a certified copy of the document concerned.

(2) A certified copy obtained by a party under subsection (1) from any Public Office, Public Corporation, Provincial Council or Local Authority, relevant to any proceeding by such party may, without an officer from the Public Office, Public Corporation, Provincial Council or Local Authority concerned being called as a witness, be produced in such

proceeding in proof of the fact that such document was made or such document is in the custody of such Public Office, Public Corporation, Provincial Council or Local Government Authority concerned and be prima facie proof of the contents therein:

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 original document and permit any such party to examine it or require that the officer who is in charge of keeping or maintaining such document be summoned as a witness.

Proof of document unnecessary unless it is impeached. [15, 8 of 2017]

440C. (1) Notwithstanding anything to the contrary in this Code or any other law, it shall not be necessary to adduce proof of any document which is, ex facie, an original document or a certified copy issued by a Public Office, Public Corporation, Provincial Council or any Local Authority, unless the authority of such document is impeached by the opposing party for reasons to be recorded and for such reasons, the court may require proof thereof.

(2) Where the genuineness of any document is impeached by a party, such party shall state the reason for impeaching its genuineness and the court shall record the same.

(3) In the event that the court, after evidence is lead as to the proof of the document, accepts the document, the party who impeached the document shall be liable to pay incurred cost of proving the document, in addition to taxed costs, unless the court for good reason directs otherwise.

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.

456. (1) All actions by or against the state shall be instituted by or against (as the case may 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.

Service of a process.

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.

Attorney- General to have reasonable time to appear.

458. The court, in fixing the day for the Attorney-General to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and may extend the time at its discretion.

Service on public officer.

459. Where the defendant is a public officer, the court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the court that the summons may be most conveniently so served.

Public officer may apply for time to answer.

460. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel; and the court upon such application may extend the time for so long as appears to be requisite.

Attorney-General, Minister, Deputy Minister, and public officer entitled to notice.

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.

Procedure where no notice has been given under section 461.

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 plaint fails to aver the fact of such notice

having been given, the court shall permit an amendment of the plaint averring the giving of such notice and 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 such action 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.

Where Attorney-General docs not intervene action to proceed as against private party.

464. If such application is not made by the Attorney-General on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in an action between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Minister, Deputy minister or public officer need not appear in person.

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.

[Sections 466 to 469 (both inclusive) repealed by Law No. 20 of 1977]

CHAPTER XXXIII

ACTIONS BY AND AGAINST CORPORATIONS AND COMPANIES

Action by or against a corporation, or company.

470. In actions by or against any corporation, or by or against a board or other public body, or any company authorized to sue or be sued, the name and the style of the corporation, board, public body, or company, or of 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.

Service on corporation or company.

471. When the action is against a corporation, or against a board or other public body, or a company authorized to sue and be sued in the name of an officer or of a trustee, except in cases where a particular mode of service is directed by law, the summons may be served-

(a) by leaving it at the registered office (if any) of the corporation, board, public body, or company; or

(b) by giving it to the secretary or other principal officer of the corporation, board, public body or company; and the court may in such summons or by special order require the personal appearance of such secretary or other principal officer of the corporation, board, public body, or company who may be able to answer material questions relating to the action.

CHAPTER XXXIV

ACTIONS BY AND AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS

Actions against trustees, executors, and administrators

472. In all actions concerning property vested in a trustee, executor, or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent 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, made parties.

473. When there are several trustees, should be 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 administrator shall not be a party to an action by or against her in her representative capacity.

CHAPTER XXXV

ACTIONS BY AND AGAINST MINORS AND PERSONS UNDER OTHER DISQUALIFICATION

Action by minor.

476. Every action by a minor shall be instituted in his name by an adult person who in such action shall be designated in the plaint the next friend of the minor, and may be ordered personally to pay any costs in the action as if he were the plaintiff.

Next friend and guardian ad litem.

477. Every application to the court on behalf of a minor (other than an application under section 487) shall be made in his name by his next friend or his guardian for the action, and shall be so expressed to be made on the face of the application.

Procedure where no next friend.

478.

(1) If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the registered attorney or other person by whom it was presented.

(2) Such application shall be made on summary procedure by the defendant; and the court after hearing the objections, if any, of the person against whom it is made, may make such order in the matter as it thinks fit.

Court may appoint guardian ad litem.

479. Where the defendant to an action is a minor, the court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the action for such minor, and generally to act on his behalf in the conduct of the case.

No order to affect minor not represented.

480. Every order made in an action or on any application before the court in or by which a minor is in any way concerned or affected without such minor being represented by a next friend or guardian for the action, as the case may be, may be discharged on application made on summary procedure for the purpose ; and, if the 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.

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.

Minor's right of election on coming of age.

486. A minor plaintiff, or a minor not a party to an action on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the action or application.

Discharge of next friend on minor's election to proceed with action.

487.

(1) If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his Own name.

(2) The title of the action or application shall, upon such order being made, be altered so as to read thenceforth thus: "A. B; late a minor, by C. D., his next friend, but now of full age ".

Procedure on election of sole plaintiff to abandon on payment of costs.

488. If he elects to abandon the action or application he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the action or application, on repayment of the costs incurred by the defendant, or respondent, or which may have been paid by his next friend.

Application to be ex parte.

489. Any application under section 487 or section 488 may be made ex pane: and the affidavit of facts upon which it is based must satisfy the court that the late minor has attained his full age.

Procedure on election of a co-plaintiff to repudiate.

490.

(1) A minor CO-plaintiff on coming of age, and desiring to repudiate the action, must apply to have his name struck out as co-plaintiff; and the court, if it finds that he is not a necessary party, shall dismiss him from the action on such terms as to costs or otherwise as it thinks fit.

(2) The next friend as well as the defendant, shall be served with the petition of application as respondent, and it must be proved by affidavit that the late minor has attained his full age ; the costs of all parties of such application and of all or any proceedings theretofore had in the action shall be paid by such persons as the court directs. If the !ate minor be a necessary party to the action, the court may direct him to be made a defendant.

Procedure when ex-minor applies to have action dismissed as unreasonable or improper.

491.

(1) If any minor on attaining majority can prove to the satisfaction of the court that an action instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply by way of summary procedure to have the action dismissed.

(2) Notice of the application shall be served on all the parties concerned, including the next friend, and the court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the action.

Minor may in person sue for wages.

492. Nothing in the foregoing sections shall affect the right of any minor to prosecute any proceedings in a 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.

Application for appointment of guardian ad litem.

493.

(1) An order for the appointment of a guardian for the action may be obtained upon application on summary procedure in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit

verifying the fact that the proposed guardian has no interest in the matters in question in the action adverse to that of the minor, and that he is a fit person to be so appointed.

(2) On the occasion of such an application being made, the minor ought to appear personally in court unless prevented by good cause, such as extreme youth or illness, from doing so.

When officer of court may be appointed.

494. When there is no other person fit and willing to act as guardian for the action, the court may appoint any of its officers to be such guardian, provided that he has no interest adverse to that of the minor.

Co-defendant may be appointed. [2,20 of 2002]

495. A co-defendant of sound mind and of full age with no interest adverse to that of the minor may be appointed guardian for the action, but a plaintiff cannot be so appointed.

Court may remove guardian and litem.

496. If the guardian for the action of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the court may remove him and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Death of guardian.

497. If the guardian for the action dies pending such action, or is removed by the court, the court shall appoint a new guardian in his place.

Procedure for execution of decree against minor heir.

498. When the enforcement of a decree or order is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the action of such minor shall be appointed by the court, on an application of summary procedure duly made for this purpose, and the decree- holder shall then serve on such guardian notice of such application.

When court may allow next friend funds for suit.

499. No sum of money or other thing shall be received or taken by a next friend or guardian for the action on behalf of a minor at any time before decree or order, unless he has first obtained the leave of the court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

Next friend may not compound action without leave of court.

500.

(1) No next friend or guardian for the action shall, without the leave of the court, enter into any agreement or compromise on behalf of a minor with reference to the action in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the court shall be voidable against all parties other than the minor.

This Chapter to apply to persons of unsound mind and mentally deficient persons.
[13, 53 of 1980]

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.

(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.

Majority, what is.
[2,12 of 1996]

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 eighteen years, or on marriage, or on obtaining letters of venia aetatis.

CHAPTER XXXVI

ACTIONS BY AND AGAINST PERSONS IN THE NAVAL, MILITARY, OR AIR SERVICE

Actions by or , against persons in the naval, military or air force.

503. (1) When any officer in the naval military, or air service or any sailor, soldier, or airman actually serving the Government in the capacity of a member of a naval, military, or air force is a party to an action, and cannot obtain leave of absence for the purpose of prosecuting or defending the action in person, he may authorize any person to sue or defend in his stead.

Authority to agent.

(2) The authority shall be in writing, and shall be signed by the party in the presence of-

(a) his commanding officer, or of the next subordinate officer if the party be himself the commanding officer; or

(b) where the party is serving in naval, military, or air force staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in court.

(3) When so filed, the counter-signature shall be sufficient proof that the authority was duly executed, and that the party by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the action in person.

Explanation 1

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.

Agent may sue or defend in person.

504. Any person authorized by such party to prosecute or defend an action in his stead may prosecute or defend it in person in the same manner as such party could do if present; or he may appoint an attorney-at-law to prosecute or defend the action on behalf of such party.

Service of process in such cases.

505. Processes served upon any person authorized by any party under section 503, or upon any 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.

Copy of summons may be sent to commanding officer for service.

506.

(1) When any naval, military, or air officer or any sailor, soldier, or airman is a defendant, a copy of the summons shall be sent by the Fiscal to his commanding officer for the purpose of being served on him. 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.

(2) The officer to whom such copy is sent shall cause it to served on the person to whom it is addressed, if practicable, and shall return it to Fiscal with the written acknowledgment of such person endorsed thereon.

(3) If from any cause the copy cannot be so served, it shall be returned to the Fiscal by whom it was sent, with information of the cause which has prevented the service.

Warrant of arrest may likewise be delivered for execution.

507.

(1) If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, or naval, military, or air station, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

(2) The commanding officer shall, if the person named therein is by law liable to arrest, back the warrant or other process with his signature, and shall in the case of a warrant of arrest cause such person, if within the limits of his command, to be arrested and delivered to the officer so charged.

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.

The taking of the accounts.

511. The account directed to be taken, before it is filed, must be verified on oath or affirmation by the accounting party. Objections to the account may be filed by any party concerned in the right taking of the accounts and may be directed as well to adding new entries or enhancing existing entries on the debit side of the accounting party, as to falsifying the account given by him in any particular. And the trial of the issues arising out of the objections to the account shall conform, as nearly as may be, in regard to the order and method of proceeding and the taking of evidence, to the rules hereinbefore laid down for the trial of a regular action.

Reasonable care to be taken in appointing the days for the purpose.

512. The day for filing the account directed to be taken, and the times for filing the objections thereto, and for the hearing and determination of the issues arising there out, 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 panics to prepare for trial.

Procedure where party makes default.

513. In the event of the accounting party not duly filing his account, and not satisfying the court that there is just cause for his default, the court shall proceed with the hearing of the matter of the account and adjudicate upon the same on the day appointed therefor by finding the actual state of the account directed to be taken upon such materials as may be furnished by the opposing party:

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 provision 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 counter state of facts, and to the trial of the issues arising there out 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.
[4,14 of 1993]

516. When any person shall die leaving a will in Sri Lanka, the person in of 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 initialed by the Probate Officer and deposited and kept in the record room of the District Court.

Application for probate or administration.
[4,14 of 1993]

517.

(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, within the time limit and in the manner specified in section 524, to have the will proved and to have probate thereof granted to him; any person interested, either by virtue of the will or otherwise, in having the property of the testator administered, may also 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.

(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 when there is a will.
[4,14 of 1993]

518. In every case where a will is deposited in court after the coming into operation of this Chapter, and no application has been made by any person to have the will proved and probate granted in respect thereof, the court shall in accordance with the procedure set out in respect of the grant of probate or letters of administration on application made thereto, proceed to grant probate of the will, to the executor or executors named in such will, or 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.

When Public Trustee may be appointed. [4,14 of 1993]

519. Where there is no person fit and proper in the opinion of the court to be appointed administrator in the manner provided, in the last preceding section or no such person is willing to be so appointed, and not in any other case, the court shall appoint the Public Trustee as administrator.

Security. [4,14 of 1993]

520. 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 wiling to act, or by reason of no person who is competent under section 517 to apply for letters of administration, so applying, that any such person as is mentioned, in section 518 should be appointed administrator, the court shall take from such person security for the due administration of the estate, and shall for this purpose require such person to enter into a Bond with two good and sufficient sureties in form No. 90 in the First Schedule, for the due administration of the deceased person's property, and it shall not in any case be competent for the court to dispense with such security.

Application for administration by the Public Trustee. [4,14 of 1993]

521.

(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 heirs 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.

Duties of Public Trustee in administering estates. [4,14 of 1993]

522. Whenever the Public Trustee has obtained probate in respect of a will or grant of letters 01 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:

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 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;

(d) unless the court otherwise directs, to tender final accounts.

To whom grant should be made.
[4,14 of 1993]

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:

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.
[4,14 of 1993]
[4,11 of 2010]

524. (1) Every application to the District Court to have the will of a deceased person proved, shall be made within a period of three months from the date of finding of the will, and shall be made by way of petition and affidavit and such petition shall set out in numbered paragraphs-

(a) the fact of the making of the will;

(b) the details and the situation of the deceased's property;

[2, 38 of 1998]

(bb) the heirs of the deceased to the best of the petitioner's knowledge;

(c) the grounds upon which the petitioner is entitled to have the will proved; and

(d) the character in which the petitioner claims (whether as creditor, executor, administrator, residuary legatee, legatee heir or devisee).

(2) If the will is not already deposited in the District Court in which the application is made, it must either be appended to the petition, or must be brought into court and identified by affidavit, with the will as an exhibit thereto, or by parol testimony at the time the application is made.

(3) Every person making or intending to make, an application to a District Court under this section to have the

will of a deceased person proved, which will is deposited in another District Court, is entitled to procure the latter court to transmit the said will to the court to which application is to be made, for the purpose of such application. Also the application must be supported by sufficient evidence either in the shape of affidavits of facts, with the will as an exhibit thereto, or of oral testimony, proving that the will was duly executed according to law, and establishing the character of the petitioner according to his claim.

[4,11 of 2010] (4) The petitioner shall tender with the petition proof of payment of charges to cover the cost of publication of the notice under section 529.

Duty to report where person dies leaving property exceeding four million rupees in value.
[4,14 of 1993]
[5, 11 of 2010]

525. 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 four million rupees, within one month of the date of his death to report such death to the District 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.

Who may apply for letters of administration.
[4,14 of 1993]

526. When any person shall die without leaving a will or where the will cannot be found, and such person shall have left property in Sri Lanka-

(a) any person interested in having the estate of the deceased administered may apply for the grant to himself of letters of administration; or

(b) any heir of the deceased may apply for the issue of certificates of heir ship to each of the heirs entitled to succeed to the estate of the deceased.

Such application shall be made in accordance with section 528 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.

Administration compulsory where estate is over four million rupees in value.
[4,14 of 1993]
[6, 11 of 2010]

527. In case no person shall apply for the grant of letters of administration or for the issue of certificates of heir ship, as the case may be, 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, four million rupees, the court shall in accordance with the procedure set out in this Chapter appoint some person, whether he would under ordinary circumstances be entitled to take out administration or otherwise, to administer the estate, and the provisions of sections 518 to 521, both inclusive, shall

apply, so far as the same can be made applicable, to any such appointment.

Mode of application for letters of administration or certificates of heirship.
[4,14 of 1993]
[7, 11 of 2010]

528. (1) Every application to the District Court for grant of letters of administration or for the issue of certificates of heir ship shall be made within three months from the date of death, and shall be made by way of petition and affidavit, and such petition shall set out in numbered paragraphs-

(a) the fact of the absence of the will;

(b) the death of the deceased;

(c) the heirs of the deceased to the best of the petitioner's knowledge;

(d) the details and the situation of the deceased's property;

(e) the particulars of the liabilities of the estate;

(f) the particulars of the creditors of the estate;

(g) the character in which the petitioner claims and the facts which justify his doing so;

(h) the share of the estate which each heir is entitled to receive, if agreed to by the heirs.

(2) The application shall be supported by sufficient evidence to afford prima facie proof of the material averments in the petition, and shall name the next of kin of the deceased as respondents. If the petitioner has no reason to suppose that his application will be opposed by any person, he shall file with his petition an affidavit to that effect.

(3) The petitioner shall tender with the petition-

(a) proof of payment of charges to cover the cost of publication of the notice under section 529;

(b) the consent in writing of such respondents as consent to his application.

[7, 11 of 2010]

(c) notices on the respondents who have not consented to the application, requiring them to file objections if any, to the application on or before the date specified in the notice under section 529. Such notice shall be sent by the probate officer by registered post.

Publication of notice relating to application under section 524 or 528.
[4,14 of 1993]
[8,11 of 2010]

529. (1) Every application to a District Court under section 524 or 528 shall be received by the Probate Officer of the District Court, and shall be registered in a separate register to be maintained for that purpose by the Probate Officer who shall thereafter cause the required publications to be made in terms of subsection (2).

[8,11 of 2010] (2) The Probate Officer of a District Court shall, on any day of the week commencing on the third Sunday of every month cause a notice in form No. 84 in the First Schedule to be published in a prescribed local newspaper in Sinhala, Tamil and English, relating to-

(i) every application under section 524 or 528 received by that District Court in the preceding one month ; and

(ii) every application under section 524 or 528 received by that District Court and incorporated for the first time in the notice published in respect of such District Court in the previous month,

so however that the information in respect of every application under section 524 or 528 received by every District Court is published on two separate occasions in two consecutive months.

[8,11 of 2010] (3) The notice published under subsection (2), shall call upon persons having objections to the making of an order declaring any will proved, or the grant of probate or of letters of administration with or without the will annexed, or the issue of certificates of heir ship to any person specified in the application made under section 524 or 528, to submit their written objections, if any, supported by affidavit, before such date as is specified in the notice, being a date not earlier than sixty days and not later than sixty-seven days from the date of the first publication referred to in subsection (2).

(4) Copies of such objections if any, shall be forwarded by the person making the same to the person making the application under section 524 or 528, as the case may be, and shall also be served on the other parties named in such objections.

Appointment of guardian or manager.
[4,14 of 1993]
[9 , 11 of 2010]

530. If any of the heirs, legatees or beneficiaries of the deceased is a minor without a natural guardian, or person of unsound mind, without a guardian, steps shall be taken for the appointment of a guardian or manager, upon the making of an application to the District Judge, which application shall be heard in Chambers.

Order on application made under section 524 or 528.
[4,14 of 1993]

531. (1) If no objections are received in relation to any application received under section 524 or 528 in response to a notice published under section 529, on or before the date specified in such notice in respect of such application, the court shall-

(a) in the case of an application under section 524, if the court is satisfied that the evidence adduced is sufficient to afford prima facie proof as to the due making of the will and the character of the petitioner, it shall make order declaring the will to be proved and if the applicant claims-

(i) as the executor or one of the executors of the will, and asks that probate thereof be granted to him the order shall declare that he is executor, and shall direct the grant of probate to him accordingly, subject to the conditions hereinafter prescribed; or

(ii) 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 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; or

(b) in the case of an application under section 528-

(i) make order for the grant of letters of administration to the petitioner subject to the conditions hereinafter prescribed; or

(ii) make order for the issue of a certificate of heir ship in form No. 87A in the First Schedule, to each of the heirs mentioned in the application, stating also the share of the estate which each heir is entitled to receive, if agreed to by the heirs;

(c) in the case of an application under section 528 for the issue of certificates of heir ship, make order for the grant of letters of administration, instead, to some person entitled to take out administration, subject to the conditions hereafter prescribed, if in the opinion of court it is necessary to appoint some person to administer the estate.

(2) The certificates of heir ship issued under subsection (1) (b) (ii) above shall be sufficient proof of the true heirs of the deceased referred to therein, and may be produced for the purpose of claiming any share in respect of any right, title or interest, accruing upon intestacy.

(3) For the purpose of making an order under subsection (1), the Probate Officer shall submit all papers, relevant to the application in question, to the District Judge in Chambers on the day following the date specified in the notice published under section 529, in respect of such application and the court shall forthwith make an appropriate order.

Procedure where there are objections to applications under section 524 or 528.
[4,14 of 1993]

532. (1) If any objections are received in relation to any application under section 524 or 528 in response to a notice published under section 529, on or before the date specified in such notice in respect of such application, the court shall proceed to hear, try and determine such application in accordance with the procedure herein provided and may for such purpose name a day for final hearing and disposal of such application and may in addition, make such order as it may consider necessary under section 541 hereof.

(2) For the purpose of making an order under subsection (1), the Probate Officer shall submit all papers, relevant to the application in question, to the District Judge in Chambers on the day following the date specified in the notice published under section 529.

Effect of acting in pursuance of a certificate of heirship.
[4,14 of 1993]

532A. Where upon the production of a certificate of heir ship issued by a District Court, under section 531(1) (b) (ii), any money, movable property or certificate is handed over or transferred in pursuance of such certificate, by any bank or institution to any heir entitled to the same, such handing over or transfer shall be deemed to be in discharge of an obligation to the deceased in respect of whose estate the certificate of heir ship is so issued.

At final hearing court to frame issues.
[4,14 of 1993]

533. If on the day appointed under section 532 (1) for final hearing, or on the day to which it may have been duly adjourned the persons filing objections satisfies the court that there are grounds objecting for to the application, such as ought to be tried on viva voce, evidence, then the court shall frame the issues which appear to arise between the parties, and shall direct them to be tried on a day to be appointed for the purpose under section 386.

Orders that may be made on final hearing.
[4,14 of 1993]

534 (1) If at the final hearing, or on the determination of the issues thus framed it shall appear to the court-

(a) that the prima facie proof of the material averments in the application have not been rebutted, the court shall forthwith make order for the grant of probate or letters of administration with the will annexed or grant of administration only subject to the conditions hereinafter prescribed, or for the issue of certificates of heir ship, as the case may be; or

(b) that the prima facie proof of the material averments in the petition have been rebutted then the court shall dismiss the petition, and in the event of any person who has filed objections having at such hearing, or trial of issues, established his right to have probate or administration of the deceased's estate granted to him instead of to the petitioner, then the court shall further make an order to that effect in his favour subject to the conditions hereinafter prescribed; or

(c) that any person listed in the petition as an heir is not in fact an heir, or that any other person not listed in the petition as an heir has established his right to be recognised as an heir, then the court shall make an order accordingly; or

(d) that, in the case of an application for the issue of certificates of heir ship to the heirs of any deceased, that letters of administration ought to be granted instead, for the administration of the estate of such deceased, then the court shall make order for the grant of administration in accordance with the provisions of this Chapter, subject to the conditions hereinafter prescribed.

(2) The dismissal of any 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 person other than the petitioner.

Procedure where corporation is appointed administrator or executor.
[4,14 of 1993]

535.

(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.

Who may file caveat.
[4,14 of 1993]

536. At any time after the notice published under section 529 and before the final hearing of the petition, it shall be competent to any person interested in the will or in the deceased person's property or estate, though not a person specified in the petition, to intervene, by filling in the same court a caveat as set out in form No. 93 in the First Schedule against the allowing of the petitioner's claim or a notice of opposition thereto, and the court may permit such person to file objections, if any, and may adjourn the final hearing of the petition.

Power to recall, revoke or cancel probate administration or certificate of heirship.
[4,14 of 1993]

537. In any case where a certificate of heir ship has issued, or probate of a deceased person's will or administration of a deceased person's property has been granted it shall be competent to the District Court to cancel the said certificate, or recall the said probate or grant of administration, and to revoke the grant thereof, upon being satisfied that the certificate should not have been issued or 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 here under impracticable or useless.

Transitional for recall & c.
[4,14 of 1993]

538. All applications for the cancellation, recall or revocation of certificates of heir ship, probate or grant of administration shall be made by petition, in pursuance of the rules of summary procedure, 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.

Inventory and valuation.
[4,14 of 1993]

539.

(1) In every case where an order has been made, by a District Court declaring any person entitled to have probate of a deceased person's will, or administration of a deceased person's property granted to him it shall be the duty of the said person, executor or administrator, in whose favour such order is made, to take within fifteen days of the making of such order, the oath of an executor or administrator as set out in form No. 92 in the First Schedule, and thereafter to file in court within a period of one month from the date of taking of the oath, an inventory of the deceased person's property and effects, with a valuation of the same as set out in form No. 92 in the First Schedule and the court shall forthwith grant probate or letters of administration, as the case may be.

(2) Upon the making of an order under section 531(1) (b) (ii) declaring any person entitled to have issued to him a certificate of heir ship, the court shall forthwith issue such certificate to such person.

Limited probate or administration. [4,14 of 1993]

540. 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 does, 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, grant 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.

Administration pendente lite.
[4,14 of 1993]
[10 , 11 of 2010]

541.

(1) 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 or for obtaining certificate of heir ship is pending, the court may, either on the ground of undue delay or for any sufficient cause-

(i) 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; or

(ii) if it become necessary to sell any property of the estate of a deceased person prior to the grant of probate or letters of administration the court may grant letters limited for the purpose of selling such property in which event the property shall then 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 of otherwise;

(b) that the net proceeds of the 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.

[10 , 11 of 2010] (2) Before making an order for grant of letters under this section, the heirs of the deceased or other persons who have objected to the application 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.

Power of administration when not limited.
[4,14 of 1993]

542. If no limitation is expressed in the order making the grant, then the power of administration, which is authenticated by the grant of probate, or is conveyed by the grant of letters of administration, extends to every portion of the deceased person's property, movable and immovable, within Sri Lanka, other than such property as is deemed under section 554A not to be the property of the deceased, 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.

Issue of letters ad colligenda.
[4,14 of 1993]

543. 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 some next of kin or other person in Sri Lanka, 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, or by any heir to whom a certificate of heir ship shall have been issued.

Nomination.
[4,14 of 1993]
[2,34 of 2000]
[3,20 of 2002]
[2,4 of 2005]

544.

[2,4 of 2005] (1) Any person over sixteen years of age who has-

(a) moneys in any account, other than a current account, in any licensed Commercial Bank or licensed Specialized Bank, within the meaning of the Banking Act, No. 30 of 1988;

[3,20 of 2002] (b) any share in a company registered in terms of the Companies Act, No. 17 of 1982 or established under any written law for the time being in force ; or

(c) any life insurance policy issued by the Insurance Corporation of Sri Lanka, established by the Insurance Corporation Act, No. 2 of 1961,

or by any corporation incorporated under the Insurance, (Special Provisions) Act, No. 22 of 1979, or by any company registered under the Control of Insurance Act, No. 25 of 1962, as being authorised to transact insurance business;

(d) any money in deposit in any finance company registered under the Finance Companies Act, No. 78 of 1988;

[2,34 of 2000] [2,4 of 2005] (e) any other movable property in any vault, in any licensed Commercial Bank or licensed Specialized Bank, within the meaning of the Banking Act, No. 30 of 1988;

[2,4 of 2005] (f) any instrument relating to any monetary interest (other than a bearer instrument or a negotiable instrument) issued by a company or other body of persons established in terms of any law for the time being in force,

may nominate a person (hereinafter referred to as the "nominee"), to whom, such monies share or other movable property lying to the credit of, or in the name of, such first-mentioned person, (hereinafter referred to as "nominator") or moneys payable under such insurance policy, shall be paid or transferred upon his death.

[3,20 of 2002] For the purposes of this section "share" shall have the same meaning as in the Companies Act, No. 17 of 1982.

[2,4 of 2005] For the purposes of paragraph (f) of this subsection -

"instrument" means a legally enforceable agreement expressing a contractual right to the payment of money ; and

"bearer instrument" means a negotiable instrument transferable from one person to another, upon certain conditions being met.".

(2) A nomination made under subsection (1) shall have effect upon the death of the nominator notwithstanding anything in his last will to the contrary.

(3) Any nomination made under subsection (1) shall be deemed to be revoked by the death of the nominee in the lifetime of the nominator or by written notice of revocation signed by the nominator in the presence of a witness (who shall attest the signature of the nominator) or by any subsequent nomination made by the nominator.

(4) No money, certificates or other movable property shall be handed by the Bank or institution, as the case may be, to any nominee unless the nominee satisfies the Bank or institution as to his true identity.

(5) The handing over, or transferring of, any money, share certificate or deposit certificate or other movable property to any nominee of a nominator who has died, shall be a complete discharge of the obligations of the Bank or institution, in respect of the money, or other movable property, lying to the credit of, or in the name of, such nominator, or under such insurance policy.

No transfer to be effected in certain cases.
[4,14 of 1993]
[11 , 11 of 2010]

545. No person shall effect any transfer 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 five years prior to the effecting of the transfer, unless grant of probate has been issued in the case of a person dying testate, or letters of administration or certificates of heirship have been issued in the case of a person dying intestate and leaving an estate amounting to, or exceeding four million rupees in value.".

Probate when executor is appointed for a limited period.
[4,14 of 1993]

546. 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.
[4,14 of 1993]

547. 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.
[4,14 of 1993]

548. 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 probate, letters of administration or certificates of heir ship so granted or issued may be altered and amended accordingly.

Compensation of executors and administrators.
[4,14 of 1993]

549. 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.
[4,14 of 1993]

550. 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 accounts.
[4,14 of 1993]

551. 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 executor ship 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:

Provided that where the parties consent, the filing of such account and payment shall be dispensed with on payment of the stamp duty that would have been otherwise payable on the filing of such account, and the proceedings shall then be closed.

Executor or administrator failing to administer within one year liable for interest.
[4,14 of 1993]

552. If any executor or administrator shall fail to pay over to the creditors, heirs, legatees, or other persons the sums of money to which they are respectively entitled within one year after probate or administration is granted, such executor or administrator shall be liable to pay interest out of his own funds for all sums which he shall retain in his own hands after that period, unless he can show good and sufficient cause for such detention.

Offences.
[4,14 of 1993]

553.

(1) Any person who wilfully conceals the existence of a will or knowingly fails to comply with the provisions of section 516 shall be guilty of an offence and shall be liable to a fine equivalent to the value of the estate dealt with in the will.

(2) Any person who wilfully-

(a) fails to disclose the existence of any heirs of the deceased; or

(b) makes a false statement regarding any heir of the deceased; or

(c) makes a false statement regarding the property, the creditors or debtors of the deceased; or

(d) makes any other false statement relating to any matter which is required to be set out,

in any application made under section 524 or 528, shall be guilty of an offence and be liable to a fine equivalent to the value of the share or shares devolving on the heir or heirs who have not been disclosed or the value of the property with regard to which the false statement has been made, as the case may be.

Transitional provisions.
[4,14 of 1993]
[12 , 11 of 2010]

554.

(1) Where a person has died without leaving a will in Sri Lanka prior to the date on which this Chapter comes into operation, and testamentary proceedings have not commenced in respect of the estate of such person, the provisions of this Chapter shall apply to the administration of such estate.

[12 , 11 of 2010] (2) Where an application has been made to any District Court prior to the date on which this Chapter comes into operation, for the issue of probate of a will or the grant of letters of administration in respect of an estate the value of which is over rupees four million, and an order nisi has not been made, such application shall be deemed to be an application made under section 524 or 528, as the case may be, and shall be heard and disposed of in accordance with the provisions of this Chapter.

[12 , 11 of 2010] (3) Where an application has been made to any District Court prior to the date on which this Chapter comes into operation, for the grant of letters of administration, in respect of an estate the value of which is less than rupees four million, and an order nisi has not been made, such application shall be terminated on the coming into operation of this Chapter:

Provided however, if it appears to court that it is necessary or convenient to grant letters of administration or certificates of heir ship, as the case may be, to any person interested in having the estate of such deceased person administered, or where any heir of such deceased person is interested in obtaining certificates of heir ship in respect of such estate, the court may in its discretion, permit the continuation of such action.

Interpretation.
[4,14 of 1993]

554A.

(1) In this Chapter, "Probate Officer" means the Registrar of the District Court and includes any other officer generally or specially authorized by the court to exercise the powers and perform the duties of a Probate Officer, in testamentary proceedings.

(2) For the purpose of proceedings under this Chapter "estate" and "property" of any deceased person shall be

deemed not to include-

(a) any money or other movable property lying in any Bank to the credit of such deceased at the time of his death;

(b) the moneys represented by any share certificates and deposit certificates issued by any institution and remaining in the name of such deceased at the time of his death;

if he had made a nomination in respect thereof under subsection (1) of section 544; and

(c) the moneys payable under a contract of insurance entered into by the deceased and subsisting on the date of his death whether any nomination in respect thereof had been made under subsection (1) of section 544, or not.

CHAPTER XXXVIIIA

INSOLVENT TESTAMENTARY ESTATES

When the estate of a deceased person is deemed to be insolvent.
[87,20 of 1977]

554F. The estate of a deceased person shall be deemed to be insolvent-

(i) If upon the basis of a valuation of his assets and liabilities as at the date of his death or at any time subsequent thereto, it appears that the assets are or will be insufficient to pay in full the funeral, testamentary and administration expenses relating to the estate, and the claims of creditors ; or

(ii) if owing to execution proceedings being taken against the deceased or his estate or the difficulty of 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.

Where estate insolvent, applicant for probate, & c, to take steps to have it so declared.
[87,20 of 1977]

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-

(a) the names of all persons who to the best of the petitioner's knowledge and belief have claims against the estate;

(b) the last known place of abode or business of such persons;

(c) the sums claimed by each of such persons and whether or not the sums claimed are liquidated or unliquidated amounts; and

(d) whether or not the sums claimed or any part thereof are admitted by the petitioner.

(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. [87,20 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. [87,20 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. [87,20 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. [87,20 of 1977]

554L. A copy of the testamentary insolvency order nisi shall be served on each 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.

Person interested may intervene. [87,20 of 1977]

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.

Order absolute to be advertised [87,20 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.

Actions and execution proceedings to be stayed after such order nisi. [87,20 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.

When court may point fit administer estate. [87,20 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 dispatch, 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.

How insolvent estate to be distributed. [87,20 of 1977]

554R. Where a testamentary insolvency order shall have been made, the estate shall be distributed in accordance with the following provisions:-

(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. [87,20 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 saved due to appeal. [87,20 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.

CHAPTER XXXVIIIB

FOREIGN PROBATES

Sealing of foreign probates or letters of administration. [87,20 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.

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.

Security for payment of debts.

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.

Duplicate or copy of probate or letters of administration. [87,20 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,

Liabilities of executors and administrators. [87,20 of 1977] [5,14 of 1993]

554Y. The sealing of probate or letters of administration under this Chapter shall not affect the liability of an executor or administrator-

(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 539 ;

(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 551 ; 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 IV.

Resealing court deemed to be court issuing probate or letters of administration.
[87,20 of 1977]

554Z. For the purpose of all estates to which this Chapter applies-

(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.
[87,20 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
[87,20 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 XXXVIIIC

GENERAL AND TRANSITIONAL PROVISIONS IN TESTAMENTARY MATTERS

Stamp duty to be first charge on the estate of the deceased. [87,20 of 1977]

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.

Transitional provision. [87,20 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.

CHAPTER XXXIX

ACTIONS RELATING TO PERSONS OF UNSOUND MIND

Definition of "person of unsound mind."

555. The expression " person of unsound mind " as used in this Ordinance shall, unless the contrary appears from the context, mean every person found by due course of law to be of unsound mind and incapable of managing his affairs.

District Court to institute inquiry.

556.

(1) Whenever any person who is possessed of property is alleged to be a person of unsound mind, the District Court within whose jurisdiction such person is residing may, upon such application as is hereinafter mentioned, institute any inquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

Application for, how to be made. [88,20 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.

Person alleged to be of unsound mind may be required to attend.

560. The District Court may also at any time before or pending the inquiry, require the person alleged to be of unsound mind to attend at such convenient time and place as it may appoint, for the purpose of being personally examined by the court or by any person from whom the court may desire to have a report of, or testimony as to, the mental capacity and condition of such person alleged to be of unsound mind. The court may likewise make an order authorizing any person or persons therein named to have access to the person alleged to be of unsound mind for the purpose of a personal examination.

Assessors.

561. The District Court, if it think fit. may appoint two or more persons to act as assessors to the court in the said inquiry.

Issue.

562. The issue to be tried on such inquiry shall be whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his affairs.

Trial of issue to be public.

563. The trial of this issue shall be effected by viva vice 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.

Person of unsound mind to be present.

564. The person alleged to be of unsound mind shall be present at the inquiry and shall take part as a party defendant therein either by his 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, Any relative of the person alleged to be of unsound mind may also, if the court thinks fit, appear and take part in the inquiry on behalf of the person alleged to be of unsound mind,

Adjudication on the Issue. Costs.

565. Upon the completion of the inquiry, the court shall adjudicate whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his affairs. And at the same time the court may make such order as to the payment of the 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 after wards, on an application made by such guardian by petition in the way of summary procedure, for the maintenance of the person of unsound mind and of his family.

Powers of manager-Restrictions on manager's powers

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.

Inventory Account.

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.

(2) If any relative of the person of unsound mind, or the Attorney-General, by petition to the court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the court may summon the manager and inquire summarily into the matter and make such order thereon as it shall think proper.

Excess over expenditure, to be paid into kachcheri.

573. All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the person of unsound mind or of the estate shall be paid into the kachcheri on account of the estate, and shall be dealt with thereafter in such manner as is prescribed by law in the case of suitors' deposits.

Relative may sue for account.

574. It shall be lawful for any relative of a person of unsound mind to sue for an account from any manager, appointed under this Ordinance, or from such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Manager or guardian how to be removed.

575.

(1) The District Court, for any sufficient cause, may on the application of the guardian or of a relative of the person of unsound mind, or of the Attorney-General, Superintendent of Police, or (where the property of the person of unsound mind consists in whole or in part of land, or of any interest in land) of the Government Agent, made by petition in the way of summary procedure, remove any manager appointed by the court, and may appoint any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him.

(2) The court may also, for any sufficient cause, in like manner remove any guardian appointed by the court.

Punishment for neglect or refusal to account.

576. The District Court may on any application made to it by a relative of the person of unsound mind or a public officer under section 575 impose a fine not exceeding five hundred rupees on any manager of the estate of a person of unsound mind who wilfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the court, and may realize such fine by attachment and sale of his property under the rules in force for the

execution of decrees of court, and may also commit him to close custody until he shall deliver such accounts or property.

Where not necessary court need not appoint manager.

577. If it appears to the District Court, having regard to the situation and condition in life of the person of unsound mind and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the court may, instead of appointing such manager, order that the property if money, or if of any other description the proceeds thereof, when realized in such manner as the court shall direct, be paid to such persons as the court may think fit, to be applied for the maintenance of the person of unsound mind and his family.

Further inquiry when person of unsound mind so found alleged to have recovered.

578.

(1) When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the District Court, or if the court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the court may institute an inquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs.

(2) The inquiry shall be conducted in the manner provided in section 560 and the four following sections of this Ordinance ; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the court shall make an order for his estate to be delivered over to him, and such order shall be final.

Saving of Mental Diseases Ordinance.

579. In all cases in which this Chapter is applicable, the procedure herein provided shall be followed, anything in the Mental Diseases Ordinance to the contrary notwithstanding.

Appeal to Court of Appeal.

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.

Provisions applicable to menially deficient persons.
[14, 53 of 1980]

580A.

(1) The provisions contained in this Chapter, other than section 555 shall apply in the case of mentally deficient persons.

(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. [41,79 of 1988]

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:

Provided that when the property is below the value of twenty thousand rupees, or for any other sufficient reason, provided any court having jurisdiction may allow any relative of a minor to institute or defend an action on his behalf, although a certificate of curatorship has not been granted to such relative; And

provided further that any such person so claiming to have charge of any such property under the provisions of a will, of which probate shall have been duly granted, may institute or defend any such action without having obtained such certificate.

Explanation

A person to whom letters of administration of a deceased person's estate have been granted under Chapter XXXVIII of this Ordinance does not thereby obtain a right to have charge, within the meaning of this section, of such portion or share of his deceased's estate, if any there be, as descends to a minor heir.

Application for appointment of person to have charge of property or person of minor.

583. Any relative or friend of a minor, in respect of whose property such certificate has not been granted, may apply by petition in the way of summary procedure to the Family Court, to appoint a fit person to take charge of the property and person or of either property or person of such minor.

Charge of property of minor to whom to be granted.

585.

(1) If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and-is willing to undertake the trust, the court shall grant a certificate of curatorship to such person.

(2) If there is no person so entitled, or if such person is unwilling to undertake the trust and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the court may grant a certificate to such relative.

Same person maybe appointed guardian of person.

(3) The court may also, if it think fit (unless a guardian has been appointed by the father), appoint such person as aforesaid or such relative, or any other relative or friend of the minor, to be guardian of the person of the minor.

Court may call upon grama seva niladhari to report on qualification.

(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.

When charge of property may be granted to any fit person.

586. If no title to a certificate is established to the satisfaction of the court by a person claiming under a will or deed, and if there is no near relative willing and to be entrusted with the charge of the property of the minor, and the court shall think it necessary for the interest of the minor that provision should be made by the court for the charge of the property and person of such minor, the court may grant a certificate to any fit person whom the court may appoint for the purpose.

Guardian to have charge of the person and maintenance, to be appointed at the same time.

587.

(1) Whenever the court shall grant a certificate of curatorship to the estate of a minor who is resident in 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, Accounts.

(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.

Any relative of minor may sue curator for accounts.

590. It shall be lawful for any relative of a minor with the leave of the court, or the minor himself by a next friend, at any time during the continuance of the minority, to sue for an account from any person to whom a certificate shall have been granted under the provisions of this Ordinance, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Recall of the certificates.

591. The 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.

Resignation and discharge of curator of property, or guardian of person of minor.

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.

(2) The application to be discharged from the trust shall be made by petition in the way of summary procedure, in which petition a near relative of the minor or the Attorney-General shall be named a respondent; and it shall be competent to the court to direct that any other person be made a respondent.

Allowance of curator.

593. Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this Chapter, if he is not willing to discharge the trust gratuitously, shall be entitled to receive such allowance, to be paid out of the minor's estate, as the Family Court shall by order, made when the curator is appointed or afterwards on an application made by the curator by petition in the way of summary procedure, think fit to direct.

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 petitioner resides to have jurisdiction.

597.

(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 dissolved on any ground for which marriage may, by the law applicable in Sri Lanka to his or her case, be dissolved.

(2) The provisions of the Conciliation Boards Act, No. 10 of 1958, shall not apply to matrimonial actions.

Co-defendant.

598. Upon any such plaint presented by a husband, in which the adultery of the wife is the cause or part of the cause of action, the plaintiff shall make the alleged adulterer a co-defendant to the said action, unless he is excused from so doing on one of the following grounds, to be allowed by the court upon an application for the purpose:-

(1) that the defendant is leading the life of a prostitute, and that the plaintiff knows of no person with whom the adultery has been committed ;

(2) that the name of the alleged adulterer is unknown to the plaintiff, although he has made due efforts to discover it;

(3) that the alleged adulterer is dead; and it shall be lawful in any such plaint to include a claim for pecuniary damages against such co-defendant.

Affidavit where co-defendant is excused.

599. The prayer to be excused from making the alleged adulterer a co-defendant and the allegations of fact upon which it is founded, supported by affidavit of fact or other sufficient evidence, shall be embodied m the plaint.

Sections 598 and 599 to apply where adultery of the husband is alleged.
[91,20 of 1977]

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 600 and 601 repealed by Law No. 20 of 1977]

Decree to be passed declaring marriage dissolved.
[93,20 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.

Defendant when entitled to relief.

603. In any action instituted for dissolution of marriage, if the defendant opposes the relief sought on any ground which would have enabled him or her to sue as plaintiff for such dissolution, the court may in such action give to the defendant on his or her application the same relief to which he or she would have been entitled in case he or she had presented a plaint seeking such relief.

Decree to be decree nisi in the first instance.
[94,20 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 :

Provided that where such decree nisi is entered ex pane, 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.

[Section 606 is repealed by Law No. 20 of 1977]

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.

(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.

Separated wife's property.

609.

(1) In every case of such separation under this Chapter the wife shall, from the date of the sentence and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

(2) Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, devolve as the same would have devolved if she had died unmarried :

Provided that if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

Separated wife's contracts &c, rights to sue.

610. In every case of such separation under this Chapter the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceedings; and her husband shall not be liable in respect of any contract, act, or costs entered into, done, omitted, or incurred by her during the separation:

Provided that where, upon any such separation alimony has been decreed or ordered to be paid to the wife, and the same is "not duly paid by the husband, he shall be liable for necessaries supplied for her use to the persons who supplied them;

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

When decree for separation may be 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.

Co-defendant may be order to pay costs.

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;

Provided that the co-defendant shall not be ordered to pay the plaintiffs 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.

[98,20 of 1977] (2) The provisions of the preceding subsection shall, mutatis mutandis, apply where a woman has been made a co-defendant.

Intervenient under section 606 may be ordered to pay costs.

613. Whenever any application is made under section 606, the court if it thinks that the applicant had no grounds, or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

Alimony pen-dente lite.
[99,20 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:

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.

(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.

(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.

Settlement upon decree of divorce or separation.
[100,20 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:-

(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.

(2) The court may at any stage discharge, modify, temporarily suspend and revive or enhance an order made under subsection (I).

[Sections 616 and 617 repealed by Law No. 20 of 1977]

Court may inquire into ante-nuptial and post nuptial settlements.

618.The court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the court seems fit;

Provided that the court shall not make any order for the benefit of the parents or either of them at the expense of the children.

Court may before decree for separation order maintenance of minor children.

619. In any action for obtaining a separation, the court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such action, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said court.

Court may after decree of separation make order respecting custody, & c., of minor children.

620. The court after a decree of separation may, upon application by way of summary procedure for this purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

Court may make interim order and also provide for custody, & c, of minor children in decree.

621. In any action for obtaining a dissolution of marriage or a decree of nullity of marriage, the court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim orders, and may make such provision in the decree absolute or decree, as the court deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the action, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the court.

Court may after decree absolute make orders respecting custody, & c, of minor children.

622. The court after a decree absolute for dissolution of marriage or a decree of nullity of marriage may, upon application by petition on summary procedure for the purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said court as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

Adjournment and further evidence.

623. The court may from time to time adjourn the hearing of any petition or plaint under this Chapter, and may of its own motion require further evidence thereon if it sees fit so to do.

Appeal.

624. All decrees and orders made by the court in any action or proceeding under this Chapter shall be enforced and may be appealed from, in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the laws, rules, and orders for the time being in force.

Enforcement of alimony and maintenance orders. [102,20 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. [103,20 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 being 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.

Saving of the application of this Chapter as to Muslim and Kandyan marriages. [104,20 of 1977]

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,

CHAPTER XLIII

INTERPLEADER ACTIONS

Interpleader actions.

628. When two or more persons claim adversely to one another payment of the same sum of money or delivery of the same property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute an action of interpleader against all the claimants, for the purpose of obtaining a decision as to the party to whom the payment should be made or the property delivered, and of obtaining indemnity for himself:

Provided that if any action is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute an action of interpleader.

Form of plaint.

629. In every action of interpleader the plaint must, in addition to the other statements necessary for plaints, state-

(a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants ; and such plaint shall also be supported by an affidavit of the plaintiff verifying the statements contained therein.

Property claimed to be deposited in court.

630. When the thing claimed is capable of being paid into court or placed in the custody of the court, the plaintiff must so pay or place it before he can be entitled to any order in the action.

Procedure at the hearing.

631. At the hearing the court may-

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the action;

or if it thinks that justice or convenience so require-

(b) retain all parties until the final disposal of the action;

and if it finds that the admissions of the parties or other evidence enable it to do so, may-

(c) adjudicate upon the title to the thing claimed;

or else it may-

(d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the court.

Who may not be sued in interpleader.

632. Nothing in this Chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any person other than persons making claim through such principals or landlords.

Illustrations

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader action against A and C

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that Cs debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader action against A and C.

Of the plaintiff costs therein.

633. When the action is properly instituted, the court may provide the plaintiffs costs by giving him a charge on the thing claimed, or in some other effectual way.

Procedure where stakeholder is sued by defendant.

634. If any of the defendants in an interpleader 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.

CHAPTER XLIV

ACTIONS WHICH FAIL FOR WANT OF JURISDICTION

Power to make order for costs not with standing want of jurisdiction.

635. When an action fails for want of jurisdiction in the court to entertain and determine the matter of the action on its merits, it shall, nevertheless, be competent to the court to make such order on the parties for the payment of costs as to it shall seem just; and every such order for the payment of costs is a decree for money within Chapter XX.

When want of jurisdiction caused by exclusive jurisdiction of any court or tribunal, averment of

636. When the want of jurisdiction is caused by reason of the exclusive jurisdiction of any court or tribunal, the averment in the plaint made in pursuance of section 45 shall be considered as traversed, whether the defendant in his answer is silent in reference to it or not;

jurisdiction in plaint is traversed. [105,20 of 1977]

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. [105,20 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. [105,20 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.

[Section 639 is repealed by Ordinance No. 9 of 1917]

[Sections 640 to 644 (both inclusive) repealed by Ordinance No. 21 of 1927]

[Sections 645 to 648 (both inclusive) repealed by Ordinance No. 7 of 1949]

[Section 649 is repealed by Ordinance No. 21 of 1927]

PART V

PROVISIONAL REMEDIES

CHAPTER XL VII

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 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.

Arrested person to be discharged on giving bail. otherwise committed to prison.

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 plaintiffs claim and to abide by and perform the judgment of the court, or to surrender himself or be surrendered to be charged in execution for the same ; in which case the Fiscal shall be authorized to discharge him. If he is brought before the court under the warrant, or if he appears in discharge of the bail taken by the Fiscal, he must give bail (form No. 102, First Schedule) to abide by and perform the judgment of the court, and pay any sum or sums which may be awarded against him or to surrender himself or be surrendered by his sureties, to be charged in execution for the same ; or if he is unable or unwilling to give such bail, he shall be committed to prison (form No. 103, First Schedule) until he does so, or until the determination of the action ; and in the event of the decree being passed against him, then until the execution of the decree subject to the provisions of Chapter XXII in regard to imprisonment in execution of a decree for money ; and

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.
[14, 43 of 2024]

653. If a plaintiff in any action, either at the commencement thereof or at any subsequent period before judgment, shall, by way of motion on petition supported by his own affidavit and viva voce examination (if the Judge should consider such examination necessary) satisfy the Judge that he has a sufficient cause of action against the defendant, either in respect of a money claim of or exceeding two million 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, directing him to seize and sequester the houses, lands, goods, money, securities for money and debts, wheresoever or in whose custody so ever 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 there out, pending the sequestration.

Plaintiff to give security before such warrant of arrest or sequestration is issued.

654. Before making the order for a warrant of arrest or mandate of sequestration, the Judge shall require the plaintiff to enter into a bond (form No. 105, First Schedule), with or without sureties, in the discretion of the Judge, to the effect that the plaintiff will pay all costs that may be awarded and all damages which may be sustained by reason of such arrest or sequestration, by the defendant or by any other person in whose possession such property shall have been so sequestered; and it shall be competent to the court 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.

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.

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.

Effect of sequestration on prior rights.

660. Sequestration before judgment shall not affect the rights, existing prior to on the sequestration, of persons not parties to the action, nor bar any person holding a decree against the defendant from applying for the sale of the property under sequestration in execution of such decree.

Subsequent seizure of property under decree unnecessary.

661. Where property is under sequestration by virtue of the provisions of this Chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to again seize the property as preliminary to sale or delivery in execution of such decree.

CHAPTER XLVIII
OF INJUNCTIONS

When Injunction may be granted.
[15, 53 of 1980]

662. Every application for an injunction for any of .the purposes mentioned in section 54 of the Judicature Act, No. 2 of 1978,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.

How disobedience to injunction or enjoining order punished.
[44,79 of 1988]

663. An injunction or an enjoining order granted by court on any such application may, in case of disobedience be enforced, by the punishment of the offender as for a contempt of court.

Application to be on notice to opposite party.
[45,79 of 1988]

664.

(1) The court shall before granting an injunction cause the petition of application for the same together with the accompanying affidavit to be served on the opposite party.

(2) Where it appears to court that the object of granting an injunction would be defeated by delay, it may until the hearing and decision of the application for an injunction, enjoin the defendant for a period not exceeding fourteen days in the first instance, and the court may for good and sufficient reasons, which shall be recorded, extend for periods not exceeding fourteen days at a time, the operation of such order. An enjoining order made under these provisions, shall lapse upon the hearing and decision of the application for the grant of an injunction.

(3) The court may, of its own motion, or on an application made by any party, suspend the operation of an enjoining order issued under subsection (2), if it is satisfied that such order was obtained by suppression, or misrepresentation, of any material facts.

Effect on corporation, & c.
[46,79 of 1988]

665. An injunction or enjoining order directed to a corporation or board or other public body or company is binding not only on the corporation, board, public body, or company itself, but also on all members or officers of the corporation, board, public body, or company whose personal action it seeks to restrain.

How order set aside or varied.
[47,79 of 1988]

666. An order for an injunction or enjoining order made under this Chapter may be discharged, or varied or set aside by the court, on application made thereto, by any party dissatisfied with such order.

When court may award compensation
[48, 79 of 1988]

667. If it appears to the court that the injunction or enjoining order was applied for on insufficient grounds, or if, after the issue of an injunction or enjoining order 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 or enjoining order, the court may on the application of the party against whom the Injunction or enjoining order, 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 or enjoining order. An award

under this section, shall bar any action for compensation in respect of the issue of the injunction or enjoining order.

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 there out such expenses as the court allows him, deposit the proceeds of the sale in court to the credit of the action.

Order for detention, preservation, or inspection of property.

669. The court may, on the application of any party to an action, and on such terms as it thinks fit-

(a) make an order for the detention, preservation, or inspection and survey of any property being the subject of such action ;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such action ; and

(c) for all or any of the purposes aforesaid authorize any samples to be taken or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

Application herein to be made by way of summary procedure.

670. Every application under either of the two preceding sections shall be made by petition in the way of summary procedure; and every party who is sought to be affected by the order must be named a respondent in the petition. Any such application may be made by a plaintiff after service of summons, or by a defendant after he has appeared in the action.

CHAPTER L

OF THE APPOINTMENT OF RECEIVERS

When court may appoint a receiver.

671. Whenever it appears to the court to be necessary for the restoration, preservation, or better custody or management of any property, movable or immovable, the subject of an action, or under sequestration, the court may on the application of any party who shall establish a prima facie right to or interest in such property, by order-

(a) appoint a receiver of such property, and, if need be,

(b) remove the person, in whose possession or custody the property may be, from the possession or custody thereof;

(c) commit such property to the custody or management of such receiver; and

And give him power over subject of action or sequestration.

(d) grant to such receiver such fee or commission on the rents and profits of the property by way of remuneration as the court thinks fit, and all such powers as to bringing and defending actions and for the realization, management, protection, preservation, and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the court thinks fit.

Notice of application.

672. Notice of an application for the appointment of a receiver under this Chapter must be served on the adverse party, unless he has left 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.

Receivers to give security and pass accounts.

673. Every receiver 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.

Power of court to remove, or require fresh security.

674. The court may at any time, on sufficient cause shown therefor, remove a receiver or require him to give fresh security.

Powers conferrable by the court not to exceed those of parties themselves.

675. Nothing in sections 671 and 673 authorizes or empowers the court to remove those from the possession or custody of property under sequestration any person whom the parties to the action or some or one of them have or has not a present right so to remove.

PART VI

OF SPECIAL PROCEEDINGS

CHAPTER LI

OF REFERENCE TO ARBITRATION

Matter in difference in action may by consent of parties

676.

(1) If all the parties to an action desire that any matter in difference between them in the action be referred to

be referred to arbitration.

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.

(2) Every such application shall be in Mode of writing and shall state the particular matters submission. 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.

Appointment of arbitrator.

(3) The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

when court may nominate 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.

The matter in difference to referred to arbitrator by order of court.

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.

(2) When once a matter is referred to arbitration, the court shall not deal with it in the same action, except as hereinafter provided.

Appointment of an umpire.

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-

(a) by the appointment of an umpire; or

(b) by declaring that the decision shall be with the majority if the major pan of the arbitrators agree ; or

(c) by empowering the arbitrators to appoint an umpire; or

(d) otherwise, as may be agreed between the parties ; or if they cannot agree, as the court determines.

(2) If an umpire is appointed, the court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

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.

When court may appoint umpire.

680. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice has been served, or such further time as the court may in each case allow, no umpire be appointed, the court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of umpire appointed after reference.

681. Every arbitrator or umpire appointed under the foregoing sections shall have the like powers as if his name had been inserted in the order of reference.

Court to issue process.

682.

(1) The court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire to examine as the court may issue in actions tried before it.

Power of arbitrators to take evidence.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or being guilty of any contempt to an arbitrator or umpire during the investigation of the matters referred, shall be subject to the tike disadvantages, penalties, and punishments, by order of the court on the representation of such arbitrator or umpire, as they would incur for the like offences in actions tried before the court.

Extension of time for award.

683. If from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the action.

When umpire may enter on the reference in lieu of arbitrators.

684. When an has been umpire appointed, he the reference in may enter on the place of the arbitrators-

(a) if they have allowed the appointed time to expire without making an award; or

(b) when they have delivered to the court or to the umpire a notice in writing stating that they cannot agree.

Award to be filed in court.

685. When an award in an action has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them ; and notice of the filing shall be given to the parties.

Award may be in form of special case.

686. Upon any reference by an order of court the arbitrators or umpire may, with the consent of the court, state the award as to the whole or any part thereof in the form of a special case, for the opinion of the court; and after the filing of such special case upon notice to the parties, the court shall upon an appointed day hear argument and deliver its opinion thereon; and such opinion shall be added to and form part of the award.

Application to set aside or correct the award.

687. Within fifteen days from the date of receipt of notice of the filing of the award any party to the arbitration may by petition apply to the court to set aside the award, or to modify or to correct the award, or to remit the award to the arbitrators for reconsideration, on grounds mentioned in the following sections.

When court may correct award.

688. The court may, by order, modify or correct an award-

(a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred ; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

Court may make order as to costs.

689. The court may also make such orders as it thinks fit respecting the costs of the arbitration, if any question arises respecting such costs and the award contains no sufficient provision concerning them.

When court may remit award for 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-

(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.

When an award is void. When award is not valid.

691. (1) An award remitted under section 690 becomes void on the refusal of the arbitrators or umpire to reconsider it.

When may an award be set aside.

(2) No award shall be set aside except on one of the following grounds, namely :-

(a) corruption or misconduct of the arbitrator or umpire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the court superseding the arbitration and restoring the action; and no award shall be valid unless made within the period allowed by the court.

Judgment to be according to the award.

692. (1) If the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if it has been made and the court has refused such application, then the court shall, after the time for making such application has expired, on a day of which notice shall be given to the parties, proceed to give judgment according to the award ; or if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

And decree to be framed thereon.

(2) Upon the Judgment so given a decree shall be framed, and shall be enforced in manner provided in this Ordinance for the execution of decrees.

(3) No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

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.

When value of property is to be stated therein.

700. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

To what court agreement may be presented.

701. The agreement, if framed in accordance with the rules 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.

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 at 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.

Without such leave decree at once with speedy execution.

(1) In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the action unless he obtains leave from the court as hereinafter mentioned so to appear and defend ; and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest to the date of the payment, and such costs as the court may allow at the time of making the decree.

(2) The defendant shall not be required, as a condition of his being allowed to appear and defend, to pay into court the sum mentioned in the summons, or to give security therefor, unless the court thinks his defence not to be prima facie sustainable, or feels reasonable doubt as to its good faith.

Instrument to be produced with the plaint, and affidavit to be made.

705.

(1) The plaintiff who so sues and obtains such summons as aforesaid must on presenting the plaint produce to the court the instrument on which he sues, and he must make affidavit that the sum which he claims is justly due to him from the defendant thereon.

(2) If the instrument appears to the court to be properly stamped, and not to be open to suspicion by reason of any alteration or erasure or other matter on the face of it, and not to be barred by prescription, the court may in its discretion make an order for the service on the defendant of the summons above mentioned.

Summons to be of short date.

(3) The day to be inserted in the notice as the day for the defendant's appearance shall be as early a day as can be conveniently named, regard being had to the distance of the defendant's residence from the court.

When leave to defend may be granted.

706. The court shall, upon application by the defendant, give leave to appear and to defend the action upon the defendant paying into court

the sum mentioned in the summons, or upon affidavits satisfactory to the court which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application and on such terms as to security, framing, and recording issues, or otherwise, as the court thinks fit.

When court may set aside decree, & c.

707. After decree the court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the action, if it seem reasonable to the court so to do, and on such terms as the court thinks fit.

Court may order deposit of instrument.

708. In any proceeding under this Chapter the court may order the instrument on which the action is founded to be forthwith deposited with an officer of the court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of expenses incurred in noting.

709. The holder of every dishonoured bill of exchange or promissory note shall expenses have the same remedies for the recovery of 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.

Saving clause.

710. Except as provided in this Chapter, the procedure in actions under this Chapter shall be the same as the procedure in actions instituted under Chapter VII.

Special trial roll to be kept.

711. In every court in which cases may be instituted under this Chapter, a special trial roll shall be kept of such cases in which issue has been joined. And it shall be competent for the Judge of such court to order such cases to be set down for hearing on such days, and on the day fixed for the hearing of any such case to direct the same to be called on for trial, in such order as to him shall appear best calculated to promote the ends of justice, any rule or practice of such court to the contrary notwithstanding:

Provided that the parties to such case shall have received reasonable notice of the day of hearing.

PART VII

OF THE AIDING AND CONTROLLING OF EXECUTORS AND ADMINISTRATORS, AND THE JUDICIAL SETTLEMENT OF THEIR ACCOUNTS

CHAPTER LIV

OF AIDING, SUPERVISING, AND CONTROLLING EXECUTORS AND ADMINISTRATORS

Proceedings to discover property withheld, & c.

712.

(1) An executor or administrator may present to the court from which grant of probate or administration issued to him a petition entitled as of the action in which such grant

issued, setting forth upon knowledge, or information and belief, any facts tending to show that money or other movable property which ought to be delivered to the petitioner, or which ought to be included in his inventory and valuation, is in the possession, under the control, or within the knowledge or information of a person who withholds the same from him, or who refuses to impart any knowledge or information he may have concerning the same, or to disclose any other fact which will in any way aid the petitioner in making discovery of such property, so that it cannot be inventoried and valued; and praying an inquiry respecting it, and that the person complained of may be cited to attend the inquiry and to be examined accordingly.

(2) The petition may be accompanied by affidavits or other evidence tending to support the allegations thereof.

(3) If the court is satisfied upon the materials so presented that there are reasonable grounds for inquiry, it shall issue a citation accordingly, which may be made returnable forthwith, or at such future time as the court shall direct.

Order to accompany citation.

713.

(1) There shall be annexed to, or endorsed on, the citation an order signed by the Judge, requiring the person cited to attend personally at the time and place therein specified.

Service of citation-

(2) The citation and order must be personally served, and the service shall be ineffectual unless it is accompanied with payment or tender of the sum required by law to be paid or tendered to a witness subpoenaed to attend a trial in a civil court.

Failure to obey citation.

(3) Failure to attend as required by the citation and order may be punished as a contempt of court.

Examination of person cited.

714.

(1) Upon the attendance of a person in obedience to such citation and order, he shall be examined fully and at large, on oath or affirmation, respecting any money or other property of the testator or intestate, or of which the testator or intestate was in possession at the time of or within two years preceding his death.

Refusal to answer.

(2) A refusal to be sworn or to answer any question allowed by the court is punishable in the same manner as a like refusal by a witness in a civil case.

(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 to possession to the petitioner.

716. Where it appears to the court, from the examination and other testimony, if any, that there is reason to suspect that money or other property of the testator or intestate is withheld or concealed by the person cited, the court shall, unless the person cited gives security by a bond entered into with the petitioner as obligee, with such sureties and in such penalty as the court approves, for the payment of the money or delivery of the property, or in default of such delivery for the payment to the obligee of the full value thereof, and in either case of all damages which may be awarded against the obligor for withholding the same whenever it shall be determined in an action brought by the obligee that it belongs to the estate of the testator or intestate, make a decree reciting the grounds thereof, and requiring the person cited to deliver possession of the money or other property, specifying the sum or describing the property, to the petitioner. But in the event of such security being given, and after payment within a time to be fixed therefor of any costs which the court may award to the petitioner, the proceedings shall be dismissed.

Disobedience to decree contempt.

717.

(1) Where the decree requires the person cited to deliver money, disobedience thereto may be punished as contempt of court. Warrant to seize property.

(2) Where it requires him to deliver possession of other property, a warrant shall issue on the application of the petitioner directed to the Fiscal, and commanding him to search for and seize the property, if it is found in the possession of the person cited, or his agent, or any person deriving title from him since the presentation of the petition to deliver the same to the petitioner, and to return the warrant within sixty days.

(3) The issue of such a warrant does not affect the power of the court to enforce the decree, or any part thereof, by punishing a disobedience thereto.

Executor, &c, how compelled to return inventory and accounts.

718.

(1) A creditor, or any person interested in the estate, may present to the court in the action in which grant of probate or administration issued, proof by affidavit that an executor or administrator has failed to file in court the inventory and valuation, and account (or a sufficient inventory and valuation, or sufficient accounts) required by law within the time prescribed therefor.

(2) Thereupon, or of its own motion, if the court is satisfied that the executor or administrator is in default, it shall make an order requiring the delinquent to file the inventory and valuation or accounts, or a further inventory and valuation or further accounts, as the case may be ; or in default thereof to show cause at a time and place therein specified why he should not be attached.

(3) Upon the return of the order, if the delinquent has not filed a sufficient inventory and valuation or sufficient accounts, the court shall issue a warrant of attachment against him, and shall deal with him as for a contempt of court.

How executor or administrator may be discharged from commitment.

719. A person committed to jail under the provisions of the last preceding section may be discharged by the court upon his discharged paying and delivering under oath all the from money and other property of the testator or intestate, and all papers relating to the estate under his control, to the Judge, or person authorized by the Judge to receive the same.

Petition by creditor or legatee to compel payment.

720. In either of the following cases a petition, entitled as of the action in which grant of probate or administration issued, may be presented to the court which issued the same, praying for a decree directing an executor or administrator to pay the petitioner's claim, and that he be cited to show cause why such decree should not be made-

(a) by a creditor, for the payment of a debt, or of its just proportional part, at any time after twelve months have expired since grant of probate or administration;

(b) by a person entitled to a legacy, or any other pecuniary provision under a will, or a distributive share, for the payment or satisfaction thereof, or of its just proportional part, at any time after twelve months have expired since such grant.

Citation to issue. Hearing and decree.

721. On the presentation of such petition the court shall issue a citation accordingly, and upon the return thereof shall make such decree in the premises as justice requires. But in any case where the executor or administrator files an affidavit setting forth facts which show that it is doubtful whether the petitioner's claim is valid and legal, and denying its validity or legality absolutely, or upon information and belief, or where the court is not satisfied that there is money or other movable property of the estate applicable to the payment or satisfaction of the petitioner's claim, and which may be so applied without injuriously affecting the rights of others entitled to priority or equality of payment or satisfaction, the decree shall dismiss the petition, but such dismissal shall not prejudice the right of the petitioner to an action or accounting.

Appeal.

722. Every order or decree made under the provisions of this Chapter shall be subject to an appeal to the 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 551.
[108,20 of 1977]
[6,14 of 1993]

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 551.

(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. I 18A 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 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.

Judicial settlement of account.

725. In any of the following cases, and either upon the application of a party mentioned in the next section or of its own motion, the court may from time to time compel a judicial settlement of the account of an executor or administrator:-

(a) where one year has expired since grant to him of probate or administration;

(b) where such grant has been revoked, or for any other reason his powers have ceased;

(c) where he has sold or otherwise disposed of any immovable property of the testator, or devisable interest therein, or the rents, profits, or proceeds thereof, pursuant to a power in the will, where one year has elapsed since the grant of probate to him.

Who may apply for accounting.

726.

(1) The application for a judicial settlement in the last section mentioned shall be by petition, entitled as of the action in which grant of probate or administration issued, and may be presented by a creditor, or by any person interested in the estate or fund, including a child born after the making of a will; or by any person in behalf of an infant so interested ; or by a surety in the official bond of the person required to account, or the legal representative of such surety.

Citation.

(2) Upon the presentation thereof, citation shall issue accordingly; but in a case specified in paragraph (a) of the last preceding section the court may, if the petition is presented within less than eighteen months after the issue of probate or administration, entertain or refuse to entertain it in its discretion.

Order to account.

727.

(1) Upon the return of such citation, if the executor or administrator fails either to appear, or to show good cause to the contrary, or to present, in a proper case, a petition as prescribed in section 729, an order shall be made directing him to account within such a time and in such a manner as the court prescribes, and to attend before the court from time to time for that purpose. And the executor or administrator shall be bound by such order without service thereof, and if he disobeys it the court may issue a warrant of attachment against him, and the grant of probate or administration issued to him may be revoked.

Supplemental citation.

(2) If it appears that there is a surplus, distributable to creditors or persons interested, the court may at any time issue a supplemental citation, directed to such persons as must be cited upon the petition of an executor or administrator for a judicial settlement of his account, requiring them to attend the accounting.

Person cited may bring in other parties.

728.

(1) Upon the return of any citation issued under any of the foregoing sections of this Chapter, the executor or administrator may, if one year has expired since grant of probate or administration issued to him, present a petition as in the next section prescribed.

Proceedings.

(2) A citation issued upon such a petition need not be directed to the petitioner in the special proceeding pending against the executor or administrator; but the hearing of the special proceeding shall be adjourned until the return of the citation so issued, whereupon the two special proceedings shall be consolidated. Such consolidation shall not affect any power of the court which might be exercised in either special proceeding.

Executor, &c, may petition for judicial settlement of his account. Citation.

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.

Hearing.

730.

(1) Upon the return of such citation the court must take the account and hear the allegations and proofs of the panics respecting the same.

(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.

Creditor not citied may appear.

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.

Executor, & c. whose grant has been revoked may petition.

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.

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.

Court to determine claims.

736.

(1) Upon a judicial settlement of the account of an executor or administrator, he may prove any debt owing to him by his testator or intestate:

Provided that a concise statement of such debt with an intimation of the petitioner's intention so to prove the same has been inserted in the petition.

(2) Where a contest arises between the accounting party and any of the other parties respecting any property alleged to belong to the estate, but to which the accounting party lays claim, or respecting a debt alleged to be due by the accounting party to the testator or intestate, or by the testator or intestate to the accounting party, the contest must be tried and determined in the same special proceeding and in the same manner as any issue arising on a civil trial.

Prescription.

737. From the death of the testator or intestate until the first judicial settlement of an account by 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.

Court may allow for property lost & c.

738. Upon a judicial settlement of the account of an executor or administrator, the court may allow the accounting party for property of the testator or intestate perished or lost without the fault of the accounting party.

Effect of judicial settlement.

739. A judicial settlement under this Chapter, either by the decree of the District Court or upon an appeal therefrom, is conclusive evidence against all parties who were duly cited or appeared, and all 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.

When specific property may be delivered.

741.

(1) In either of the following cases the decree may direct the delivery of unsold property, movable or immovable, or the assignment of an uncollected demand, or any other movable property, to a party or parties entitled to payment or distribution in lieu of the money value of the property ;-

(a) where all the parties interested, who have appeared, manifest their consent thereto by a writing filed in court;

(b) where it appears that a sale thereof, for the purpose of payment 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 appraisement under oath made by one or more persons appointed by the court for the purpose.

When money may be retained.

742. Where an admitted debt of the testator or intestate is not yet due, and the creditor will not accept present payment with a rebate of interest, or where an action is pending between the executor or administrator and a person claiming to be a creditor of the deceased, the decree must direct that a sum sufficient to satisfy the claim, or the proportion to which it is entitled, together with the probable amount of the interest and costs, be retained in the hands of the accounting party, or paid into court for the purpose of being applied to the payment of the claim when it is due, recovered, or settled; and that so much thereof as is not needed for that purpose be afterwards distributed according to law.

Share of person of unsound mind minor.

743. Where a legacy or distributive of share is payable to a person of unsound mind or a minor, the decree may, in the discretion of the court, direct it to be paid to the manager or curator, as the case may be, of the estate of such person of unsound mind or minor, and where a sum of less than one hundred rupees is so payable to a minor, the decree may direct that the same be applied to the maintenance or education of the minor. And such manager or curator shall apply and account for any sum received by him under this Chapter in manner in Chapters XXXIX and XL respectively provided with regard to sums coming to his hands as such manager or curator.

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 the manager of the estate of unsound mind 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.

Voluntary judicial settlement of accounts in case of persons of unsound mind and minors.

746. A petition praying for the judicial settlement of his account and a discharge from his duties and liabilities may be presented in like manner by any of the persons described under paragraphs (a), (b), (c), (d), (e), and if) of the last preceding section, in any case where a petition for a judicial settlement of his account may be presented by any other person as prescribed in the last section. The petition must pray that every person who might have so presented, a petition may be cited to attend the settlement.

Procedure.

747.

(1) Upon the presentation of any petition as mentioned in the last two sections, the court shall issue a citation accordingly.

(2) Sections 724 to 740 both inclusive shall be taken to apply as far as practicable, mutatis mutandis, to all proceedings under this Chapter. And the accounting party must annex to every account produced and filed by him an affidavit verifying the account.

Appeal.

748. Every order or decree made under the provisions of this Chapter shall be subject to an appeal to the Court of Appeal.

CHAPTER LVII

GENERAL CLAUSES

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.

PART VIII

OF APPEALS

CHAPTER LVIII

Powers of revisions by Appeal.
[49,79 of 1988]

753. The Court of Appeal may, of its own motion or on any application made, call for and examine the record of any case, whether already tried or pending trial, in any court, tribunal or other institution 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, tribunal or other institution, and may upon revision of the case brought before it pass any judgment or make any order thereon, as the interests of justice may require.

Mode of Preferring appeal.
[109,20 of 1977]
[50,79 of 1988]

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 sundays and 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.
[109,20 of 1977]
[[50,79 of 1980]
[50,79 of 1988]

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 under article 136 of the constitution, 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. Provided that, if such petition is not presented to the original court within sixty days from the date of the judgment or decree appealed against, the court shall refuse to receive the appeal.

(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 and the opinion of the Judge as to whether or not there is a right of appeal against the judgment or decree appealed against.

(5) 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: Provided that when the judge of the original court has expressed an opinion that there is no right of appeal against the judgment or decree appealed against, the Registrar shall submit the petition of appeal to the President of the Court of Appeal or any other Judge nominated by the President of the Court of Appeal who shall require the petition to be supported in open court by the petitioner or an attorney on his behalf on a day to be fixed by such Judge, and the court having heard the petitioner or his attorney, may, reject such petition or fix a date for the hearing of the petition, and order notice thereafter to be issued on the respondent or respondents;

Provided further that, when a petition is rejected under this section the court shall record the reasons for such rejection.

Security to be by bond and with surety.
[50,79 of 1980]
[50,79 of 1988]
[12,14 of 1997]

756. (1) The security which is required to be deposited by a party appellant shall be made by way of deposit of a sum of money or hypothecation of immovable property, to cover the costs of appeal and to no greater amount:

Provided that where money is deposited as security, the same shall be deemed to have been hypothecated in favour of the Registrar of the court, for the payment of all costs which shall be incurred and taxed in prosecution of such appeal if the appellant is decreed to pay the same.

(2) Security shall be dispensed with where the appellant

(a) the Attorney-General;

(b) the spouse in a matrimonial action in whose favour and 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.

Procedure in respect of application for leave to appeal.
[50,79 of 1988]
[3,38 of 1998]

757. (1) 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. Such petition shall be supported by affidavit, and shall contain the particulars required by

section 758, and shall be presented to the Court of Appeal 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 Sundays and 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. The appellant shall along with such petition, tender as many copies as may be required for service on the respondents.

(2) Upon an application for leave to appeal being filed in the Registry of the Court of Appeal, the Registrar shall number such application and shall forthwith send notice of such application by registered post, to each of the respondents named therein, together with copies of the petition, affidavit and annexures, if any. The notice shall state that the respondent shall be heard in opposition to the application on the date to be specified in such notice. An application for leave to appeal may include a prayer for a stay order, interim injunction or other relief.

(4) On the date specified in the notice sent under subsection (2) or on such other dale as the Court may fix, the Court shall hear the application for leave to appeal and shall grant or refuse leave to appeal :

Provided that pending the hearing and disposal of such application and in the event of leave to appeal being granted, pending the hearing and disposal of the appeal, the Court may make order granting such interim relief as it deems to be appropriate in the circumstances.

(5) 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:

[§16,2 of 1990] Provided however that in an application for leave to appeal in respect of any order made in the course of any action instituted under the Debt Recovery (Special Provisions) Act, No. 2 of 1990, proceedings in the original court shall not be stayed when leave to appeal is granted unless the Court of Appeal otherwise directs and the Court of appeal shall where it decides to grant leave to appeal call upon the appellant to give security in cash or by a guarantee from a banker for the satisfaction of the entire claim of that plaintiff or such part thereof as the court deem fit in all the circumstances of the case, in the event of the appeal being dismissed.

Language and form of appeal.
[50,79 of 1988]

758. (1) The petition of appeal shall be distinctly written upon good and suitable paper, and shall contain the following particulars:-

(a) the name of the court in which the case is pending;

(b) the names of the parties to the action;

(c) the names of the appellant and of the respondent;

(d) the address to the 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; form of relief

(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.
[50,79 of 1980]
[50,79 of 1988]

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.

[112,20 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.
[50,79 of 1980]
[50,79 of 1988]

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.
[113,20 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

Application for execution of decree not to be entertained till expiry of appealable time.
[114, 20 of 1977]
[[19, 53 of 1980]

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:

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.

[Section 762 repealed by Law No. 20 of 1977]

Application for execution of decree pending appeal must be on notice to debtor; and execution will only be granted on security.
[19, 53 of 1980]

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.

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.

[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.

Provided that in the case of decrees entered under the provisions of the Debt Recovery (Special Provisions) Act, No. 2 of 1990, the security to be given by the judgment-debtor shall be the full amount of the decreed sum or such part thereof as the court deem fit in all the circumstances of the case.

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.
[51,79 of 1988]

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, 755 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, to be presented immediately to the court of Appeal.

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 to be presented immediately to the Court of Appeal in its the Court of appellate jurisdiction, and in addition to the Appeal. 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.

Order of Court of Appeal thereon.

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;

CHAPTER LXI

HEARING OF THE APPEAL

Hearing of appeal [116,20 of 1977]

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 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.

[117,20 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.
[118,20 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.

Rights of respondent to object to decree.

771. When an appeal is heard ex parte in the absence of the respondent, and Judgment is given against him, he may apply to the 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 at hearing.

772.

(1) Any respondent, though he may not have appealed against any part of the decree, may, upon the hearing, not only support the decree on any of the grounds decided against him in the court below, but take any objection to the decree which he could have taken by way of appeal, provided he has given to the appellant or his registered attorney seven days' notice in writing of such objection.

(2) Such objection shall be in the form prescribed in paragraph (e) of section 758.

Power of court to dismiss the appeal, affirm, vary or set aside the decree or direct new trial, & c.
[119,20 of 1977]

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.

Judgment of the court.

774.

[16, 8 of 2017] (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.

[120,20 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.

[16, 8 of 2017] (3) A judgment, order or directive pronounced under this section by an Appellate Court shall be deemed to be a judgment, order or directive pronounced by the original court from which the appeal was preferred.

[Section 775 is repealed by Law No. 20 of 1977]

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:-

how framed; (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.

(2) The decree shall also state by what parties, and in what proportions, the costs of the action are to be paid.

Decree to be sealed

(3) The decree shall be sealed with the seal of the court, ;

after sealing of decree proceedings to be returned to court of first instance-

(4) As soon as the decree is sealed all the proceedings in the case sent up to the 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.

Execution of the decree passed in appeal.

777. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this Chapter desires to obtain execution of the same, he shall apply to the court which passed the decree against which the appeal was preferred ; and such court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in an action.

[Chapters LXII to LXIV - Sections 778 to 791 (both inclusive) repealed by Law No. 20 of 1977]

PART IX

OF SUMMARY PROCEDURE IN RESPECT OF CONTEMPTS OF COURT

CHAPTER LXV

Summary procedure case of contempt.

792.In all courts the summary procedure to be followed for the exercise of the special jurisdiction to take cognizance 01 contempt. and to punish summarily offences of contempt of court, and offences declared by this Ordinance to be punishable as contempts of court, shall be that which is prescribed in the sections next immediately following.

Summons to accused.

793. The court shall issue a summons to the accused person in the form No. 132 in the First Schedule or to the like effect, which summons shall state shortly the nature of the alleged offence and the information or grounds upon which the summons is issued, and shall

require the accused person to appear before the court on a day named in the summons to answer the charge.

When may court issue warrant simultaneously with summons.

794. It shall be competent to the court simultaneously with issuing such summons, or at any time after such summons has been issued, if it has reason to believe that the attendance of the accused person at the time appointed in the summons to answer the charge cannot otherwise be secured, to issue a warrant for his arrest in the form No. 133 in the First Schedule or to the like effect, which warrant shall recite the issuing of the summons, and the day appointed therein for the hearing of the charge, and shall command that the accused person after arrest be kept in custody until that day, and be then brought before the court to answer the charge in the summons;

Provided that the person arrested shall at any time after arrest be enlarged upon sufficient security, to an amount endorsed on the warrant by the court, either of the accused person's own bond or that of another person, for his appearance in court on the day named in the summons, being furnished to the officer in whose custody he is.

Judge to record minute of facts observed by him.

795. When the information upon which the charge is based is furnished to the court, either wholly or in part, by the personal observation of the Judge of the accused person's behaviour and language in his presence, the Judge shall at the time record a minute of the facts so observed by him, which shall be admissible as evidence at the hearing of the charge, and in such case no such summons as in section 793 is mentioned shall be necessary, but the accused person may be forthwith committed to jail or admitted to bail as in the last preceding section provided, and all further steps shall be taken in manner herein provided, as though such summons or summons and warrant as aforesaid had been issued.

On day of hearing court may ask accused if he admits truth of charge.

796. On the day appointed by the court for the hearing of the charge, or on any subsequent day to which the hearing may have been adjourned in consequence of the previous non-attendance of the accused person, the court shall commence the hearing by asking the accused person whether or not he admits the truth of the charge; and if he does not admit the truth of the charge, the court shall proceed to take evidence (if any) which may be necessary in addition to the court minute under section 795 to establish the charge; and also to take the accused person's statement and any evidence which he may offer in answer to the charge.

Form of the conviction and sentence thereon.

797.

(1) If the accused person admits the charge, or if after taking the evidence on both sides and considering the court minute and hearing the accused person's explanation the court finds the accused person guilty of the charge, it shall make out a conviction in the form No. 134 in the First Schedule or to the like effect, which shall recite the materials on which the conviction is founded, and adjudicate upon the material facts of the accused person's behaviour and language, with so much of the surrounding circumstances as cause these to constitute the offences of contempt of court. And the sentence passed by the court shall be recorded on this conviction.

When may court dismiss charge.

(2) If the court finds the accused person not guilty of the charge laid, it shall dismiss the charge, and shall make and record an order to that effect.

Appeal to Court of Appeal.

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.

Procedure for carrying out sentence of court in case of conviction for contempt.

799. Every sentence of fine or imprisonment passed by a court in exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of, contempt of court, and offences by this Ordinance made punishable as contempt of court, shall be carried into effect in the same manner and according to the same procedure as is provided in the Code of Criminal Procedure Act for carrying into effect sentences of fine or imprisonment passed by any court in the exercise of its ordinary criminal jurisdiction.

Sentences to be imposed under this Chapter.
[20, 53 of 1980]

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.

[3, 36 of 2022]

801 to 833R Repealed Sections.

PART X

CHAPTER LXVII

MISCELLANEOUS

Privilege from arrest of Judges, parties registered attorneys and counsel.

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.

When may civil court send cases for investigation to Magistrate.

835.

(1) When in a case pending before any court there appears to the court sufficient ground for sending for investigation to a Magistrate a charge of any such offence as is described in sections 190, 193, 196, 197, 202, 203, 204, 205, 206, 207, 452, 459, 462, 463, 464, or 466 of the Penal Code, which may be made in the course of any other action or proceeding or with respect to any document offered in evidence in the case, the court may cause the person

accused to be detained till the rising of the court, and may then or sooner send him in custody to the Magistrate or take sufficient bail for his appearance before the Magistrate. The court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

(2) The Magistrate shall receive such charge and proceed with it according to law.

Warrant of arrest may be cancelled on ground of illness of party.

836. At any time after a warrant of arrest has been issued under this Ordinance the court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

Judgment debtor under arrest may be released on illness.

837.

(1) When a judgment-debtor has been arrested under this Ordinance, the court may release him, it in its opinion he is not in a fit state of health to undergo ground of imprisonment

(2) When a judgment-debtor has been committed to Jail, he may be released there from-

(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.

Released judgment debtor may be rearrested.

838. A judgment-debtor released under the last preceding section may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed six months.

Inherent powers of court saved.

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

994-7-1997

Regulations.
[13,14 of 1997]

840.

(1) The Minister may make regulations for, and in respect of all or any of the matters, for which regulations are required or authorized to be made by this Ordinance, or which are required by this Ordinance to be prescribed.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation shall, as soon as convenient after publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded, shall be published in the Gazette.

Schedules

See Schedules ,

2 of 1990
6 of 1990
14 of 1993