



**CIVIL PROCEDURE CODE (AMENDMENT)**

**LAW, No. 20 OF 1977**

**OF**

**THE NATIONAL STATE ASSEMBLY**

**[Certified on 29th November, 1977]**

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*Civil Procedure Code (Amendment) Law,  
No. 20 of 1977*

[Certified on 29th November, 1977]

L.D.—O. 28/77.

A LAW TO AMEND THE CIVIL PROCEDURE CODE AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the National State Assembly of the Republic of Sri Lanka as follows:—

1. This Law may be cited as the Civil Procedure Code (Amendment) Law, No. 20 of 1977, and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.

Short title  
and date of  
operation.

2. Section 5 of the Civil Procedure Code, hereinafter referred to as the "principal enactment", is hereby amended as follows:—

Amendment  
of section 5  
of the Civil  
Procedure  
Code.  
(Chapter 101.)

(1) by the omission of the definition of "Attorney-General" and the substitution therefor, of the following new definition:—

"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;

(2) by the omission of the definition of "chief clerk" or "clerk";

(3) by the omission of the definition of "Her Majesty" or "the Queen";

(4) by the omission of the definition of "Judge" and the substitution therefor, of the following new definition:—

"Judge" means the presiding officer of a court and includes Judges of the Supreme Court, High Court Judges, District Judges and Magistrates;

(5) by the insertion, immediately after the definition of "judgment-debtor", of the following new definition:—

"legal document" includes all processes, pleadings, petitions, affidavits, notices, motions and other documents, proceedings, and written communications;

- (6) by the omission of the definition of "public officer" and the insertion of the following definition:—

“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;’;

- (7) by the insertion, immediately after the definition of "recognized agent", of the following new definition:—

“registered attorney” means an attorney-at-law appointed under Chapter V by a party or his recognized agent to act on his behalf;’;

- (8) by the omission of the definition of "secretary" and the substitution therefor, of the following new definition:—

“Registrar” in relation to a court includes an Additional, Deputy or Assistant Registrar;’;

- (9) by the omission of the definition of "the Governor-General"; and

- (10) by the omission of the definition of "the Island" and "this Island" and the substitution therefor, of the following new definition:—

“the Island” and "this Island" means respectively the Island of Sri Lanka;’.

Replacement  
of section 10  
of the  
principal  
enactment.

3. Section 10 of the principal enactment is hereby repealed and the following new section substituted therefor:—

"Of applica-  
tion for  
withdrawal  
and transfer  
of action.

10. Any of the parties to an action which is pending in any original court may, before trial, and after notice in writing to the other parties of his intention so to do, apply to the Supreme Court 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 Supreme Court may, on any such application after hearing such of the parties as desire to be heard, and on being satisfied that such withdrawal and transfer are desirable for any of the 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 Supreme Court shall think fit. When the action might have been instituted in any one of several courts, the balance of convenience only shall be deemed sufficient cause for such withdrawal and transfer to one of the alternative courts.

Stamp duty.

In no case in which any action is so transferred as aforesaid from one court to another shall any stamp fee be leviable in the court to which the action is transferred on any pleading or exhibit on which the proper stamp fee has been paid in the court from which the action is so transferred."

4. Section 25 of the principal enactment is hereby amended by the omission of paragraphs (d) and (e) of that section.

Amendment of section 25 of the principal enactment.

5. Sections 31 and 32 of the principal enactment are hereby repealed.

Repeal of sections 31 and 32 of the principal enactment

Replacement of  
section 39  
of the  
principal  
enactment.

6. Section 39 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Regular  
action to  
commence by  
plaint.

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

Amendment of  
section 40  
of the  
principal  
enactment.

7. Section 40 of the principal enactment is hereby amended by the omission of the words “in the English language”.

Replacement of  
section 40  
of the  
principal  
enactment.

8. Section 49 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Memorandum  
of documents  
to be  
endorsed  
on plaint.

49. (1) The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents, if any, which he has produced along with it; and if the plaint is admitted, shall present as many copies on unstamped paper of the plaint as there are defendants, 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.”

9. Section 54 of the principal enactment is hereby amended as follows:—

Amendment of  
section 54  
of the  
principal  
enactment.

(1) by the repeal of subsection (2) of that section;  
and

(2) by the renumbering of subsection (1) of that section as section 54.

10. Section 55 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of  
section 55  
of the  
principal  
enactment.

\* Summons.

55. (1) Upon the plaint being filed and the copies or concise statements required by section 49 presented, the court shall order summons in the form No. 16 in the First Schedule to issue, signed by the Registrar of the court, requiring the defendant to answer the plaint on or before a day to be specified in the summons. The summons, together with such copy or concise statement each translated into the language of the defendant where his language is not the language of the court, attached thereto, shall be delivered under a precept from the court in the form No. 17 in the said Schedule, or to the like effect, to the Fiscal of the court or to the Fiscal of a court of like jurisdiction within the local limits of whose jurisdiction the defendant resides, who shall cause the same to be duly served on the defendant, or on each defendant, if more than one, and shall as hereinafter provided, return the same and the execution thereof to the court, duly verified by the officer to whom the actual service thereof has been entrusted.

(2) (a) Every party to an action, not appearing by a registered attorney, shall on or before the date specified in the summons deliver to the Registrar a memorandum substantially in the form No. 16A in the First Schedule setting out an address (hereinafter referred to as the "registered address") for the service on him of the notice under section 80

and any other legal document required to be served on a party under the provisions of this Ordinance unless otherwise provided. Every party shall with such memorandum tender to the Registrar stamps to the value required to cover cost of service of such notice by registered post.

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

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

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

Repeal of sections 56, 57 and 58 of the principal enactment.

11. Sections 56, 57 and 58 of the principal enactment are hereby repealed.

Replacement of section 62 of the principal enactment.

12. Section 62 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" Substituted service.

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

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13. Section 70 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 70 of the principal enactment.

“ Order for, to prescribe mode of.

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

14. The heading appearing in Chapter IX immediately before section 72 of the principal enactment is hereby repealed and the following new heading substituted therefor:—

Replacement of heading in Chapter IX of the principal enactment.

“ OF FILING ANSWER ”

15. Sections 72 and 73 of the principal enactment are hereby repealed and the following new sections substituted therefor:—

Replacement of sections 72 and 73 of the principal enactment.

“ Judgment against defendant if he admits claim of the plaintiff.

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.

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

16. Section 74 of the principal enactment is hereby repealed.

Repeal of section 74 of the principal enactment.

17. Section 75 of the principal enactment is hereby amended by the omission of the words “in the English language.”.

Amendment of section 75 of the principal enactment



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Replacement of  
section 78 of  
the principal  
enactment.

18. Section 78 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" Copy of  
answer to  
be delivered  
to plaintiff  
or his  
registered  
attorney.

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."

Replacement of  
section 79  
of the  
principal  
enactment.

19. Section 79 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" When  
replication  
may be  
allowed.

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."

Replacement of  
section 80  
of the  
principal  
enactment.

20. Section 80 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" Day of  
trial.

80. (1) Forthwith on the expiration of the time allowed for the filing of the defendant's answer, or, where a replication is permitted, on the last day of the time allowed for filing such replication, and whether the same is filed or not, the court shall appoint a day for the case to be called in order to fix the day of trial

of the action and shall give notice thereof in writing by registered post to all parties who have furnished a registered address and tendered the cost of service of such notice as provided by subsection (2) of section 55.

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

(3) The court may subsequently on application made by either party and after hearing both parties, or after proof of notice of motion to the absent party, direct that the day for the hearing of any case shall be advanced or deferred."

21. Section 83 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor, of the following new subsection:—

Amendment of section 83 of the principal enactment.

"(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 courthouse, so that the suitors and all others interested may be enabled readily to be informed of the contents of the same."

22. The heading appearing in Chapter XII immediately before section 84 of the principal enactment is hereby repealed and the following new heading substituted therefor:—

Replacement of heading in Chapter XII of the principal enactment.

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

Replacement of  
sections 84  
to 88 of the  
principal  
enactment.

23. Sections 84 to 88 (both sections inclusive) of the principal enactment are hereby repealed and the following new sections substituted therefor:—

Default of  
defendant.

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

Procedure  
in *ex parte*  
trials.

85. (1) The plaintiff may place evidence before the court in support of his claim by affidavit, or by oral testimony and move for judgment, and the court, if satisfied that the plaintiff is entitled to the relief claimed by him, either in its entirety or subject to modification, may enter such judgment in favour of the plaintiff as to it shall seem proper, and enter decree accordingly.

(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.

86. (1) Where at any time prior to the entering of judgment against him for default, the defendant with notice to the plaintiff, satisfies court that he had reasonable grounds for such default, the court shall set aside any order made arising out of such default and permit the defendant to proceed with his defence as from the stage of default upon such terms as to costs or otherwise as to the court shall appear proper.

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

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

Non-appearance of plaintiff.

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.

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

(2) The order setting aside or refusing to set aside the judgment entered upon default shall be accompanied by a judgment adjudicating upon the facts and specifying the grounds upon which it is made, and shall be liable to an appeal to the Supreme Court."

Amendment of section 91 of the principal enactment.

24. Section 91 of the principal enactment is hereby amended as follows:—

(1) by the repeal of subsection (2) of that section; and

(2) by the renumbering of subsection (1) of that section as section 91.

Insertion of new section 91A in the principal enactment.

25. The following new section is hereby inserted immediately after section 91 of the principal enactment and shall have effect as section 91A of that enactment:—

" Postponements, adjournments and extensions of time.

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."

26. The following new section is hereby inserted immediately after section 103 of the principal enactment and shall have effect as section 103A of that enactment:—

Insertion of new section 103A in the principal enactment.

" State required to make discovery or give inspection of documents under certain circumstances.

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."

27. Section 120 of the principal enactment is hereby amended by the substitution, for the two items appearing therein of the following:—

Amendment of section 120 of the principal enactment.

" For every folio of 120 words ... Rs. 1 25  
For every fractional part of a folio Rs. 1 25 "

Replacement of heading in Chapter XVII of the principal enactment.

28. The heading appearing in Chapter XVII immediately before section 121 of the principal enactment is hereby repealed and the following new heading substituted therefor:—

“ OF WITNESSES AND DOCUMENTS ”

Amendment of section 121 of the principal enactment.

29. Section 121 of the principal enactment is hereby amended as follows:—

(1) by the repeal of subsection (2) of that section, and the substitution therefor, of the following new subsection:—

“(2) Every party to an action shall, not less than fifteen days before the date fixed for the trial of an action, file or cause to be filed in court after notice to the opposite party—

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

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

(2) by the substitution for the marginal note to that subsection of the following new marginal note:—

“ Lists of witnesses and documents.”

Amendment of section 169 of the principal enactment.

30. Section 169 of the principal enactment is hereby amended by the omission of the words “ in English ”.

Amendment of section 175 of the principal enactment.

31. Section 175 of the principal enactment is hereby amended as follows:—

(1) by the renumbering of that section as subsection (1) of that section; and

(2) by the insertion, immediately after the renumbered subsection (1), of the following new subsection:—

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

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.”; and

(3) by the substitution for the marginal note to that section of the following new marginal note:—

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

32. Section 186 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Judgement to be in writing and to be dated and signed in open court.

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.”.

Replacement of section 186 of the principal enactment.

33. Section 190 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Requisites of decree relating to immovable property.

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.”.

Replacement of section 190 of the principal enactment.

34. Section 208 of the principal enactment is hereby amended by the omission of the proviso to that section.

Amendment of section 208 of the principal enactment.

35. Section 218 of the principal enactment is hereby amended as follows:—

Amendment of section 218 of the principal enactment.

(1) in the first proviso to that section as follows:—

(i) by the omission of clause (b) and the substitution therefor, of the following new clause:—

“ (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;”;

(ii) by the omission of clause (c) and the substitution therefor, of the following new clause:—

“(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;”;

(iii) by the omission of clause (h) and the substitution therefor, of the following new clause:—

“(h) so much of the salary and allowances of a state officer as does not in the aggregate exceed five hundred rupees per month;”;

(iv) by the omission of clause (l) and the substitution therefor, of the following new clause:—

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

(v) by the omission of clause (m) and the substitution therefor, of the following new clause:—

“(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;”;

(vi) by the omission of clause (n) and the substitution therefor, of the following new clause:—

“(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;"; and

(vii) by the omission of clause (p);

(2) by the omission of the second proviso to that section;

(3) by the omission of the "Explanation" attached to that section and the substitution therefor, of the following new Explanation:—

" *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."; and

(4) by the omission of all the words from "In clause (p)" to the end of that section.

36. Section 255 of the principal enactment is hereby amended by the omission of item II of that section and the substitution therefor, of the following new item:—

Amendment of  
section 255  
of the  
principal  
enactment.

" II—For  
immovable  
property.

II—In all cases of immovable property the like notice of sale shall be given as is herein before required in sales of movable property, and the Fiscal, Deputy Fiscal, or other officer shall also cause to be made three copies of the notice of sale in the language of the court, and where the language prevailing in the district is different, 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."

Replacement of  
section 256  
of the  
principal  
enactment.

37. Section 256 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Advertisement  
where  
property  
exceeds five  
thousand  
rupees in  
value.

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 herein before required, advertise the sale thereof, enumerating briefly the goods for sale, the nature and situation of the land, and the time and place of the sale, in 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.”

Repeal of  
section 257  
of the  
principal  
enactment.

38. Section 257 of the principal enactment is hereby repealed.

Replacement of  
sections 296  
and 297  
of the  
principal  
enactment.

39. Sections 296 and 297 of the principal enactment are hereby repealed and the following new sections substituted therefor:—

‘ Mode of  
payment to  
court by  
attorneys-  
at-law and  
other  
persons.

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.

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.

40. Section 301 of the principal enactment is hereby repealed and the following section substituted therefor:—

" No arrest  
for sum  
under  
Rs. 1,500.

301. No warrant under section 298 or notice under section 299 shall be issued in any case in which the sum awarded in the decree inclusive of interest, if any, up to the date of the decree but exclusive of any further interest and of costs, is less than one thousand five hundred rupees."

Replacement of  
section 301  
of the  
principal  
enactment.

41. Sections 325 to 330 (both sections inclusive) of the principal enactment are hereby repealed and the following new sections substituted therefor:—

" Procedure in  
event of  
event of  
to execution  
of writ or  
delivery of  
property.

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

Replacement of  
sections 325  
to 330  
of the  
principal  
enactment.

respondents to file objections, if any, within such time as they may be directed by court.

(2) When a petition under subsection (1) is presented, the court shall 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 both in Sinhala and in any other language prevailing within the district 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 courthouse and if the court so orders shall also be published in any daily newspaper as the court may direct.

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

due notice of the date of such investigation and inquiry has been given to all persons concerned.

Punishment  
of person  
obstructing.

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

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

(b) that the resistance, obstruction, hindrance or ouster complained of was occasioned by a person other than the judgment-debtor, and that the claim of such person to be in possession of the property, whether on his own account or on account of some person other than the judgment-debtor, is frivolous or vexatious, or

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

shall direct the judgment-creditor to be put into or restored to the possession of the property and may, in the case specified in paragraph (a) in addition deal with the judgment-debtor or such other person in the manner provided by law for the punishment of contempt of court.

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

(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.

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

Court shall  
investigate  
dispute  
if bona fide  
claimant be  
dispossessed  
in effecting  
the execution.

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.

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.

330. Any subsequent resistance, obstruction or hindrance to the execution of the writ or ouster of the judgment-creditor within a year and a day of the delivery of possession may be dealt with summarily as for a contempt of court."

42. Section 338 of the principal enactment is hereby amended by the repeal of subsection (3) of that section and the substitution therefor, of the following new subsection:—

Amendment of  
section 338  
of the  
principal  
enactment.

(3) For the purposes of this Chapter—

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

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

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

43. Section 350 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of  
section 350 of  
the principal  
enactment.

"Concurrence  
and  
preference.

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 out 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."

44. Section 355 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" 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, 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."

Replacement of section 355 of the principal enactment.

45. Section 356 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" To whom may all processes of court not being writs or warrants be directed.

356. All processes of court not being writs, or warrants directed to the Fiscal or other person for execution, and all notices and orders required by this Ordinance to be given to or served upon any person, shall, unless the court otherwise directs, be issued for service to the Fiscal of the court issuing such processes, notices, or orders under a precept of that court as is herein before

Replacement of section 356 of the principal enactment.

provided for the case of the summons to the defendant in an action. And the enactments of the sections of this Ordinance from section 59 to section 70, both inclusive, relative to the service of such summons shall apply, so far as is practicable, to the service of such processes, notices, and orders. 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."

Replacement of section 358 of the principal enactment.

46. Section 358 of the principal enactment is hereby repealed and the following new section substituted therefor:—

"Proceedings against Fiscal for contempt, &c.

358. All proceedings for attachment, contempt, or otherwise against a Fiscal or Deputy Fiscal for neglect or refusal to serve process or to comply with any order or direction of the court in connection therewith shall, where such Fiscal or Deputy Fiscal is the Fiscal or Deputy Fiscal of a 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."

Replacement of section 360 of the principal enactment.

47. Section 360 of the principal enactment is hereby repealed and the following new section substituted therefor:—

"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."

48. Section 361 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement  
of section  
361 of the  
principal  
enactment.

"Duty of  
every  
Fiscal to  
assist.

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."

49. Section 362 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement  
of section  
362 of the  
principal  
enactment.

"Every  
writ or  
process to be  
valid for the  
whole of  
Sri Lanka.

362. Every mandate, writ, warrant, precept, or other process issuing from the Supreme Court, or from any High Court or District Court or Magistrate's 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."

Replacement  
of section  
365 of the  
principal  
enactment.

50. Section 365 of the principal enactment is hereby repealed and the following new section substituted therefor:—

"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 Sunday, or 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."

51. Section 373 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 373 of the principal enactment.

"Summary procedure by petition.

373. Every application to the court, or action, of summary procedure shall be instituted upon a duly stamped written petition presented to court by the applicant."

52. Section 374 of the principal enactment is hereby amended by the omission of the words " in the English language "

Amendment of section 374 of the principal enactment.

53. Section 394 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor, of the following new subsection:—

Amendment of section 394 of the principal enactment.

(2) For the purposes of this Chapter—

"estate" means the gross value of the estate of the deceased ; and

"legal representative" means an executor or administrator, or in the case of an estate below the value of twenty thousand rupees, the next of kin who have adiated the inheritance."

54. Sections 416 and 417 of the principal enactment are hereby repealed and the following new sections substituted therefor:—

Replacement of sections 416 and 417 of the principal enactment.

"Security for costs where plaintiff resident out of Sri Lanka.

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.

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."

Replacement of section 419 of the principal enactment.

55. Section 419 of the principal enactment is hereby repealed and the following new section substituted therefor:—

"What amounts to residing out of Sri Lanka.

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."

Replacement of section 427 of the principal enactment.

56. Section 427 of the principal enactment is hereby repealed and the following new section substituted therefor:—

"Foreign courts to which provisions apply.

427. The provisions herein before contained as to the execution and return of commissions shall apply to commissions issued by the courts of any foreign country recognized by the Government of Sri Lanka."

Insertion of new heading immediately after section 440 of the principal enactment.

57. The new heading "CERTIFIED COPIES" is hereby inserted immediately after section 440 of the principal enactment.

58. The following new section is hereby inserted immediately after the heading "CERTIFIED COPIES" appearing immediately after section 440, and shall have effect as section 440A, of the principal enactment:—

Insertion  
of new  
section 440A  
in the  
principal  
enactment.

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.

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 Chapter II of the Administration of Justice Law No. 44 of 1973.’.

Repeal of  
Chapter XXX  
of the  
principal  
enactment.

59. Chapter XXX of the principal enactment is hereby repealed.

Amendment of  
section 456  
of the  
principal  
enactment.

60. Section 456 of the principal enactment is hereby amended as follows:—

(1) by the repeal of the proviso to subsection (1) of that section; and

(2) by the repeal of subsection (4) of that section.

61. The following new section is hereby inserted immediately after section 461, and shall have effect as section 461A, of the principal enactment:—

Insertion  
of new  
section 461A  
in the  
principal  
enactment.

" 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 plaintiff fails to aver the fact of such notice having been given, the court shall permit an amendment of the plaint averring the giving of such notice and if a postponement or adjournment is occasioned in consequence thereof, the court may award such costs as it thinks fit.

(3) No such action as is referred to in section 461 shall be dismissed only for the reason that no notice prior to the institution of action had been given as required by the said section or that a statement that such notice of action has been duly delivered or left has not been averred in the plaint."

62. Chapter XXXII of the principal enactment is hereby repealed.

Repeal  
of Chap-  
ter XXXII  
of the  
principal  
enactment.

Amendment of  
section 501  
of the  
principal  
enactment.

63. Section 501 of the principal enactment is hereby amended by the addition, at the end of that section, of the following proviso:—

“ Provided that for the purpose of instituting or defending a particular action only on behalf of a person alleged to be of unsound mind or otherwise mentally ill, or feeble and incapable of managing his own affairs, the court shall appoint a next friend or guardian *ad litem* for such person as if he were a minor.”

Replacement  
section 516  
of the  
principal  
enactment.

64. Section 516 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Deposit of  
the will  
of deceased.

516. (1) When any person shall die leaving a will in Sri Lanka, the person in whose keeping or custody it shall have been deposited, or who shall find such will after the testator's death, shall produce the same to the District Court of the district in which such depository or finder resides, or to the District Court of the district in which the testator shall have died, as soon as reasonably may be after the testator's death. And he shall also make oath or affirmation, or produce an affidavit (form No. 81, First Schedule) verifying the time and place of death, and stating (if such is the fact) that the testator has left property within the jurisdiction of that or any other, and in that event what, court, and the nature and value of such property; or, if such is the fact, that such testator has left no property in Sri Lanka.

The will so produced shall be numbered and initialled by the Probate Officer and deposited and kept in the record room of the District Court.

(2) In this section, " Probate Officer " means the Registrar of the District Court and includes any other officer generally or specially authorized by the court to exercise powers and perform the duties of a Probate Officer in testamentary proceedings.

65. Section 518 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor, of the following new subsection:—

Amendment of section 518 of the principal enactment.

" (1) When any person shall die leaving a will under or by virtue of which any property in Sri Lanka is in any way affected, any person appointed executor therein may apply to the District Court of the district within which he resides, or within which the testator resided at the time of his death, or within which any land belonging to the testator's estate is situate, to have the will proved and to have probate thereof issued to him; also any person interested, either by virtue of the will or otherwise, in having the property of the testator administered, may apply to such court to have the will proved and to obtain grant to himself of administration of the estate with copy of the will annexed."

66. Section 519 of the principal enactment is hereby amended by the addition, at the end of that section of the following new subsection:—

Amendment of section 519 of the principal enactment.

' (3) For the purposes of this Chapter " estate " shall mean the gross value of the estate of the deceased.'

67. Section 520 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 520 of the principal enactment.

" When Public Trustee may be appointed.

520. Where there is no person fit and proper in the opinion of the court to be appointed administrator in manner in the last preceding section provided, or no such person is willing to be so appointed, and not in any other case, the court shall appoint the Public Trustee such administrator."

Insertion  
of new  
section 520A  
in the  
principal  
enactment.

68. The following new section is hereby inserted immediately after section 520, and shall have effect as section 520A, of the principal enactment:—

" Requirements  
when Public  
Trustee applies  
for letters of  
administration.

520A. (1) Whenever the Public Trustee applies for letters of administration, it shall be sufficient if the petition presented for the grant of such letters states—

- (a) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner;
- (b) the names and addresses of the surviving next of kin of the deceased, if known;
- (c) the full and true particulars of the property left by the deceased as far as he has been able to ascertain the same;
- (d) particulars of the liabilities of the estate, if known.

(2) The Public Trustee shall not be required to file accounts of the property of the deceased unless the court otherwise directs."

Replacement  
of section  
521 of the  
principal  
enactment.

69. Section 521 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" Security.

521. In every case in which it is found necessary, whether by reason of such executor as aforesaid not applying for probate, or by reason of there being no executor resident in Sri Lanka competent and willing to act, or by reason of no person who is competent under section 518 to apply for letters of administration so applying, that any such person as is in section 519 mentioned, should be appointed administrator, the court shall take from such

person security for the due administration of the estate in manner in section 538 mentioned, and it shall not in any case be competent for the court to dispense with such security under the provisions of section 541."

70. Section 522 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement  
of section  
522 of the  
principal  
enactment.

"Duties of  
Public  
Trustee  
relating  
to the  
administration  
of estates.

522. Whenever the Public Trustee has obtained probate in respect of a will or grant of letters of administration in respect of the estate of a deceased person, he shall as far as practicable, comply with the provisions of this Chapter relating to the administration of estates:

Provided that the Public Trustee shall not be required—

- (a) to take any oath as executor or administrator;
- (b) to furnish any bond or security, but shall be subject to the same liability and dues as if he had given such bond or security;
- (c) to make payment or secure the payment of assessed estate duty prior to his undertaking the administration of the estate, but shall eventually make such payment as required by the Estate Duty Ordinance;
- (d) to affix stamps on any document at or about the time of the making of such document; but shall eventually make such payment as required by the Stamp Ordinance;
- (e) unless the court otherwise directs, to tender final accounts."

Amendment  
of section  
523 of the  
principal  
enactment.

71. Section 523 of the principal enactment is hereby amended by the addition, at the end of that section, of the following proviso:—

“ Provided, however, that the court may for good cause supersede the claim of the widow or widower.”

Amendment  
of section  
524 of the  
principal  
enactment.

72. Section 524 of the principal enactment is hereby amended by the addition, at the end of that section, of the following new subsection:—

“(4) The petitioner shall tender with the petition—

(a) the declaration of property referred to in section 30 of the Estate Duty Ordinance in triplicate with a certified copy of the will for transmission by court to the Commissioner-General of Inland Revenue;

(b) draft order *nisi*;

(c) the requisite stamps for the order *nisi* and service thereof;

(d) draft notice of order *nisi* in the form No. 84A in the First Schedule;

(e) proof of payment of the estimated charges to cover the cost of advertising the notice of order *nisi* in a local newspaper as hereinafter provided; and

(f) the consent in writing of such respondents as consent to his application.”

Amendment  
of section  
525 of the  
principal  
enactment.

73. Section 525 of the principal enactment is hereby amended as follows:—

(1) by the renumbering of that section as subsection (1) of that section; and

(2) by the addition, immediately after renumbered subsection (1), of the following new subsection:—

“(2) The petitioner shall tender with the petition—

(a) the declaration of property referred to in section 30 of the Estate Duty Ordinance in triplicate with a certified copy of the will for transmission by court to the Commissioner-General of Inland Revenue;

- (b) draft order absolute;
- (c) the requisite stamps for such order absolute;
- (d) draft notice of order absolute in the form No. 84B in the First Schedule; and
- (e) proof of payment of the estimated charges to cover the cost of advertising the notice of order absolute in a local newspaper as hereinafter provided."

74. Section 529 of the principal enactment is hereby amended as follows:—

Amendment  
of section  
529 of the  
principal  
enactment.

- (1) by the renumbering of that section as subsection (1) of that section; and
- (2) by the addition, immediately after renumbered subsection (1), of the following new subsection:

"(2) The notice of such order absolute shall be in the form No. 84B in the First Schedule and shall be advertised in the manner provided in section 532."

75. Section 530 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement  
of section  
530 of the  
principal  
enactment.

" Mode of  
application  
and proof for  
grant of  
administration  
in absence  
of a will.

530 (1) When any person shall die without making a will or where the will cannot be found, every application for grant of administration of his property may be made to the District Court of the district within which the applicant resides, or within which the deceased resided at the time of his death or within which any land belonging to the deceased's estate is situate. Every such application shall be made on petition by way of summary procedure, which petition shall set out in the numbered paragraphs prescribed by section 524, the relevant facts of the absence of the will, the death of the deceased, and the heirs of the deceased to the best of the



petitioner's knowledge; the petition shall also show the character in which the petitioner claims and the facts which justify his doing so. The application shall also be supported by sufficient evidence, to afford prima facie proof of the material allegations in the petition, and shall name the next of kin of the deceased as respondents.

(2) (a) The petitioner shall tender with the petition—

- (i) the declaration of property referred to in section 30 of the Estate Duty Ordinance in triplicate for transmission by court to the Commissioner-General of Inland Revenue;
- (ii) draft order *nisi*;
- (iii) the requisite stamps for the order *nisi* and service thereof;
- (iv) draft notice of order *nisi* in the form No. 84A in the First Schedule; and
- (v) proof of payment of the estimated charges to cover the cost of advertising the notice of order *nisi* in a local newspaper as hereinafter provided.

(b) The petitioner may also tender with the petition the consent in writing of such respondents as consent to his application.

Insertion of  
new sections  
531A and  
531B in the  
principal  
enactment.

76. The following new sections are hereby inserted immediately after section 531 of the principal enactment and shall have effect as sections 531A and 531B of that enactment:—

\* Court to  
forward  
declaration  
made by  
the  
petitioner  
to the  
Commissioner-  
General of  
Inland  
Revenue.

531A. (1) The court shall, upon receipt of the declaration referred to in section 30 of the Estate Duty Ordinance, forthwith forward to the Commissioner-General of Inland Revenue two copies of such declaration, and where the will has been filed, one copy of the will.

(2) The Assessor shall, within one year after the receipt by him of such particulars as may be necessary to assess the estate duty payable in respect of the estate of the deceased, determine the person or persons by whom the whole or part of such duty is payable and assess the estate duty payable in respect of the estate.

(3) On the payment of the estate duty assessed under the preceding subsection or on such security as the Commissioner-General of Inland Revenue may deem sufficient being furnished for the payment of such estate duty, such Commissioner-General shall issue a certificate to that effect.

(4) Whenever it appears to an Assessor that the amount which any person is liable to pay as estate duty has been assessed under subsection (2) at less than the appropriate amount, the Assessor may make an additional assessment of the amount which such person is in the opinion of the Assessor liable to pay:

Provided that no such additional assessment shall be made after the expiry of two years from the date of grant of probate or letters of administration.

(5) Nothing in this section shall prevent the Assessor from acting under any such provisions of the Estate Duty Ordinance as are not inconsistent with the provisions of this section.

(6) In this section "Assessor" has the same meaning as in the Estate Duty Ordinance.

531B. Notwithstanding the provisions of section 55 of the Estate Duty Ordinance, the court may grant probate or letters of administration, as the case may be, upon production of a provisional certificate under the provisions of subsection (3) of section 531A.

Court to  
grant  
probate or  
letters of  
administration  
upon  
provisional  
certificate.

Replacement  
of section  
532 of the  
principal  
enactment.

77. Section 532 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Notice of  
order *nisi*  
to be  
advertised.

532. In all cases of application for the grant of the administration of the deceased's property, whether with or without a will, the court shall, whether a respondent is named in the petition or not, direct notice of the order *nisi* in the form No. 84A in the First Schedule to be advertised twice in a local newspaper before the day of final hearing; the newspaper to be selected by the court with the object that the notice of the order *nisi* should come to the knowledge of all persons interested in the administration of the deceased's property:

Provided that the court may in its discretion direct such other mode of advertisement in lieu of such publication as to it seems sufficient.”

Insertion of  
of new  
section 534A  
in the  
principal  
enactment.

78. The following new section is hereby inserted immediately after section 534, and shall have effect as section 534A, of the principal enactment:—

“ Procedure  
where a  
corporation  
is appointed  
executor  
under a  
will.

534A. (1) Where a corporation is appointed executor under a will either alone or jointly with another person, the court may grant probate to such corporation either solely or jointly with such other person as the case may require, and the corporation may act as executor accordingly.

(2) Letters of administration may be granted to any corporation either solely or jointly with another person and the corporation may act as administrator accordingly.

(3) Any officer, authorized for the purpose by such corporation, may swear affidavits, take the oath of office, give security, and do any other act or thing, which the court may require, on

behalf of the corporation and the acts of such officer shall be binding on the corporation.”.

79. Section 538 of the principal enactment is hereby amended by the addition, at the end of that section, of the following new subsection:—

Amendment  
of section 538  
of the  
principal  
enactment.

“(3) Where a banking, insurance or other corporation approved by the court stands surety, no other surety shall be necessary, nor shall a mortgage or hypothecation of the property be required.”.

80. Section 539 of the principal enactment is hereby amended by the substitution, for the expression “as is prescribed in section 524.”, of the expression “as is prescribed in sections 524 and 530.”.

Amendment  
of section 539  
of the  
principal  
enactment

81. The following new sections are hereby inserted immediately after section 539, and shall have effect as sections 539A and 539B, of the principal enactment:—

Insertion  
of new  
sections 539A  
and 539B  
in the  
principal  
enactment.

Administration  
pendente  
lite.

539A. Where any legal proceeding touching the validity of the will of a deceased person or for obtaining, recalling, or revoking grant of probate or letters of administration is pending, the court may, either on the ground of undue delay or otherwise, grant letters of administration to the estate of the deceased to an administrator limited for the duration of such proceeding; such administrator shall be subject to the immediate control of the court and act under its direction, and shall not have the right of distributing the estate.

Limited letters  
for sale of pro-  
perty of estate.

539B. (1) Notwithstanding the provisions of section 55 of the Estate Duty Ordinance, where for the purpose of paying estate duty or for any other sufficient cause it becomes necessary to sell any property of the estate of a deceased person prior to the issue of probate or letters of administration the court may grant letters limited for the purpose of selling such property.

(2) Such property shall be specified in the grant and such grant shall expressly state that the letters are issued subject to the following conditions:—

- (a) that the sale shall be, if by private treaty, at the price fixed by court, or if by public auction, either at an upset price or otherwise;
- (b) that the net proceeds of sale shall be deposited in court within such time as the court may prescribe;
- (c) that the administrator to whom the letters are issued is not empowered to execute any deed of conveyance of immovable property prior to the confirmation of sale by the court; and
- (d) any other stipulation the court may in the circumstances deem fit to impose.

(3) Before making an order for grant of letters under this section, the Commissioner-General of Inland Revenue and the respondents to the original petition for probate or letters of administration shall be given notice of the application and they or any other person interested in the estate shall be heard in opposition unless they or any of them shall have signified their assent to such sale.”.

82. Section 541 of the principal enactment is hereby amended by the addition, immediately after the proviso thereto, of the following additional proviso:—

Amendment of  
section 541  
of the  
principal  
enactment.

“ Provided further that in all cases of the issue of probate or grant of administration to a sole beneficiary under a will or the sole heir in the case of intestacy or where all the heirs being *sui juris* consent thereto, security shall not be required.”.

83. Section 544 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Who may apply for administration in case of intestacy.

544. In any case where a person is so reported to have died intestate, any person interested in having the estate of such intestate administered may apply to such court for grant to himself of letters of administration; and the court shall have power, having regard, where there is a conflict of claims, to the provisions of section 523, to appoint such person administrator.”

Replacement of section 544 of the principal enactment

84. Section 547 of the principal enactment is hereby repealed and the following new section substituted therefor:—

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

547. No action shall be maintainable for the recovery of any property, movable or immovable, in Sri Lanka belonging to or included in the estate or effects of any person dying testate or intestate in or out of Sri Lanka within twenty years prior to the date of institution of the action, where such estate or effects amount to or exceed in value the sum of twenty thousand rupees unless grant of probate or letters of administration shall first have been issued. In the event of any such property being transferred in any manner other than under the provisions of subsection (1) of section 539B of this Ordinance or under section 28 of the Estate Duty Ordinance without such probate or administration being so first taken out, every transferor or transferee of such property shall be guilty of an offence, and in addition to any penalty imposed under this Ordinance, it shall be lawful for the State to recover from such transferor and transferee or either of them, such sum as would have been payable to defray estate duty. The amounts so recoverable shall be a first charge on the estate or effects of such testator or intestate in Sri Lanka or any part of such estate or effects, and may be recovered by action accordingly.”

Replacement of section 547 of the principal enactment.

Replacement of  
section 553  
of the  
principal  
enactment.

85. Section 553 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" Filing of  
the account,  
and payment  
into court.

553. Every executor and administrator shall file in the District Court, on or before the expiration of twelve months from the date upon which probate or grant of administration issued to him, or within such further time as the court may allow, a true and final account of his executorship or administration, as the case may be, verified on oath or affirmation, with all receipts and vouchers attached, and may at the same time pay into court any money which may have come to his hands in the course of his administration to which any minor or minors may be entitled."

Insertion  
of new  
sections 554A  
to 554E  
in the  
principal  
enactment.

86. The following new sections are hereby inserted immediately after section 554, and shall have effect as section 554A to 554E, of the principal enactment:—

" When a  
certificate of  
heirship  
may be  
applied  
for.

554A. When any person shall die without leaving a will and leaving an estate under twenty thousand rupees in value, any heir of the deceased shall be entitled to apply to the District Court of the district within which he resides, or within which the deceased resided at the time of his death, or within which any property of the deceased's estate is situate, for a certificate that he is an heir of the deceased.

Mode of  
application.

554B. The application shall be made on petition by way of summary procedure setting out the relevant facts of the absence of the will, the death of the deceased, the value of the estate and the heirs of the deceased to the best of the petitioner's knowledge, and the grounds upon which the petitioner claims to be an heir.

The application shall also be supported by sufficient evidence by way of affidavit to afford prima facie proof of the material allegations in the petition, and shall name the next of kin of the deceased as respondents.

Court if  
satisfied  
with proof  
to make  
order nisi.

554c. If the court is of opinion that the material allegations of the petition are proved, it shall make an order *nisi* declaring the petitioner's heirship, which order shall be served on the respondents and upon such other persons as the court shall think fit to direct, and shall come on for final hearing and disposal on a day to be named therein.

At final  
hearing  
on objection  
court shall  
frame issues.

554d. If on the day appointed for final hearing, or on the day to which it may have been adjourned, the respondent or any person upon whom the order *nisi* has been directed to be served, or any person then appearing to be interested in the administration of the deceased's property, satisfies the court that there are grounds of objection to the application, such as ought to be tried on viva voce evidence, then the court shall frame the issues which appear to arise between the parties, and shall try the same forthwith or on a day to be appointed for the purpose.

When  
order  
*nisi* shall  
be made  
absolute  
and when  
discharged.

554e. If at the final hearing or on the determination of the issues thus framed, it shall appear to the court that the prima facie proof of the material allegations of the petition has not been rebutted, then the order *nisi* shall be made absolute, and a certificate of heirship shall issue accordingly to the petitioner. If, on the other hand, it shall then appear to the court that the prima facie proof of any material allegations in the petition has been rebutted and that the petitioner has failed to establish his claim the order *nisi* shall be discharged, and the petition dismissed:

Provided that it shall be open to any of the respondents at such hearing of issues to establish his right to be an heir of the deceased and to have a certificate of heirship issued to him, whether the petition is dismissed or not."



Insertion of  
new Chapters  
XXXVIII A,  
XXXVIII B  
and  
XXXVIII C  
in the  
principal  
enactment.

87. The following new Chapters are hereby inserted immediately after section 554E, and shall have effect as Chapters XXXVIII A, XXXVIII B and XXXVIII C, of the principal enactment:—

CHAPTER XXXVIII A

INSOLVENT TESTAMENTARY ESTATES

When the  
estate of  
a deceased  
person is  
deemed to  
be insolvent.

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.

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.

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.

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.

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.

554L. A copy of the testamentary insolvency order *nisi* shall be served on each of the respondents named therein and notice of such order *nisi* in the form No. 93B in the First Schedule shall be advertised at the expense of the petitioner not later than one month prior to the date fixed in such order *nisi* for the determination of the matters contained therein in accordance with the provisions of section 532.

Person  
interested  
may  
intervene.

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.

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*.

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 appoint  
fit person to  
administer  
estate.

554Q. Where the executor named in the will or the widow or widower is unwilling to proceed with the due administration of an insolvent estate, or where the executor or administrator to

whom probate or letters have been issued fails to administer the estate with reasonable despatch, the court may, having regard to the proper conservation of the estate and the interest of all parties before it, appoint any fit person to administer the estate.

How insolvent estate to be distributed.

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.

554s. An executor or administrator of an insolvent estate shall have the same powers and be subject to the same obligations as the assignee of an insolvent appointed under the Insolvency Ordinance.

Administration of estates not to be stayed due to appeal.

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 Supreme Court shall make order to the contrary.

CHAPTER XXXVIII<sub>B</sub>

FOREIGN PROBATES

Sealing of  
foreign  
probates or  
letters of  
administration.

554u. Where a Court of Probate or other authority in a foreign country has either before or after the relevant date 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.

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.

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 538;
- (b) to file, on or before the expiration of twelve months from the date of such sealing, a true and final account, as regards the deceased's property and effects situated in Sri Lanka, of his executorship or his administration, as the case may be, verified on oath or affirmation, with all receipts or vouchers attached as required by section 553; and
- (c) to be compelled to make a judicial settlement of his account as executor or administrator, with respect to the deceased's property situated in Sri Lanka, under the provisions of Chapter LV.

Resealing court  
deemed to be  
court issuing  
probate or  
letters of  
administration.

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.

554AA. Notwithstanding the repeal of the British Courts Probate (Resealing) Ordinance (Chapter 99), 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 section 15 of the Administration of Justice Law, No. 44 of 1973.

Interpretation.

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;

“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; and

“relevant date” means the date on which the Civil Courts Procedure (Special Provisions) Law, 1977, comes into operation.

## CHAPTER XXXVIIIc

### GENERAL AND TRANSITIONAL PROVISIONS IN TESTAMENTARY MATTERS

Stamp duty to be first charge on the estate of the deceased.

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 provisions.

554DD. Where any person has prior to the relevant date died in Sri Lanka leaving an estate and testamentary proceedings had not been commenced in respect of such estate before the relevant date, such proceedings may be instituted under the provisions of this Ordinance.

In this section "relevant date" means the date on which the Civil Courts Procedure (Special Provisions) Law, 1977, comes into operation.

Amendment of section 556 of the principal enactment.

88. Section 556 of the principal enactment is hereby amended in subsection (2) of that section, by the omission of the word "provincial".

Amendment of section 575 of the principal enactment.

89. Section 575 of the principal enactment is hereby amended in subsection (1) of that section by the omission of the word "provincial".

Amendment of section 597 of the principal enactment.

90. Section 597 of the principal enactment is hereby amended as follows:—

(1) by the renumbering of that section as subsection (1) of that section; and

(2) by the addition, immediately after the renumbered subsection (1), of the following new subsection:—

"(2) The provisions of the Conciliation Boards Act, No. 10 of 1958, shall not apply to matrimonial actions."

Insertion of new-section 599A in the principal enactment.

91. The following new section is hereby inserted immediately after section 599, and shall have effect as section 599A, of the principal enactment:—

" Sections 598 and 599 to apply where adultery of the husband is alleged.

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."

Repeal of sections 600 and 601 of the principal enactment.

92. Sections 600 and 601 of the principal enactment are hereby repealed.

93. Section 602 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Decree to be passed declaring marriage dissolved.

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.”

Replacement of section 602 of the principal enactment.

94. Section 604 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Decree to be decree nisi in the first instance.

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.”

Replacement of section 604 of the principal enactment.

95. Section 605 of the principal enactment is hereby amended by the addition at the end of that section of the following proviso:—

“ Provided that where such decree *nisi* is entered *ex parte*, the period during which the same should not be made absolute shall be computed from the date of service of such decree *nisi* on the defaulting party.”

Amendment of section 605 of the principal enactment.

96. Section 606 of the principal enactment is hereby repealed.

Repeal of section 606 of the principal enactment.

97. Section 608 of the principal enactment is hereby amended as follows:—

(1) by the renumbering of that section as subsection (1) of that section;

(2) by the insertion, immediately after the renumbered subsection (1), of the following new subsection:—

(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 District Court, whether entered before or after the relevant date, or

Amendment of section 608 of the principal enactment.

- (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 District 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.

In this subsection "relevant date" means the date on which the Civil Courts Procedure (Special Provisions) Law, 1977, comes into operation; and

- (3) by the substitution for the marginal note to that section of the following new marginal note:—

"Application for separation or for divorce whether after decree of separation or otherwise."

Amendment of  
section 612  
of the  
principal  
enactment.

98. Section 612 of the principal enactment is hereby amended as follows:—

- (1) by the renumbering of that section as subsection (1) of that section; and  
(2) by the addition, immediately after the renumbered subsection (1), of the following new subsection:—

"(2) The provisions of the preceding subsection shall, *mutatis mutandis*, apply where a woman has been made a co-defendant."

99. Section 614 of the principal enactment is hereby amended as follows:—

Amendment of  
section 614  
of the  
principal  
enactment.

(1) by the renumbering of that section as subsection (1) of that section; and

(2) by the addition, immediately after the renumbered subsection (1), of the following new subsections:—

“(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.”

100. Section 615 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement  
of section  
615 of the  
principal  
enactment.

“ Settlement  
upon decree  
of divorce or  
separation.

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 (1)."

Repeal of sections 616 and 617 of the principal enactment.

101. Sections 616 and 617 of the principal enactment are hereby repealed.

Insertion of new section 624A in the principal enactment.

102. The following new section is hereby inserted immediately after section 624, and shall have effect as section 624A, of the principal enactment:—

" Enforcement of alimony and maintenance orders.

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."

Replacement of section 625 of the principal enactment.

103. Section 625 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" When parties may marry again.

625. Upon a decree *nisi* for divorce being made absolute under the provisions of this Chapter, or when three months after the passing of the decree thereunder of nullity of marriage shall have elapsed, without an appeal having been taken therefrom, or upon the confirmation in appeal of any such decree, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death."

Replacement of sections 627 of the principal enactment.

104. Section 627 of the principal enactment is hereby repealed and the following new section substituted therefor:—

" Saving of the application of this Ordinance as to Muslim and Kandyan Marriages.

627. Save as expressly otherwise provided in the Kandyan Marriage and Divorce Act (Chapter 113) and in the Muslim Marriage and Divorce Act (Chapter 115) 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."

105. Sections 636 to 638 (both inclusive) of the principal enactment are hereby repealed and the following new sections substituted therefor:—

"When want of jurisdiction caused by exclusive jurisdiction of any court or tribunal, averment of jurisdiction in plaint is traversed.

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; 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.

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.

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."

106. Section 650 of the principal enactment is hereby amended by the substitution, for the words "exceeding two hundred rupees", of the words "exceeding one thousand five hundred rupees".

Replacement of sections 636, 637 and 638 of the principal enactment.

Amendment of section 650 of the principal enactment.

Amendment of  
section 653  
of the  
principal  
enactment.

107. Section 653 of the principal enactment is hereby amended by the substitution, for the words "exceeding two hundred rupees", of the words "exceeding one thousand five hundred rupees".

Insertion of  
new sections  
724A and  
724B in the  
principal  
enactment.

108. The following new sections are hereby inserted immediately after section 724, and shall have effect as sections 724A and 724B, of the principal enactment:—

" Procedure  
where  
executor or  
administrator  
has failed to  
file an account  
under section  
553.

724A. (1) Any person interested in the estate may present to the court proof by affidavit that an executor or administrator has failed to file in court such account as is prescribed by section 553.

(2) The court shall thereupon, or of its own motion, if satisfied that the executor or administrator is in default, make order which shall be served on the delinquent, requiring him to file such final account on a date to be specified therein; and in default thereof to show cause why he should not be attached.

(3) Upon the day fixed in such order, if the delinquent has not filed a sufficient final account, the court may issue a warrant of attachment against him and deal with him as for contempt of court.

(4) A delinquent committed to jail under subsection (3) shall be discharged by the court upon his filing a sufficient final account.

(5) Every account so filed by the accounting party shall be in accordance with the specimen form No. 118A in the First Schedule with such variations as circumstances may require and shall set out distinctly—

(a) the assets and liabilities of the deceased valued as in the inventory;

(b) receipts and disbursements and transactions of property made by the accounting party up to the date to which his account is made up;

(c) the assets and liabilities as at the date to which the account is made up,

and all schedules thereto which would facilitate the taking of accounts.

(6) To each account filed shall be appended an affidavit of the accounting party to the effect that the account contains, according to the best of his knowledge and belief, a full and true statement of all assets and liabilities and of all his receipts and disbursements on account of the estate of the deceased and of all money and other property belonging to the estate which have come to his hands, or have been received by any other person by his order or authority for his use; and that he does not know of 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.

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.

109. Sections 754 to 756 (both inclusive) of the principal enactment are hereby repealed and the following new sections substituted therefor :—

"Mode of  
preferring  
appeal.

Replacement  
of sections 754  
to 756 of the  
principal  
enactment."

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 Supreme Court 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 Supreme Court against such order for the correction of any error in fact or in law, with the leave of the Supreme Court first had and obtained.

(3) Every appeal to the Supreme Court 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.

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 under section 15 of the Administration of Justice Law, No. 44 of 1973, or acknowledgment or waiver of security signed by the respondent or his registered attorney; and

- (b) proof of service, on the respondent or on his registered attorney, of a copy of the notice of appeal, in the form of a written acknowledgment of the receipt of such notice or the registered postal receipt in proof of such service.

(3) Every appellant shall within sixty days from the date of the judgment or decree appealed against present to the original court a petition of appeal setting out the circumstances out of which the appeal arises and the grounds of objection to the judgment or decree appealed against, and containing the particulars required by section 758, which shall be signed by the appellant or his registered attorney. Such petition of appeal shall be exempt from stamp duty.

(4) Upon the petition of appeal being filed, the court shall forward the petition of appeal together with all the papers and proceedings in the case relevant to the judgment or decree appealed against as speedily as possible, to the Supreme Court, 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.

Procedure in respect of appeal and application for leave to appeal.

756. (1) On receipt of the petition of appeal, the Registrar of the Supreme Court shall forthwith number the petition and shall enter such number in the Register of Appeals and notify the parties concerned by registered post.

(2) Every application for leave to appeal against an order of court made in the course of any civil action, proceeding or matter, shall be made by petition duly

stamped, addressed to the Supreme Court and signed by the party aggrieved or his registered attorney and shall be supported by affidavit and shall contain the particulars required by section 758. The appellant shall with such petition tender as many copies as may be required for service on the respondents.

(3) Upon an application for leave to appeal being filed, the Registrar of the Supreme Court shall number such application and shall, as speedily as possible, submit such application to a Judge in Chambers.

(4) The application for leave to appeal shall be presented to the Supreme Court for this purpose by the party appellant or his registered attorney within a period of fourteen days from the date when the order appealed against was pronounced exclusive of the day of that date itself and of the day when the application is presented and of Sundays and public holidays and the Supreme Court shall receive it and deal with it as hereinafter provided and if such conditions are not fulfilled, the Supreme Court shall reject it.

(5) A Judge to whom an application for leave to appeal has been submitted may—

(a) forthwith fix a date for the hearing of the application and order notice thereof to be issued on the respondent or respondents, or

(b) require the application to be supported in open court by the petitioner or attorney-at-law on his behalf on a day to be fixed by such Judge; and the court having heard the petitioner or his attorney-at-law may reject such application or fix a day for

the hearing of the application and order notice thereof to be issued on the respondent or respondents:

Provided that when an application is rejected under this subsection, the court shall record the reasons for such rejection.

(6) Where notice is ordered to issue, the Registrar of the Supreme Court shall accordingly issue notice on each respondent or his registered attorney by registered post and shall also annex to it a copy of the petition of appeal furnished by the appellant. On the date specified in the notice, or on such other date as the court shall then fix, the court shall hear the application for leave to appeal and grant or refuse leave to appeal.

(7) Upon leave to appeal being granted, the Registrar of the Supreme Court shall immediately inform the original court, and, unless the Supreme Court has otherwise directed, all proceedings in the original court shall be stayed and the said court shall as speedily as possible forward to the Supreme Court all the papers and proceedings in the case relevant to the matter in issue.

110. Section 757 of the principal enactment is hereby amended as follows:—

(1) by the renumbering of that section as subsection (1) of that section; and

(2) by the addition, immediately after the renumbered subsection (1), of the following new subsection:—

“(2) Security shall be dispensed with where the appellant is—

(a) the Attorney-General;

(b) the spouse in a matrimonial action in whose favour an order for alimony *pendente lite* has been made;

Amendment  
of section 757  
of the  
principal  
enactment.

(e) an insolvent in respect of insolvency proceedings;

(d) exempted from depositing security by any other written law.

Amendment of section 758 of the principal enactment.

111. Section 758 of the principal enactment is hereby amended in subsection (1) thereof, by the omission of the words "in the English language".

Amendment of section 759 of the principal enactment.

112. Section 759 of the principal enactment is hereby amended as follows:—

(1) by the renumbering of that section as subsection (1) of that section; and

(2) by the addition, immediately after the renumbered subsection (1), of the following new subsection:—

"(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 Supreme Court 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."

Insertion of new section 760A in the principal enactment.

113. The following new section is hereby inserted immediately after section 760, and shall have effect as section 760A, of the principal enactment:—

"Death or change of status of party to appeal.

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 Supreme Court may in the manner provided in the rules made under section 15 of the Administration of Justice Law, No. 44 of 1973, 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."

114. Section 761 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Application for execution of decree not to be entertained till expiry of appealable time.

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.”

Replacement of section 761 of the principal enactment.

115. Section 762 of the principal enactment is hereby repealed.

Repeal of section 762 of the principal enactment.

116. Section 768 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Hearing of appeal.

768. When the petition of appeal has been preferred to the Supreme Court in the manner in section 755 prescribed or in the event of the petition of appeal being presented immediately to the Supreme Court, and when the order for the admission has been made, the Registrar of the Supreme Court 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 Chief Justice or any other Judge of the Supreme Court authorized by him in that behalf:

Replacement of section 768 of the principal enactment.

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 Supreme Court 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 High Courts or District Courts for fourteen days, or in the case of appeals from Magistrates' 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."

Amendment of section 769 of the principal enactment.

117. Section 769 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor, of the following new subsection:—

"(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 Supreme Court to reinstate upon such terms as the court shall think fit any appeal that has been dismissed under this subsection."

Replacement of section 770 of the principal enactment.

118. Section 770 of the principal enactment is hereby repealed and the following new section substituted therefor:—

"Power of court to adjourn hearing.

770. If, at the hearing of the appeal, the respondent is not present and the court is not satisfied upon the material in the record or upon other evidence that the notice of appeal was duly served upon him or his registered attorney as herein before provided, or if it appears to the court at such hearing that any

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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, the court may issue the requisite notice of appeal for service.”.

119. Section 773 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Power of court to dismiss the appeal, affirm, vary or set aside the decree or direct new trial &c.

773. Upon hearing the appeal, it shall be competent to the Supreme Court to 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 Supreme Court 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.”.

Replacement of section 773 of the principal enactment.

120. Section 774 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor, of the following new subsection:—

Amendment of section 774 of the principal enactment.

(2) The judgment which shall be given or taken down in writing, shall be signed and dated by the Judge or Judges, as the case may be, and shall state—

- (a) the points for determination;
- (b) the decision of the Judge or Judges thereon;
- (c) the reasons which have led to the decision;
- (d) the relief, if any, to which the appellant is entitled on the appeal in consequence of the decision.”.

Repeal of  
section  
775 of the  
principal  
enactment.

121. Section 775 of the principal enactment is hereby repealed.

Repeal of  
Chapter LXII  
of the  
principal  
enactment.

122. Chapter LXII of the principal enactment is hereby repealed.

Replacement of  
section 800 of  
the principal  
enactment.

123. Section 800 of the principal enactment is hereby repealed and the following new section substituted therefor:—

“ Sentences  
to be imposed  
under this  
Chapter ”

800. The following sentences of fine or imprisonment, as the case may be, may be imposed on conviction for contempt under this Chapter by the following courts respectively, namely—

- (a) by the Supreme Court—imprisonment, either simple or rigorous, to a term not exceeding seven years and fine not exceeding seven thousand rupees in addition thereto or in lieu thereof;
- (b) by a High Court—fine not exceeding five thousand rupees or imprisonment, either simple or rigorous, for a period not exceeding five years;
- (c) by a District Court—fine not exceeding two thousand five hundred rupees or imprisonment, either simple or rigorous, for a period not exceeding two years;
- (d) by a Magistrate's Court—fine not exceeding one thousand five hundred rupees or imprisonment, either simple or rigorous, for a period not exceeding eighteen months.”

Repeal of  
Chapter LXVI  
of the  
principal  
enactment.

124. Chapter LXVI of the principal enactment is hereby repealed.

Amendment of:  
the First  
Schedule to  
the principal  
enactment.

125. The First Schedule to the principal enactment is hereby amended as follows:—

- (1) by the substitution for Form No. 16, of the following new form:—

"No. 16

[Section 55 (1)]

FORM OF SUMMONS

(Title)

To the above-named defendant (or defendants).

Whereas the above-named plaintiff has instituted an action against you in this court for (*state particulars of claim*) you are hereby required to file in court your answer, if any, to the plaint herewith annexed on or before the ..... day of ..... 19 ..... and you are hereby required to take notice that in default of your filing answer on or before the said date, the action will be proceeded with and heard *ex parte*.

You are further required, if you do not appear by a registered attorney, to file a memorandum stating an address at which all legal notices may be served.

By Order of Court,

\_\_\_\_\_  
Registrar.

*Note.*—If you desire to receive notice of the date on which the above action will be called in open court, in order to fix the date of trial, you are required by section 80 to furnish to the Registrar of this Court a registered address and tender stamps to the requisite value to cover postage by registered post.

\_\_\_\_\_  
Sgd : Registrar.

This ..... day of ..... 19 .....";

(2) by the insertion immediately after Form No. 16, of the following new form:—

"No. 16A

[Section 55 (2)]

MEMORANDUM OF REGISTERED ADDRESS

In the District Court/Magistrate's Court of .....

Case No. ....

On this ..... day of ..... 19 .....

I, ....., being the defendant in the above action hereby furnish my postal address for service of the notice under section 80 of this Code and all other legal documents required to be served on me under this Code. I undertake to inform the Registrar of any change of address.

I also tender stamps to the value of Rs. .... to cover cost of service of the notice under section 80 on me by registered post.

Signature .....  
Defendant.

Address :

Signature : .....  
Defendant.":

(3) by the omission of Form No. 18 and the substitution therefor, of the following new Form :—

“No. 18

[Sections 69, 70 and 71]

FORM OF SUMMONS FOR SERVICE OUT OF SRI LANKA

(Title)

To the above-named defendant (or defendants).

Whereas the above-named plaintiff has instituted an action against you in this court for (state particulars of claim) you are hereby required to file in court your answer, if any, to the plaint herewith annexed on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ and you are hereby required to take notice that in default of your filing answer on or before the said date, the action will be proceeded with and heard *ex parte*.

You are further required, if you do not appear by a registered attorney, to file a memorandum stating an address at which all legal notices may be served.

By Order of Court,

\_\_\_\_\_  
Registrar.

Note.—If you desire to receive notice of the date on which the above action will be called in open court, in order to fix the date of trial, you are required by section 80 to furnish to the Registrar of this Court a registered address and tender stamps to the requisite value to cover postage by registered post.

Sgd : \_\_\_\_\_,  
Registrar.

This \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.”;

(4) by the insertion immediately after Form No. 84 of that Schedule of the following new Forms which shall have effect as Forms No. 84A and No. 84B of that Schedule :—

“No. 84A

[Sections 524-532] FORM OF NOTICE OF ORDER *Nisi*

In the District Court of .....

In the matter of the Last Will/Intestate Estate of the late .....

..... Deceased

..... Petitioner.

Testamentary Jurisdiction } No.

It is hereby notified that the above-numbered testamentary action has been instituted in the above court for proof of the Last Will/the administration of the Estate of the above-named deceased and Order *Nisi* has been entered accordingly therein.

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Any person interested is hereby required to appear before this court on the ..... day of ..... 19 ..... at ..... o'clock in the forenoon and show cause, if any, why the Order Nisi so entered should not be made Absolute.

By Order of Court,  
\_\_\_\_\_,  
Registrar.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_:

No. 84 B

FORM OF NOTICE OF ORDER ABSOLUTE IN THE FIRST INSTANCE

[Section 529]

In the District Court of .....  
In the matter of the Last Will of the late  
..... Deceased  
..... Petitioner.

Testamentary } No.  
Jurisdiction }

It is hereby notified that the above numbered action has been instituted in the above court for proof of the Last Will of the abovenamed deceased and Order Absolute in the first instance has been entered accordingly therein on the ..... day of ..... 19....

By Order of Court,  
\_\_\_\_\_,  
Registrar.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.”;

(5) by the insertion immediately after Form No. 93 of that Schedule of the following new forms which shall have effect as Forms No. 93 A, No. 93 B and No. 93 C of that Schedule:—

“No. 93 A

FORM OF ORDER NISI DECLARING ESTATE INSOLVENT

[Section 554 K]

In the District Court of .....  
In the matter of the Last Will/Intestate  
Estate of the late .....  
Deceased.

..... Petitioner.  
vs.  
..... Respondents.

Testamentary } No.  
Jurisdiction }

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(1) name  
and  
office of  
Judge.

This matter coming on for disposal before (1) .....  
..... on the ..... day of .....  
19 ..... (in the presence of ..... on the  
part of the petitioner, and ..... on the part  
of the respondents) (and the affidavit of .....  
dated ..... having been read and  
the evidence of ..... taken), (and all  
parties heard).

It is declared that the estate of ..... deceased  
be administered as an insolvent estate in accordance with  
the provisions of Chapter XXXVIII A of the Civil  
Procedure Code unless the respondents or any person on  
whom the Court directs the order to be served shall on or  
before the ..... day of ..... 19 ..... show  
sufficient cause to the satisfaction of this Court to the  
contrary.

(Signed) .....  
District Judge.

Dated this ..... day of ..... 19 .....

No. 93 B

[Section  
554 L]

FORM OF NOTICE OF ORDER NISI DECLARING ESTATE INSOLVENT  
In the District Court of .....  
In the matter of the Last Will/Intestate  
Estate of the late .....  
..... Deceased.  
..... Petitioner.

Testamentary ] No.  
Jurisdiction ]

It is hereby notified that the above-numbered testamen-  
tary action has been instituted in the above court for the  
administration of the Estate of the above-named deceased as  
an insolvent estate and Order Nisi has been entered  
accordingly therein.

Any person interested is hereby required to appear before  
this court on the ..... day of .....  
19 ..... at ..... o'clock in the forenoon and show  
cause, if any, why the Order Nisi so entered should not be  
made absolute.

By Order of Court,  
.....  
Registrar.

Dated this ..... day of ..... 19 .....

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No. 93 C

FORM OF ORDER ABSOLUTE DECLARING ESTATE INSOLVENT

[Section  
554 N]

In the District Court of .....  
In the matter of the Last Will/Intestate  
Estate of the late .....  
..... Deceased.  
..... Petitioner,  
vs.  
..... Respondents.

Testamentary }  
Jurisdiction } No.

It is hereby notified that the Order *Nisi* entered on .....  
..... in the above numbered  
testamentary action has been made absolute on .....

By Order of Court,

\_\_\_\_\_  
Registrar.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.";



(6) by the insertion immediately after Form No. 118 of that Schedule of the following new Form which shall have effect as Form No. 118A of that Schedule :—

[Section 724A]

No 118A

FORM OF FINAL ACCOUNT

Testamentary No. ....

LIBABILITIES, PAYMENTS AND DISTRIBUTIONS

ASSETS

Date of Death —

<i>Valuation as per Inventory</i>	<i>Receipts and Transactions</i>	<i>Liabilities as per Inventory</i>	<i>Payments and Distributions</i>	<i>Ref. to Court Order or Transaction</i>	<i>Voucher or Receipt No.</i>
Immovable Property — .. Funeral expenses and alms giving, Income Tax, Estate Duty at .....% Costs of Administration Debts due and payable as per Inventory, Debts paid as per Schedule					
Movable Property — ..					

and:

*Civil Procedure Code (Amendment) Law, 81*  
*No. 20 of 1977*

- (7) by the insertion immediately after Form No. 119 of that schedule of the following new Form which shall have effect as Form No. 119A of that Schedule:—

No. 119A

FORM OF RECEIPT AND DISCHARGE IN FAVOUR OF  
EXECUTOR OR ADMINISTRATOR

(Section 724B)

CAPTION

We do hereby acknowledge the conveyance and delivery and/or receipt of the devises and legacies made and bequathed severally to us under the last will (or the distributive shares due to us as heirs) (or the debts due to us as creditors) of the deceased abovenamed, and do hereby grant a full discharge to the Executor (or Administrator) abovenamed in respect of the said devises and legacies (or distributive shares or debts, as the case may be).

Sgd. \_\_\_\_\_  
Respondent.

Sgd. \_\_\_\_\_  
Respondent.

Sgd. \_\_\_\_\_  
Respondent.

Witness to the identity and signature of the abovenamed  
\_\_\_\_\_ respondents.

Sgd. \_\_\_\_\_  
Attorney-at-Law."

Construction  
of certain  
expressions.

126. Every reference in the Civil Procedure Code  
to—

- (a) a proctor shall be read and construed to be a reference to an attorney-at-law, or a registered attorney, as the context requires;
- (b) an advocate shall be read and construed to be a reference to an attorney-at-law instructed by a registered attorney;
- (c) the Crown shall be read and construed as a reference to the Republic of Sri Lanka; and
- (d) a Parliamentary Secretary shall be read and construed as a reference to a Deputy Minister.