

*Small Tenements.***No. 11.—1882.****J. R. LONGDEN.**

Title.	An Ordinance to facilitate the recovery of possession of Tenements after due determination of the Tenancy.
Preamble.	W HEREAS it is expedient to provide for the more speedy and effectual recovery of the possession of tenements unlawfully held over after the determination of the tenancy: Be it therefore enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows:—
Short title.	1. This Ordinance may be cited for all purposes as “The Small Tenements Ordinance, 1882.”
Definition clause.	<p>2. In this Ordinance—unless the context otherwise requires—</p> <p>The term “tenement” shall mean a house or other building or any part thereof, rented, or which may be rented, exclusive of all taxes, rates and assessments, at a sum not exceeding twenty rupees a month, other than a tenement held, or occupied under a tenure registered under the provisions of “The Service Tenures Ordinance, 1870.”</p> <p>The term “town” shall mean the towns of Colombo, Kandy and Galle, within their respective Municipal limits, and such of the towns mentioned in the schedule of “The Local Boards of Health and Improvement Ordinance, 1876,” and in Ordinance No. 21 of 1877, the limits of which have been defined by proclamations issued under those Ordinances, and also such other towns which shall be determined upon by the Governor, with the advice of the Executive Council, and the limits of which, for the purposes of this Ordinance, shall, by proclamation, be published in the <i>Government Gazette</i>.</p>
Where the tenant or occupier of a tenement refuses to give up possession, after determination of tenancy, the landlord may apply to the Court of Requests for writ of possession; and if tenant does not appear, on rule nisi served upon him, or fails to show cause, the court shall issue writ to give possession to landlord.	<p>3. Whenever the term or interest of the tenant of any tenement situated in any town shall have ended, or shall have been duly determined by legal notice to quit, and such tenant, or (if such tenant do not actually occupy the premises or occupy only a part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the tenement or of such part thereof respectively, it shall be lawful for the landlord to file in the Court of Requests of the division in which such tenement is situated, an application praying for the recovery of possession, and such application shall be supported by an affidavit of the landlord or his agent, setting forth the holding, the end, or other determination of the tenancy, with the time or manner thereof and where the title of the applicant shall have accrued since the letting of the premises, the right by which he claims the possession. Thereupon the court shall cause a copy of the application and affidavit aforesaid and a rule nisi to be served on the tenant or occupier to appear on a day certain to be named by the court, not less than three or more than seven clear days after the service of the said rule, and show cause why he should not deliver up possession of the tenement to the said applicant or his agent; and if the tenant or occupier shall not appear at the time appointed, or, appearing, shall not show good and</p>

Small Tenements.

valid cause to the contrary, the rule *nisi* shall be made absolute with costs, and the court shall forthwith issue (and if need be re-issue) a writ of possession to the Fiscal of the district requiring and authorising him, within a period therein to be named, not less than three or more than seven clear days from the date of the issue or re-issue of such writ, to give possession of the tenement to such landlord or his agent; and such writ shall be sufficient to the said Fiscal to enter upon the tenement with such assistants as he shall deem necessary and to give possession accordingly. And the costs incurred in the suing out and execution of such writ shall be recovered from the tenant or occupier. Provided always that nothing herein contained shall be deemed to protect any person, by whom any such writ shall be sued out, from any action or proceeding which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession, where such person had not at the time of suing out the same as aforesaid lawful right to the possession of the said tenement.

4. The rule *nisi* aforesaid shall be served by the Fiscal, or any officer appointed by him, on the tenant or occupier personally, or by leaving the same with some adult person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid; provided that if the person or persons so holding over, or any or either of them, cannot be found, and the place of abode of such person or persons shall either not be known or admission thereto cannot be obtained for serving such rule *nisi*, the posting of the rule *nisi* on some conspicuous part of the tenement so held over shall be deemed to be good service upon such person or persons respectively, anything in the Ordinance No. 4 of 1867 to the contrary notwithstanding, and the Fiscal shall return to the court the mode of the service of the said rule *nisi* and the circumstances under which such service was made.

5. If, in showing cause to the rule *nisi* aforesaid, the tenant shall, upon affidavit, deny the legal determination of the tenancy, or shall profess to hold the tenement in his own right or under any other person than the applicant, or raise any other valid defence, necessitating, in the opinion of the court, a postponement of the hearing, the court shall immediately settle and record the issue or issues raised, and, having regard to the circumstances of the case, appoint as early a day as possible for the hearing of evidence, and the parties shall take immediate notice of the same. The chief clerk of the said court shall thereupon issue subpoenas to such witnesses as may be required by the parties, commanding their attendance at the time and place specified. No further postponement of the hearing shall be allowed except by consent of parties, or for any reason save the absence of a material witness. And in every affidavit for founding a motion for such postponement, the facts which the said witness knows and is able to prove shall be set forth, as also that he is not kept away by collusion. On the day appointed, the court shall hear and determine the issues raised, and give judgment thereon, anything to the contrary in the Ordinance No. 11 of 1868 notwithstanding.

6. In every case in which the person by whom any such writ of possession shall be sued out of the Court had not at the time of suing out the same lawful right to the possession of the

Mode of service of rule *nisi*, and the return thereto.

Procedure where tenant raises a valid defence, necessitating postponement of the hearing.

How execution of writ of possession may be stayed.

Small Tenements.

tenement, the suing out of the writ aforesaid shall be deemed a trespass by him against the tenant or occupier of the tenement, although no entry shall be made by virtue of the writ of possession. And in case any such tenant or occupier will become bound with two sufficient securities in such sum as to the court shall seem reasonable, regard being had to the rent already due and which may become due, and to the probable cost of the action herein mentioned, to sue in a court of competent jurisdiction, within two months from the date of such bond, the person by whom such writ was sued out, and to pay all the costs incidental to such action in case a judgment shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action or become nonsuit therein, execution upon the writ shall be stayed until judgment shall have been given in such action; and if, upon the trial of such action of trespass, judgment shall pass for the plaintiff, such judgment shall supersede the said writ.

Stamp duty payable in proceedings under this Ordinance.

7. All documents and process or other proceedings liable to stamp duty which shall or may be rendered necessary by this Ordinance, shall be charged as if falling under class III. of part II. of the schedule to the Ordinance No. 23 of 1871, referring to Courts of Requests, and all costs and fees chargeable in respect of such proceedings shall be taxed as of suits falling under the said class.

Appeal to Supreme Court.

8. Any party who shall be dissatisfied with any final judgment, or any order having the effect of a final judgment, may appeal to the Supreme Court against any such judgment or order, and all such appeals shall be filed within five days (exclusive of Sundays and holidays) of the order or judgment complained of, and be governed in all other respects by the same rules as are applicable to appeals from judgments of Courts of Requests.

Forms to be used.

9. The precedents contained in the schedule of forms (A) hereto annexed shall be followed as near as is material in the procedure enacted by this Ordinance.

Commencement.

10. This Ordinance shall come into operation on the 1st day of January, 1883.

A.

SCHEDULE OF FORMS.

(1.)—APPLICATION FOR A RULE *Nisi*.—CL. 3.

In the Court of Requests of _____

In the matter of the application of A. B. of _____, for a rule *nisi*, under "The Small Tenements Ordinance, 1882."

No. _____ Between A. B. Landlord.

and
C. D. Tenant.

The application of A. B. in person (or by _____).

Showeth:—That he files hereto his [or E. F.'s] affidavit, dated _____, and prays that C. D. of _____, the tenant abovenamed, may be cited to show cause why he should not deliver peaceful possession of the tenement [describe it particularly] to A. B.

Date _____

Signature of A. B. (or his proctor.)

Small Tenements.

(2.)—AFFIDAVIT SUPPORTING APPLICATION FOR RULE *Nisi*.

In the Court of Requests of _____

In the matter of the application of A. B., of _____, for a rule *nisi*, under
"The Small Tenements Ordinance, 1882."

Between A. B. Landlord.
No. _____ and
C. D. Tenant.

I, _____ of _____, make oath and say—

1. That I am the landlord of [or the agent of the landlord of] tenement No. _____, which is a house [or other building] situated in _____, and bounded as follows :—
2. That I, [or E. F. acting for and on behalf of A. B.] put C. D. in occupation of the said tenement on or about _____, upon these terms, to wit, [state the terms, if any.]
[If the title of A. B. accrued since the letting of the premises, the special circumstances of such a case must be set forth.]
3. That I, [or E. F. acting for and on behalf of A. B.] gave notice to C. D. on or about _____ to quit the tenement aforesaid on _____ [or state in what other way the tenancy expired, and when such determination took place.]
4. That notwithstanding that the tenancy as aforesaid was determined on or about _____, the said C. D. has forcibly held over possession, and refuses to give up possession.

(3.)—RULE *NISI*.

In the Court of Requests of _____

In the matter of the application of A. B., of _____, for a rule *nisi*, under
"The Small Tenements Ordinance, 1882."

Between A. B. Landlord.
No. _____ and
C. D. Tenant.
The _____ day of _____ 18 —.

Upon reading the annexed application of _____ and the affidavit of _____, it is ordered that _____ do on the _____ day of _____ next at _____ o'clock [or "instant"] appear and show cause why he should not deliver peaceful possession of the tenement [describe it particularly as in the application] to _____

Upon the motion of _____

By order of Court,

Chief Clerk.

(3 a.)—FISCAL'S RETURN.

By virtue of this Order I have caused the said C. D. to be summoned as therein directed as will appear from the affidavit of _____ dated _____ hereto annexed.

Fiscal.

(3 b.)—AFFIDAVIT OF SERVICE REFERRED TO IN THE FISCAL'S RETURN.

In the Court of Requests of _____

In the matter of the application of A. B. of _____, for a rule *nisi*, under
"The Small Tenements Ordinance, 1882."

Between A. B. Landlord.
No. _____ and
C. D. Tenant.

Small Tenements.

I, _____ make oath and say—

1. That I was deputed by the Fiscal of the _____ to serve the rule *nisi* ordered in the aforesaid case on the _____ day of _____ 18__

2. That I am personally known to and am acquainted with C. D., the tenant above-named.

3. That I served the said rule *nisi* upon the said C. D. personally on the _____ day of _____ at [*mention the place where the service took place*].

[If personal service could not be effected, state the reason why it could not be done, and what efforts were made to effect such service, and then proceed to state particulars of the service upon the adult person residing apparently in C. D.'s house. If C. D. cannot be found, or evades service, &c., state full particulars, so that the court may see reason to order the posting of the rule *nisi* on some conspicuous part of the tenement.]

Sworn to, &c.

(4.)—WRIT OF POSSESSION.

In the Court of Requests of _____

In the matter of the application of A. B. of _____ for a rule *nisi*, under
"The Small Tenements Ordinance, 1882."

Between A. B. Landlord.
No. _____ and
C. D. Tenant.

To the Fiscal of the _____ Province.

WHEREAS by an order of this Court dated _____, A. B. recovered [or C. D. was ordered to deliver to A. B.] possession of all that [*describe the tenement recovered as in the order*]: This is to command you to enter the same and within _____ days hereof to cause the said A. B. to have possession of the said tenement with its appurtenances; and in what manner you have executed this writ, make appear to this Court immediately after the execution hereof, and have you there this writ.

By Order of Court,

Chief Clerk.

Date _____

(5.)—FORM OF BOND TO STAY EXECUTION OF WRIT OF POSSESSION.—CL. 6.

In the Court of Requests of _____

In the matter of the application of A. B. of _____ for a rule *nisi*, under
"The Small Tenements Ordinance, 1882."

Between A. B. Landlord.
No. _____ and
C. D. Tenant.

KNOW all men by these presents that we, C. D., E. F., and G. H. of _____ are jointly and severally held and firmly bound unto _____ Chief Clerk for the time being of the said Court, in the sum of ~~Rs.~~ _____ to be paid to such Chief Clerk as aforesaid, or to his assigns; for which payment to be well and truly made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

Whereas the said C. D., at present in occupation of the tenement which is the subject matter of the proceeding aforesaid, has applied to the said Court to stay execution of writ of possession which was sued out in the said proceeding on _____:

Now the condition of this bond is such that if the said C. D. shall within two months from the date hereof sue in a separate action in a Court of competent jurisdiction A. B.

abovenamed for trespass in wrongfully suing out the writ of possession aforesaid, and shall pay all the costs arising from such action in case a decree shall be entered in favour of the said A. B., or the said C. D. shall not prosecute his action or shall become nonsuit therein, then the said bond shall be void, or otherwise shall be in full force.

Witness our hands at ——— this — day of ——— 18 —

Signed in my presence,

C. D.
E. F.
G. H.

Passed in Council the Twenty-ninth day of November, One thousand Eight hundred and Eighty-two.

J. A. SWETTENHAM,
Clerk to the Council.

Assented to by His Excellency the Governor the Fourth day of December, One thousand Eight hundred and Eighty-two.

J. DOUGLAS,
Colonial Secretary.
