

*Civil Procedure Code.***No. 2 of 1889.**

**An Ordinance to consolidate and amend the Laws relating to
the Procedure of the Civil Courts.**

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*Civil Procedure Code.***No. 2 of 1889.**

An Ordinance to consolidate and amend the Laws relating to the Procedure of the Civil Courts.

WHEREAS it is expedient to consolidate and amend the Laws relating to the procedure of the Civil Courts in this colony: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Preamble.

CHAPTER I.*Preliminary.*

1 This Ordinance may be cited for all purposes as the "Civil Procedure Code, 1889," and shall come into operation at such date as the Governor shall, by Proclamation* to be published in the *Government Gazette*, appoint:

Short title.

Date of operation.

2 On and from the date on which this Ordinance comes into operation, the Laws, Ordinances, sections of Ordinances, and Rules of Court, respectively mentioned in the first column of the first schedule hereto, shall be severally repealed to the extent mentioned in the third column thereof, but such repeal shall not affect—

Repeal.

(1) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed; nor

Saving clause.

(2) Any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed;

nor shall such repeal revive any enactment, right, office, privilege, matter, or thing not in force or existing at the commencement of this Ordinance. Where any unrepealed Ordinance incorporates or refers to any provision of any Ordinance hereby repealed, such unrepealed Ordinance shall be deemed to incorporate or refer to the corresponding provision of this Ordinance.

3 Every action, suit, or other matter already instituted and pending in any court at the time of the coming into operation of this Ordinance shall, so far as circumstances permit, be continued and proceeded with to final judgment and execution under the provisions of this Ordinance, in the same manner in every respect as if the same had been originally instituted after the commencement of this Ordinance; and such court may make all such special orders in any such action, suit, or matter as may be necessary for that purpose.

Actions already pending to be continued under the provisions of this Ordinance.

Provided always that any such court may, on reasonable cause being shown, direct that any such action, suit, or matter commenced before the coming into operation of this Ordinance shall be continued as if this Ordinance had not passed, up to execution, or to final judgment, or to any stage of such action, suit, or matter which the court may direct.

Except where court sees fit to direct otherwise.

* Proclaimed the 1st day of August, 1890.

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

4 In every case in which no provision is made by this Ordinance, the procedure and practice hitherto in force shall be followed, and if any matter of procedure or practice for which no provision is made by this Ordinance or by any law for the time being in force shall after this Ordinance comes into operation arise before any court, such court shall thereupon make application to the Supreme Court for, and the Supreme Court shall and is hereby required to give, such special orders and directions thereupon as the justice of the case shall require.

Provided.

Provided always that nothing in this Ordinance contained shall be held in any way to affect or modify any special rules of procedure which, under or by virtue of the provisions of any Imperial Statute or of any Ordinance now in force, may have from time to time been laid down or prescribed to be followed by any civil court in this colony in the conduct of any action, matter, or thing of which any such court can lawfully take cognizance, except in so far as any such provisions are by this Ordinance expressly repealed or modified.

Interpretation clause.

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

"Her Majesty" or "the Queen" means the sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"The island," "this island," and "this colony" mean respectively the island of Ceylon and its dependencies.

"The Governor" includes the person for the time being administering the Government of Ceylon.

"The Government" means the person or persons authorized by law to administer Executive Government in Ceylon.

"Attorney-General" includes also the Solicitor-General and any Crown counsel specially authorized by the Attorney-General to represent the Attorney-General.

"Public officer" includes all officers or servants employed in this colony by or under the Imperial Government or the Government of Ceylon.

"Recognized agent" includes the persons designated under that name in section 25 and no others.

"Action" is a proceeding for the prevention or redress of a wrong.

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

"Court" means a judge empowered by law to act judicially alone, or a body of judges empowered by law to act judicially as a body, when such judge or body of judges is acting judicially.

Civil Procedure Code.

- "Civil court" means a court in which civil actions may be brought.
- "Original court" includes district courts and courts of requests.
- "Judge" means the presiding officer of a court, and includes judges of the Supreme Court, district judges, and commissioners of requests.
- "Decree" means the formal expression of an adjudication upon any right claimed or defence set up in a civil court, when such adjudication, so far as regards the court expressing it, decides the action or appeal.
[An order rejecting a plaint is a decree within this definition.]
- "Order" means the formal expression of any decision of a civil court which is not a decree.
- "Judgment" means the statement given by the judge of the grounds of a decree or order.
- "Judgment-debtor" means any person against whom a decree or order capable of execution has been made.
- "Judgment-creditor" and "decree-holder" mean any person in whose favour a decree or order capable of execution has been made, and include any transferee of such decree or order.
- "Written" and "writing" include "printed" and "print" and "lithographed" and "lithograph" respectively.
- "Signed" includes "marked" when the person making the mark is unable to write.
- "Foreign court" means a court situate beyond the limits of, and not having authority in, Ceylon.
- "Foreign judgment" means the judgment of a foreign court.

PART I.

OF ACTIONS IN GENERAL.

CHAPTER II.

General Provisions.

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

Definition:
Action.

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

Procedure:
to be regular
or summary.

Illustration.

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

Civil Procedure Code.

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

- (a) Either the order sought is immediately passed against the defendant before he has been afforded an opportunity of opposing it, but subject to the expressed qualification that it will only take effect in the event of his not showing any good cause against it on a day appointed therein for the purpose;
- (b) Or a day is appointed by the court for entertaining the matter of the application on the evidence furnished, and notice is given to the defendant that he will be heard in opposition to it on that day if he thinks proper to come before the court for that purpose.

Procedure of action to be ordinarily regular.

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

CHAPTER III.

Of the Court of Institution of Action.

Institution of actions:
In what court.

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

- (a) A party defendant resides; or
- (b) The land in respect of which the action is brought lies or is situate in whole or in part; or
- (c) The cause of action arises; or
- (d) The contract sought to be enforced was made.

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

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

Of applications for withdrawal and transfer of actions.

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 in manner in section 46 of "The Courts Ordinance, 1889," prescribed, for the withdrawal of such action from the court in which it is pending, and for the transfer of it for trial to any other court competent to try the same in respect of its nature and the amount or value of its subject-matter. And the Supreme Court may, on any such application, after hearing such of the parties as desire to be heard, and on being satisfied that such withdrawal and transfer are

Civil Procedure Code.

desirable for any of the reasons given in that section, withdraw any such action pending in any such court, and transfer it for trial to any other such court as aforesaid, upon any terms that the said Supreme Court shall think fit. When the action might have been instituted in any one of several courts, the balance of convenience only shall be deemed sufficient cause for such withdrawal and transfer to one of the alternative courts.

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.

Stamp duty.

CHAPTER IV.

Of Parties and their Appearances, Applications, and Acts.

11. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief for such relief as he or they may be entitled to, without any amendment of the plaint for that purpose. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the court in disposing of the costs of the action otherwise directs.

Plaintiffs.

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

Where joint tenants or tenants in common.

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

Substituted and added plaintiffs.

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

Defendants.

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

Who may be joined as parties defendant.

Civil Procedure Code.

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

Notice.

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

Misjoinder not to defeat action.

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

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

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

Parties (improperly joined) may be struck out, or added.

18 The court may on or before the hearing, upon the application of either party, and on such terms as the court thinks just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out; and the court may at any time, either upon or without such application, and on such terms as the court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added:

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

Intervention not otherwise allowed.

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

Except in cases under section 16.

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

Civil Procedure Code.

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

Conduct of the action.

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

Amendment of plaint.

22 All objections for want of parties or for joinder of parties who have no interest in the action, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the hearing. And any such objection not so taken shall be deemed to have been waived by the defendant.

Objections for non-joinder or misjoinder to be taken before hearing.

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

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

CHAPTER V.

Of Recognized Agents and Proctors.

24 Any appearance, application, or act in or to any court, required or authorized by law to be made or done by a party to an action or appeal in such court, except only such appearances, applications, or acts as by any law for the time being in force only advocates or proctors are authorized to make or do, and except when by any such law otherwise expressly provided, may be made or done by the party in person, or by his recognized agent, or by a proctor duly appointed by the party or such agent to act on behalf of such party: Provided that any such appearance shall be made by the party in person, if the court so directs. An advocate, instructed by a proctor for this purpose, represents the proctor in court.

Appearances may be by party in person, his recognized agent or proctor.

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

Recognized agents.

- (a) The Attorney-General, on behalf of the Crown in respect to any court; who is also authorized to depute his power of appointing a proctor on behalf of the Crown in respect to any court to any person by a written document to be signed by the Attorney-General, and to be filed in that court.
- (b) Persons holding general powers of attorney from parties not resident within the local limits of the jurisdiction of the court within which limits the appearance or application is made, or act done,

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authorizing them to make such appearances and applications, and do such acts on behalf of such parties; which power, or a copy thereof certified by a proctor or notary, shall in each case be filed in the court.

- (c) Persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance or application is made or act done, in matters connected with such trade or business only, where no other agent is expressly authorized to make such appearances and applications and do such acts.
- (d) In courts of requests, any person appointed in writing in that behalf by the Attorney-General or by any Crown counsel empowered to act within the province or district in which the court is situate, or by the government agent or assistant government agent or collector of customs of such province or district to represent the Crown as a party plaintiff.
- (e) In courts of requests, any person specially allowed by the commissioner on sufficient cause to represent any party.

Processes served
on agent,
effectual.

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

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

Appointment of
proctor.

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

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

No advocate of the Supreme Court shall be required to present any document empowering him to act. The Attorney-General may appoint a proctor to act specially in any particular case or to act generally on behalf of the Crown.

Death or
incapacity of
proctor.

28 If any such proctor as in the last preceding section is mentioned shall die, or be removed or suspended, or otherwise become incapable to act as aforesaid, at any time before judgment, no further proceeding shall be taken in the action

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against the party for whom he appeared until thirty days after notice to appoint another proctor has been given to that party either personally or in such other manner as the court directs.

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

Service on
proctor.

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

Agent to accept
service.

31 A warrant or power of attorney to confess judgment in any action may be given by any person to a proctor in the form No. 12 in the second schedule hereto, but no such warrant or power of attorney shall be of any force unless there is present at the execution thereof some proctor of the Supreme or district court on behalf of such person expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or power before the same is executed, which proctor shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be proctor for the person executing the same, and state that he subscribes as such proctor. Every such proctor so subscribing shall state in such declaration that he read and explained the contents of such warrant or power to the person executing the same, and that such person appeared to understand the nature and effect thereof; and no such warrant or power not executed in manner aforesaid shall be rendered valid by proof that the person who executed the same did, in fact understand the nature and effect thereof, or was fully informed of the same.

Warrant or
power of
attorney to
confess
judgment,
requisites of.

32 Every such warrant or power to confess judgment, or a true copy thereof, shall be filed with the secretary of the district court having jurisdiction in the action within twenty-one days after the execution thereof. Every such warrant or power which, or a copy of which as aforesaid, shall not be so filed, shall be deemed fraudulent, and shall be void; and if any such warrant or power so filed was given subject to any defeasance or condition, such defeasance or condition shall be written on the same paper with the warrant or power before the filing thereof, otherwise the warrant or power shall be void.

To be filed.

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CHAPTER VI.

Of the Scope and Subject of Action.

Action, how to be framed.

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

To include whole claim.

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

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

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

Illustration.

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

Joinder of claims in actions for immovable property:

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

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

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

In actions against executors, &c.:

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

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

In other cases.

But if it appears to the court that any such causes of action cannot be conveniently tried or disposed of together, the court may, at any time before the hearing, of its own motion or on the application of any defendant, in both cases either in the presence of, or upon notice to, the plaintiff, or at any subsequent stage of the action if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

Exception: court may order separation.

When causes of action are united, the jurisdiction of the court as regards the action shall depend on the amount or value of the aggregate subject-matters at the date of instituting the action, whether or not an order has been made under the second paragraph of this section:

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

Application by defendant in such cases.

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

Order of court thereon.

Every amendment made under this section shall be attested by the signature of the judge.

CHAPTER VII.

Of the Mode of Institution of Action:

39 Every action of regular procedure shall be instituted by presenting a duly stamped written plaint to the court or to such officer as the court shall appoint in this behalf; or, in the court of requests, the plaintiff may personally state his case *virâ voce* in open court to the commissioner, who shall reduce the same into writing upon a stamp being supplied by the plaintiff, such as would be required for a written plaint in respect of the same cause of action, and the said stamp shall be affixed to the writing so made of the said statement, and the statement so taken down in writing and stamped shall in such case be the plaint.

Action to commence by plaint.

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Requisites of
plaints.

40 The plaint shall be distinctly written in the English language upon good and suitable paper, and shall contain the following particulars :

- (a) The name of the court and date of filing the plaint ;
- (b) The name, description, and place of residence of the plaintiff ;
- (c) The name, description, and place of residence of the defendant so far as the same can be ascertained ;
- (d) A plain and concise statement of the circumstances constituting each cause of action, and where and when it arose. Such statement shall be set forth in duly numbered paragraphs ; and where two or more causes of action are set out, the statement of the circumstances constituting each cause of action must be separate, and numbered ;
- (e) A demand of the relief which the plaintiff claims ; and
- (f) If the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

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

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

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

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

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

Illustrations.

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

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

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

Exemption from
bar from lapse of
time to be shown.

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

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

Jurisdiction of court to be averred.

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

Subscription of plaint.

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

Court may refuse to entertain plaint.

- (a) If it does not state correctly, and without prolixity, the several particulars hereinbefore required to be specified therein;
- (b) If it contains any particulars other than those so required;
- (c) If it is not subscribed, or subscribed and verified, as the case may be, as hereinbefore required;
- (d) If it does not disclose a cause of action;
- (e) If it is not framed in accordance with section 33;
- (f) If it is wrongly framed by reason of non-joinder or mis-joinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same action;

and may return the same for amendment then and there, or within such time as may be fixed by the court, upon such terms as to the payment of costs occasioned by the amendment, as the court thinks fit. Provided that no amendment shall be allowed which would have the effect of converting an action of one character into an action of another and inconsistent character. And provided further, that in each of the following cases, viz.:

And may reject.

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

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

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Where plaint
presented to
wrong court.

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

Order on
rejection.

48 Every order returning or rejecting a plaint shall specify the date when the plaint was presented and so returned or rejected, the name of the person by whom it was presented, and whether such person was plaintiff or proctor, and the fault or defect constituting the ground of return or rejection; and every such order shall be in writing, signed by the judge, and filed of record.

Memorandum of
documents to be
endorsed on
plaint.

49 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, each, in the case of Sihalasee, Tamil, or Moor defendants; translated into the language of the defendant for whom it is destined; 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.

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 secretary or clerk of the court, as the case may be, and signed by him if he finds them correct.

Plaintiff to
produce with
plaint document
such as.

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

To annex list of
other documents.

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

And to state where
document not in his
possession is.

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

Action on lost
negotiable
instrument.

53 In the case of any action founded upon a bill of exchange, promissory note, cheque, or any negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon such instrument, the court may make such decree as it would

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have made if the plaintiff had produced the instrument in court when the plaint was presented; and had at the same time delivered a copy of the instrument to be filed with the plaint.

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

Document not produced with plaint inadmissible afterwards without leave.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

CHAPTER VIII.

*Of the Issue and Service of Summons.**Issue.*

55. Upon the plaint being filed, and the copies or concise statements required by section 49 presented, the court shall order a summons in the form No. 16 in the second schedule hereto to issue, signed by the secretary or clerk of the court, requiring the defendant to appear and to answer the plaint on a day to be specified in the summons, and to be fixed with reasonable regard to the distance of the defendant's usual place of abode from the court-house, and the current business of the court. The summons, together with such copy or concise statement, each translated into the language of the defendant, 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 district in which 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.

Summons.

56. If the court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified.

Court may order defendant to appear in person; or plaintiff.

57. If the court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

58. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

Summons to order production of documents required by plaintiff or relied by defendant.

*Civil Procedure Code.**Service.*

Personal service of summons, what is.

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

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

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

Substituted service to be as effectual as personal, and court to fix time for appearance.

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

62 Whenever service is substituted by order of the court the court shall fix such time for the appearance of the defendant as the case may require.

When more defendants than one, service on each.

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

Agents and proctors holding powers of attorney to confess judgment to accept service;

64 When a defendant has an agent appointed under section 30 or a proctor holding a warrant or power of attorney under section 31 empowered to accept service, service of summons on such agent or proctor shall be sufficient. And in the case of an action against partners relative to a partnership transaction, or to an actionable wrong in respect of which relief is claimable from the partners, as a firm, each partner is an agent so empowered of each other partner, as is also the person (if any) not being a partner, who has the management of the business of the partnership at the principal place of such business within the local limits of the court's ordinary jurisdiction.

partners, and manager;

When defendant out of jurisdiction has manager within it.

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

Service on agent in charge of immovable property.

66 In an action to recover money due on a mortgage secured upon immovable property, or to obtain relief respecting or compensation for wrong to immovable property, if the service cannot be made on the defendant in person, and the defendant has no agent empowered to accept service, it may be made on any agent of the defendant in charge of the property; but without prejudice to the plaintiff's right to proceed under sections 645, 646, and 647.

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

Misdescription
not to vitiate
summons, &c.

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

Service on
defendant in jail.

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

69. Service of a summons out of the colony may be allowed by the court in all cases in which the court has jurisdiction. Every application for an order for leave to serve such summons on a defendant out of the colony shall be by motion and shall be supported by evidence (by affidavit or otherwise) showing in what place or country such defendant is or may probably be found, and the grounds on which the application is made.

Service out of
the colony
Application for,
what.

70. Every order giving leave to effect such service shall prescribe the mode of service, and shall direct that the defendant is to enter appearance within such time after service as the court directs.

Order for, to
prescribe mode
of.

71. A summons under sections 69 and 70 shall be in the form No. 18 in the second schedule hereto.

Form of
summons.

CHAPTER IX.

Of the Appearance and Answer.

72. On the day fixed in the summons for the defendant to appear and answer, if the parties appear in court, the defendant shall be called upon to answer the plaint. If the defendant shall then admit the claim of the plaintiff, the court shall give judgment against the defendant according to the admission so made.

Defendant to
answer on day
for appearance.

Explanation.—A party appears in court when he is there present in person to conduct his case, or is represented there by a proctor or other duly authorized person.

73. If the defendant does not admit the plaintiff's claim, he shall himself, or his proctor shall on his behalf, deliver to the court a duly stamped written answer; or in the court of requests the defendant may state his answer *in voce* in open court to the commissioner, who shall reduce the same into writing upon a stamp being supplied by the defendant, such as would be required for a written answer; and the said

Answer to be in
writing; or in
court of requests
may be given by
parol and
reduced to
writing.

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stamp shall be affixed to the record of the said statement, and the statement so taken down and stamped shall in such case be the defendant's answer.

Extension of
time to answer.

74 In the event of the defendant or his proctor on his behalf not being prepared on the day fixed for appearance and answer to file or state his answer as aforesaid, the court may then, or at any subsequent time, if the action is not sooner determined, upon notice to the plaintiff, and provided cause therefor is shown to the satisfaction of the court, or upon the plaintiff's consent, extend the time for that purpose to a day to be fixed by the court.

Requisites of
answer.

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

- (a) The name of the court, the number of the case, and the date of filing the answer;
- (b) The name of the plaintiff;
- (c) The name, description, and residence of the defendant;
- (d) A statement admitting or denying the several averments of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence; this statement shall be drawn in duly numbered paragraphs, referring by number, where necessary, to the paragraphs of the plaint;
- (e) When the defendant sets up a claim in reconvention, the answer must contain a plain and concise statement of the facts constituting the ground of such claim which the defendant makes in reconvention. A claim in reconvention duly set up in the answer shall have the same effect as a plaint in a cross action, so as to enable the court to pronounce a final judgment in the same action both on the original and on the cross claim; but it shall not affect the lien upon the amount decreed of any proctor in respect of the costs payable to him under the decree.

Jurisdiction of
court to be
specially
traversed.

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

Rejection and
amendment
of answer.

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

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

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

78 A copy of the answer shall be served on the proctor (if any) of the plaintiff, or left with the secretary or clerk of the court for delivery to the plaintiff, or each of the plaintiffs if more than one:

Copy of answer to be delivered to plaintiff.

CHAPTER X.

Of the Replication and Further Pleadings.

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

Replication may be allowed, when:

and further pleadings.

CHAPTER XI.

Of Fixing Day of Trial.

80 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 hearing and determination of the action, and shall give notice thereof to the parties. Provided that 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.

Day of trial.

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

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

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

Postponement.

Civil Procedure Code.

Provision.

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

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

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

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

CHAPTER XII.

Of the Consequences and Cure (when permissible) of Default in Appearing or Pleading.

Non-appearance
of plaintiff.

84 If the plaintiff fails to appear on the day fixed for the appearance and answer of the defendant, or on the day appointed for the filing of the answer, or for the filing of the replication, or for the hearing of the action, and if the defendant on the occasion of such default of the plaintiff to appear is present in person or by proctor, and does not admit the plaintiff's claim, and does not consent to postponement of the day for the hearing of the action, the court shall pass a decree *nisi* in the form No. 21 in the second schedule hereto, or to the like effect, dismissing the plaintiff's action, which said decree shall, at the expiration of fourteen days from the date thereof, become absolute, unless the plaintiff shall have previously, on some day of which the defendant shall have notice, shown to the court good cause, by affidavit or otherwise, for his non-appearance.

In case of such cause being shown, the court shall set aside the decree, and shall fix a day for proceeding with the action on such terms as to costs or otherwise as the court shall think fit, and shall cause notice to be issued to the defendant to be ready on that day to proceed with his defence as if it were the day originally appointed for appearance and answer, or for subsequently filing the answer or filing the replication, or for hearing, as the case may be.

If the defendant consents to an adjournment for the purpose either of his answer being filed or of the action being heard, the court shall appoint a day for that purpose and issue notice thereof to the plaintiff.

If, notwithstanding that the plaintiff fails to appear, the defendant admits the plaintiff's claim, judgment shall be given accordingly.

Civil Procedure Code:

85 If the defendant fails to appear on the day fixed for his appearance and answer, or if he fails to appear on the day fixed for the subsequent filing of his answer, or for the filing of the replication, or on the day fixed for the hearing of the action, and if the court is satisfied by affidavit of the process server, stating the facts and circumstances of the service, or otherwise, that the defendant has been duly served with summons, or has received due notice of the day fixed for subsequent filing of answer, or of replication, or of the day fixed for the hearing of the action, as the case may be, or if the defendant shall fail to file his answer on the day fixed therefor, 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* and to pass a decree *nisi* in favour of plaintiff in the form No. 22 in the second schedule hereto or to the like effect, and shall thereupon issue to the defendant a notice of such decree. Such notice shall be served personally unless the court, for sufficient cause to be assigned by it, direct some other mode of service.

On non-
appearance of
defendant,
decree *nisi*.

86 If the defendant does not appear on the day appointed in the decree *nisi* for showing cause, and if the court is satisfied that notice of the decree has been duly served, or if having appeared to the notice, the defendant shall fail to satisfy the court that he had reasonable grounds for the default in appearing or in filing answer, as the case may be, by reason of which the decree *nisi* was passed, then the court shall make the decree absolute, and the order of the court to that effect may be endorsed on the decree *nisi*, or otherwise duly recorded in the proceedings, as is in this Ordinance hereinafter provided.

If defendant fail
to exonerate his
default, decree
nisi to be made
absolute.

If, however, the defendant shall satisfy the court that there were reasonable grounds for the default upon which the decree *nisi* was passed, then the court shall set aside the decree, and shall order the case to be proceeded with as from the stage at which the default was committed, upon such terms as to costs, notices, or otherwise as the court shall deem fit.

otherwise to be
discharged.

87 No appeal shall lie against any decree *nisi* or absolute for default; but if any defendant, against whom a decree absolute for default shall have been passed, shall within a reasonable time after such decree appear and satisfy the court, upon notice to the plaintiff, by good and sufficient evidence that he was prevented from appearing to show cause against the notice for making the decree absolute by reason of accident or misfortune, or by not having received due information of the proceedings, and shall, if the court shall in its discretion so require, give good and sufficient security to satisfy the plaintiff's claim and costs of action, the court may, upon such terms and conditions as such court shall think it just and right to impose, set aside the decree and direct that the action be proceeded with as from the stage at which the decree was for default of the defendant made.

No appeal lies,
against decree
for default, but

court may set
aside the decree
for cause shown.

Civil Procedure Code.

Such order
appealable.

The order setting aside or refusing to set aside the decree 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.

The mere consent of the plaintiff's proctor will not be reason sufficient to justify the court in setting aside the decree.

Neither party
appearing, case
to be struck off
file.

88 If either on the day appointed for the defendant to appear and answer or for the subsequent filing of answer, or for filing the replication, neither party appears when the case is called on, the action shall be struck off the file of cases pending in the court. But the court shall have power, upon the application of either party, if made within a period of time which, under the circumstances, appears to the court reasonable, and upon notice to the other side, to restore the action to the file, upon such terms and conditions as it shall think fit, and to give the requisite directions for the action to be regularly proceeded with.

The order made on any application for the restoration of an action to the file, whether it grants or refuses the application, shall state the ground upon which it is based.

An order directing the action to be struck off the file will not operate as a bar to the institution of a fresh action upon the same cause of action.

Where two or
more defendants
severally liable.

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

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

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

CHAPTER XIII.

Of Motions.

Motions.

91 Every application made to the court in the course of an action, incidental thereto, and not a step in the regular procedure, shall be made by motion by the applicant in person or his advocate or proctor, and a memorandum in writing of such motion shall be at the same time delivered to the court. In the court of requests such application may be made orally by the applicant in person and then reduced into writing by the court, in accordance with the rules of summary procedure hereinafter prescribed.

Civil Procedure Code.

CHAPTER XIV.

Of the Journal.

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

Journal.

CHAPTER XV.

Of Amendment.

93 At any hearing of the action, or at any time in the presence of, or after reasonable notice to, all the parties to the action before final judgment, the court shall have full power of amending in its discretion, and upon such terms as to costs and postponement of day for filing answer or replication, or for hearing of cause, or otherwise, as it may think fit, all pleadings and processes in the action, by way of addition, or of alteration, or of omission. And the amendments or additions shall be clearly written on the face of the pleading or process affected by the order; or if this cannot conveniently be done, a fair draft of the document as altered shall be appended to the document intended to be amended, and every such amendment or alteration shall be initialed by the judge.

Amendments of pleadings.

CHAPTER XVI.

Of Discovery, Inspection, Production, Impounding, and Return of Documents.

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

Interrogatories.

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

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

Civil Procedure Code.

Service of
interrogatories.

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

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

96 The court, in adjusting the costs of the action, shall, at the instance of any party, inquire, or cause inquiry to be made, into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories, and the answers thereto, shall be borne by the party in fault.

Interrogatories
to company, &c.

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

When party may
refuse to answer.

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

To be answered
by affidavit.

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

Application for
further answer.

100 If any person interrogated omits or refuses to answer or answers insufficiently any interrogatory, the party interrogating may apply to the court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further, either by an affidavit or by *ex parte* examination, as the court may direct: Provided that the court shall not require an answer to an interrogatory which in its opinion need not have been answered under section 98.

Notice to admit
documents.

101 Either party may, by a notice issued by order of court, to be obtained on motion *ex parte* within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the action.

The admission shall also be made in writing, signed by the other party or his proctor, and filed in court.

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

Civil Procedure Code:

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

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

Order for discovery of documents.

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

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

Order for production of documents.

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

Notice to produce documents for inspection.

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

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

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

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

otherwise, order for inspection to be made by court.

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

Application for order to be supported by affidavit.

Civil Procedure Code.

(a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them, and (c) that they are in the possession or power of the party against whom the application is made.

Court may reserve question as to discovery or inspection.

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

Consequence of not complying with order under this chapter.

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

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

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

Court may inspect records of other courts.

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

Every application made under this section shall (unless the court otherwise directs) be supported by an affidavit of the applicant or his proctor, showing how the record is material to the action in which the application is made, and that the applicant cannot, without unreasonable delay or expense, obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice. Nothing in this section shall be deemed to enable the court to use in evidence any document which by the law of evidence in force in this colony would be inadmissible in the action.

Parties to be ready with all documents at trial.

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

Civil Procedure Code.

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

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

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

Documents to be received by court.

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

Rejection of irrelevant or otherwise inadmissible documents.

114 No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force. Every document so proved or admitted shall be endorsed with some number or letter sufficient to identify it. The judge shall then make an entry on the record to the effect that such document was proved against or admitted by (as the case may be) the person against whom it is used, and shall in such entry refer to such document by such number or letter in such a way as to identify it with the document so proved or admitted. The document shall then be filed as part of the record.

No documents to be placed on record unless proved.

Proved documents to be marked and filed.

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

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

Court may order any document to be impounded.

116 When an action has been disposed of, or when the time for preferring an appeal from the decree has elapsed, or if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the action or not, desirous of receiving back any document produced by him in the action, and placed on the record, shall, unless the document is impounded under section 115, be entitled to receive back the same. Provided that a document may be returned at any time if the person applying for such return deliver to the proper officer a certified copy of such document to be substituted for the original. And provided, further, that no document shall be returned which by force of the decree has become void or useless.

When document admitted in evidence may be returned.

Certain documents not to be returned.

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

Receipt for returned documents.

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

Provisions as to documents apply to other material objects.

*Civil Procedure Code.**Translations of Documents.*

Translations of documents.

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

Who shall be deemed a translator.

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

Fees of translators.

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

For every folio of 120 words...	...	33 cents
For every fractional part of a folio	...	33 cents

CHAPTER XVII.

Of Witnesses.

Summonses to witnesses.

121. The parties may, after the summons has been delivered for service on the defendant, obtain, on application to the court or to such officer as the court appoints in that behalf, before the day fixed for the hearing, summonses to persons whose attendance is required either to give evidence or to produce documents. A list of witnesses shall be filed in court by the party applying for such summonses; after notice to the other side, and within such time before the trial as the judge shall consider reasonable, or at any time before the trial with the consent of the other side appearing on the face of such list.

Payment of witness' costs.

122. The party applying for a summons shall, before the summons is granted, and within a period to be fixed by the court, pay into court, or give security for payment of, such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend, and for one day's attendance. Provided that in the case of a witness residing within four miles of the court at which his attendance is required, no such payment shall be made nor security given; and provided further that the making of any such payment and the giving of any such security shall in no case be a condition precedent to the issue of a summons, but in every case (except the case of a

Civil Procedure Code.

witness residing within four miles from the court) where summons issued without such payment having been made or security given, the witness shall be informed on the face of the summons that such is the case, and that it is not obligatory on him to attend.

123 The sum so paid into court, or so secured, shall at latest be paid or tendered to the person summoned at the time when he is called on to give his evidence, if he demands the same.

To be made before he gives evidence.

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

Court may order a further sum to be paid.

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

Expenses of detention.

126 Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy. If money has been deposited, or security given for his expenses under the provisions of section 122, the summons shall contain a statement to that effect.

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

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

Summons to produce document.

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

Person in court may be required to produce a document.

Civil Procedure Code.

Service of
summons.

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

Service must
afford reasonable
time for
attendance.

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

When summons
cannot be served
proclamation
may issue.

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

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

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

If witness
appears,
sequestration
may be
withdrawn.

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

Procedure when
witness fails to
appear.

133 If such person does not appear, or, appearing, fails to satisfy the court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the court may impose upon him such fine, in the case of the court of requests not exceeding fifty rupees; and in the case of the district court not exceeding two hundred rupees, as the court thinks fit, having regard to his condition in life and all the circumstances of

Civil Procedure Code.

the case; and may order the property sequestered, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such sequestration, together with the amount of the said fine, if any.

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

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

Court may
summon and
examine as
witnesses
persons
strangers to the
action.

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

Person
summoned
must attend.

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

When he may
depart.

(a) He has been examined or has produced the document, and the court has risen; or

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

137 If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 136, the court may order him to be arrested and brought before the court. Provided that no such order shall be made when the court has reason to believe that the person so failing had a lawful excuse for such failure.

May be arrested
for non-
compliance.

Provide,

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

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

Being so
arrested court
may release him
on bail.

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

Procedure when
witness absconds.

Civil Procedure Code.

Court may pass decree against party refusing to give evidence.

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

These rules to apply to a party summoned to give evidence.

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

Nothing in this chapter contained shall be deemed in any way to contravene or affect the provisions of Ordinances Nos. 9 of 1852 or 12 of 1864, except in so far as the same may be hereby expressly repealed or modified.

Privilege from arrest.

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

CHAPTER XVIII.

Of Adjournments.

Adjournments.

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

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

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

Non-appearance of a party on the postponed day.

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

Default of party to carry out purpose of adjournment.

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

Civil Procedure Code.

CHAPTER XIX.

Of the Trial.

146 On the day fixed for the hearing of the action, or on any other day to which the hearing is adjourned, if the parties are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and the court shall proceed to determine the same. If the parties, however, are not so agreed, the court shall, upon the allegations made in the plaint, or in answer to interrogatories delivered in the action, or upon the contents of documents produced by either party, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to record the issues on which the right decision of the case appears to the court to depend.

Framing of issues.

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

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

Trial of issues of law first.

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

Adjournment for evidence.

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

Amendment of issues.

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

Statement and production of evidence by party having right to begin.

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

Rules as to right to begin.

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

Civil Procedure Code.

Examination-in-chief.

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

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

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

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

Cross-examination

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

Re-examination.

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

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

Tender of documents in evidence.

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

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

Records of other actions not to be admitted in bulk.

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

Documents admitted to be marked.

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

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

First, whether the document is authentic—in other words, is what the party tendering it represents it to be; and secondly, whether, supposing it to be authentic, it constitutes legally admissible evidence as against the party who is sought to be affected by it. The latter question in general is matter of argument only, but the first must be supported by such testimony as the party can adduce. If the court is of opinion that the testimony adduced for this purpose, developed and tested by cross-examination, makes out a *prima facie* case of authenticity, and is further of opinion that the authentic document is evidence admissible against the opposing party, then it should admit the document as before.

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

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

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

Identification of document.

Illustration.

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

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

Cross-examination as to knowledge.

Civil Procedure Code.

Court to see witness thus tested.

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

And to decide on his competency.

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

Signature by a mark how proved.

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

This section applies to the case where the signature is a mark explained by the name written adjacent thereto.

Case of an illiterate person.

160 In the case of an illiterate person, who cannot read, it must also be proved that at the time when his name was written on, or his mark put to, the document, he understood the contents of it. Provided that where the name of such illiterate person shall have been written on, or his mark put to, any document for the purpose merely of attesting the signature of another, it shall not be necessary to prove that he understood the contents of such document, but it shall be sufficient to prove that he was aware of the purpose for which his name was so written or his mark so put, and that the person whose signature he purports to attest was known to him.

Case of documents whose execution need not be proved.

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

Copy document when proved.

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

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

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

163 When the party beginning has stated his case and adduced his evidence in accordance with the foregoing rules, then the opposing party or parties (if there are more than one, who have distinct cases) shall in person or by proctor or counsel, state his or their case or cases (and in the latter event in succession), and when the case of each opposing party has been so stated, each such party shall adduce in

Civil Procedure Code.

order his evidence, oral and documentary, and the same shall be received and dealt with precisely as in the case of the party beginning, who shall then be entitled to reply. But where there are several issues, the burden of proving some of which lies on the other party or parties, the party beginning may at his option either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the opposing party or parties; and in the latter case the party beginning may produce evidence on those issues after the other party or parties has or have produced all his or their evidence, and such other party or parties may then reply specially on the evidence so produced by the party beginning, but the party beginning will in that case be entitled to reply generally on the whole case.

Reply:

When rebutting evidence is admissible.

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

Court may question witness.

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

Or recall witness.

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

Court may permit a departure from above rules.

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

Evidence to be taken orally, on

168 Witnesses professing to be Christians or Jews, who have discretion to understand the nature of an oath, shall be examined upon oath, anything in the Ordinance No. 3 of 1842 to the contrary notwithstanding, unless they state that, according to their religious tenets or on other grounds they object to the taking of an oath, in which case they shall be examined on affirmation. Witnesses not professing to be Christians or Jews shall be examined on affirmation. The same rule shall apply to alluvists. And except when herein-after otherwise expressly provided, the oath or affirmation shall be administered in open court.

oath or affirmation;

169 The evidence of each witness shall be taken down in writing in the English language by the judge, not ordinarily in the form of question and answer, but in that of a narrative.

and in English in narrative form;

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

but any particular question and answer may be written down;

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also the objection to question which is allowed, and the decision of court thereon.

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

Similarly when the objection is upheld.

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

Remarks of court on demeanour of witness.

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

Witness may be kept out of court.

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

Proviso.

List of witnesses must be filed.

175 No witness shall be called on behalf of any party unless such witness shall have been included in the list of witnesses previously filed in court by such party as provided by section 121. Provided, however, that the court may in its discretion, if special circumstances appear to it to render such a course advisable in the interests of justice, permit a witness to be examined, although such witness may not have been included in such list aforesaid. Provided also that any party to an action may be called as a witness without his name having been included in any such list.

Proviso.

Court may forbid indecent questions.

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

And shall forbid insulting questions.

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

Civil Procedure Code.

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

Evidence *de bene esse*.

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

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

179 The court may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or by depositions taken on commission, instead of by the testimony of witnesses given *virâ voce* before it, or that the affidavit, or deposition taken on commission, of any witness may be read at the hearing of the action on such conditions as the court shall think reasonable. Provided that when it appears to the court that either party *bonâ fide* desires the production of a witness before the court for cross-examination *virâ voce*, and that such witness can be so produced, an order shall not be made authorizing the evidence of such witness to be given otherwise than *virâ voce*.

Evidence taken on affidavit or on commission.

Proviso.

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

Court may examine witness *virâ voce* notwithstanding affidavit or commission.

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

Affidavits.

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

Petitions.

183 In the case of any affidavit under this chapter—

- (a) Any court, or magistrate, or justice of the peace; or
- (b) Any officer whom the Supreme Court may appoint for the purpose (and who shall be styled "Commissioner to administer Oaths") may administer the oath to the declarant.

Who may administer oaths.

Civil Procedure Code.

CHAPTER XX.

Judgment and Decree.

Judgment when pronounced.

184 The court, upon the evidence which has been duly taken or upon the facts admitted in the pleadings or otherwise, and after the parties have been heard either in person or by their respective advocates or proctors (or recognized agents), shall, after consultation with the assessors (if any), pronounce judgment in open court, either at once or on some future day, of which notice shall be given to the parties or their proctors at the termination of the trial.

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

Who may pronounce.

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

To be written in English.

186 The judgment shall be written in English, and shall be dated and signed by the judge in open court at the time of pronouncing it.

Requisites of judgment.

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

Decree.

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

When it may be amended.

189 If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error: Provided that reasonable notice has been given to the parties or their proctors of the proposed amendment.

Proviso.

When it is for immovable property;

190 When 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 Government surveys or otherwise as may secure, as far as possible, correctness of identification.

for movable;

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

Civil Procedure Code.

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

For a sum of money.

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

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

For damages.

194 In all decrees for the payment of money, except money due on mortgage of movable or immovable property, the court may order that the amount decreed to be due shall be paid by instalments, with or without interest, and the court may in its discretion impose such terms as it may think fit as to giving security for the payments so to be made. Provided always that on failure to pay the first or any other instalment, the whole amount or any balance then due shall on such failure become immediately payable. Provided also, that if the party ordered to pay by instalments shall appeal against the decree, and the appeal shall be decided against him, his right to pay by instalments shall cease, and the whole amount shall be immediately payable, unless the Supreme Court give express direction to the contrary. Provided also, that no appeal shall lie against the refusal of the court to make an order for payment by instalments.

Court may decree payment at a future time

or by instalments.

Proviso 1.

Proviso 2.

Proviso 3.

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

Set off.

Reconvention.

196 When the action is for the recovery of the possession of immovable property yielding rent or other profit, the

Messe profits pending action.

Civil Procedure Code.

court may, whenever the prayer of the plaint asks for damages in respect of mesne profits or rent, provide in the decree for the payment of money in lieu of mesne profits or rent in respect of such property from the date of the institution of the action until the delivery of possession to the party in whose favour the decree is made, with interest thereon at such rate not exceeding nine per cent. as the court thinks fit.

Explanation.—“Mesne profits” of property mean those profits which the person in wrongful possession of such property actually received, or might, with ordinary diligence, have received therefrom.

Prior to action.

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

Interlocutory order for accounts.

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

Administration by the court.

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

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

Decree in action for pre-emption, &c.

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

In action to realize mortgage.

201 When the action is to enforce a right of sale under a mortgage, and the court finds for the plaintiff, the decree

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shall specify a day on or before which the money decreed to be due on the mortgage with interest thereon from date of action to date of payment and costs of action shall be paid, and shall direct that in default of such payment within the period so prescribed the mortgaged property shall be sold, and the court may in such decree for sale give such directions as to the conduct and conditions of the sale (including the terms on which the plaintiff shall be allowed to purchase), and the person who shall conduct it, and as to the terms of the instrument of conveyance and the party or parties by whom it shall be executed, as it may think fit.

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

Interlocutory order in action for dissolution of partnership.

203 When the action is for an account of pecuniary transactions between principal and agent, and in all other actions not hereinbefore provided for, where it is necessary in order to ascertain the amount of money due to or from any party that an account should be taken, the court shall before making its decree pass an order directing such account to be taken as it thinks fit.

Suit for account between principal and agent.

204 When a decree or order made at the hearing of the action is such as to have the effect of postponing the further hearing and the final determination of the action, as for instance a decree for the taking of accounts, or an order for the issue of a commission to take evidence, or of a commission to divide by metes and bounds, it shall specify the time at which the further hearing of the action shall be proceeded with.

Decree or order postponing hearing.

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

Parties entitled to certified copies of decree and judgment.

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

Printed up copy to be primary evidence of decision.

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

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

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

Civil Procedure Code.

CHAPTER XXI

Of Costs.

- Costs.** 208 Under the denomination of costs are included the whole of the expenses necessarily incurred by either party on account of the action and in enforcing the decree passed therein, such as the expense of stamps, of summoning the defendants and witnesses, and of other processes, or of procuring copies of documents, fees and charges of advocates and proctors, charges of witnesses, and expenses of commissioners either in taking evidence or in local investigations, or in investigations into accounts; and all other expenses of procuring and adducing necessary evidence. Provided that no costs shall be recoverable for or on account of the appearance of any person (not being an advocate or proctor) on behalf of any party in cases in the courts of requests.
- Court always to have power to give or reserve costs.** 209 When disposing of any application or action under this Ordinance, whether of regular or of summary procedure, the court may, unless elsewhere in this Ordinance otherwise directed, give to either party the costs of such application or action, or may reserve the consideration of such costs for any future stage of the proceedings; any order for the payment of costs only is a decree for money within the provisions of section 194 as to payment by instalments.
- By whom paid.** 210 The decree or order shall direct by whom the costs of each party are to be paid, and whether in whole or in what part or proportion.
- Court may apportion.** 211 The court shall have full power to give and apportion costs of every application and action in any manner it thinks fit, and the fact that the court has no jurisdiction to try the case is no bar to the exercise of such power:
- Provided.** Provided that if the court directs that the costs of any application or action shall not follow the event, the court shall state its reasons in writing.
- Set-off of costs.** 212 The court may direct that the costs payable to one party by another shall be set off against a sum which is admitted or is found in the action to be due from the former to the latter.
But such direction shall not affect the lien upon the amount decreed of any proctor in respect of the costs payable to him under the decree.
- Court may give interest on costs.** 213 The court may give interest on costs at any rate not exceeding nine per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the action.
- Costs to be taxed.** 214 All bills of costs, whether between party and party or between proctor and client, shall be taxed by the registrar or secretary or chief clerk of the court, as the case may be, according to the rates specified in schedule III.; and if either party is dissatisfied with this taxation, the matter in dispute

Civil Procedure Code.

shall be referred to the court for its decision, and the decision of the court in review of taxation of costs shall (except when it is the decision of the Supreme Court) be liable to an appeal to the Supreme Court.

215 No proctor shall commence or maintain any action for the recovery of any fees, charges, or disbursements at law until the expiration of one month or more after he shall have delivered unto the party charged therewith, or left with him at his dwelling house or last known place of abode, a bill of such fees, charges, and disbursements subscribed by such proctor. And after such delivery or service thereof, either the proctor or party charged therewith may obtain an appointment from the taxing officer for the taxation thereof; and if either party shall fail to attend, and the taxing officer is satisfied that such party has received due notice of the appointment, the taxation shall proceed in his absence.

Action for costs by proctor.

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

Proctor to bear costs of taxation in what case.

CHAPTER XXII

Of Executions.

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

Classification of decrees.

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

or it may enjoin that person—

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

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

- (G) Declare a right or status.

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

*Civil Procedure Code.**(A.)—Execution of Decrees to pay Money.*

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

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

Proviso 1.

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

Excepted property.

- (a) The necessary wearing apparel, beds, and bedding of the judgment-debtor, or of his wife and children ;
- (b) Tools, utensils, and implements of trade or business, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may in the opinion of the court be necessary to enable him to earn his livelihood as such ;
- (c) Professional instruments and library necessary for the carrying on of the judgment-debtor's profession or business to the value of five hundred rupees ;
- (d) Books of accounts ;
- (e) Mere rights to sue for damages ;
- (f) Any right of personal service ;
- (g) Stipends allowed to naval, military, and civil pensioners of Government and political pensions ;
- (h) The salary of a public officer or servant ;
- (i) The pay and allowances of persons to whom the articles of war apply ;
- (j) The wages of labourers and domestic servants ;
- (k) An expectancy of succession by survivorship or other merely contingent or possible right of interest ;
- (l) A right to future maintenance.

Explanation.—The particulars mentioned in clauses (g), (h), (i), and (j) are exempt from sequestration or sale, whether before or after they are actually payable.

Proviso 2.

Provided also that nothing in this section shall be deemed to affect "The Army Act, 1881," or any similar law for the time being in force.

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

219 The party entitled to enforce any decree for the recovery or payment of money may apply to the court for an order that the debtor (or, in the case of a corporation, that any officer thereof) be orally examined before the court on oath or affirmation, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the decree ; and

Civil Procedure Code.

the court may thereon make an order for the attendance and examination on oath or affirmation of such debtor or of any other person whom it thinks necessary, and for the production by such debtor or person of any books or documents.

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

Application need not be supported by affidavit.

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

Costs.

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

Execution of decree against legal representatives of a deceased person.

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

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

Seizure and sale to be effected under order of court.

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

Application therefor.

- (a) The number of the action ;
- (b) The names of the parties ;
- (c) The date of the decree ;
- (d) Whether any appeal has been preferred from the decree ;
- (e) Whether any, and what adjustment of the matter in dispute has been made between the parties subsequently to the decree ;
- (f) Whether any, and what previous applications have been made for execution of the decree, and with what result, including the dates and amounts of previous levies, if any ;
- (g) The amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby ;
- (h) The amount of costs, if any, awarded ;
- (i) The name of the person against whom the enforcement of the decree is sought ;

Civil Procedure Code.

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

Court to satisfy itself as to conformity of application.

When application should be refused by the court.

225 Upon the application for execution of the decree being made, the court shall satisfy itself by reference, if necessary, to the record of the action in which the decree or order sought to be executed was passed, that the application is substantially in conformity with the foregoing directions, and that the applicant is entitled to obtain execution of the decree or order which is the subject of the application. If the court is not satisfied in these respects it shall refuse to entertain the application, unless and until amended in the particulars in which the court considers it faulty and defective, and with the view to its being so amended the court shall point out these particulars to the applicant; provided that the court may make the requisite amendment then and there, if it is consented to by the applicant and is such as to admit of being conveniently so effected, and provided further that every such amendment shall be attested by the signature of the judge making it.

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

Writ of execution.

If the court is satisfied in the respects above indicated, it shall direct a writ of execution to issue to the fiscal in the form No. 43 given in the second schedule hereto.

Duties of fiscal thereunder.

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

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

Provided.

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

*Civil Procedure Code.**Mode of Seizure.*

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

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

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

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

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

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

229 In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other movable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any court, or in the custody of a public officer, the sequestration or seizure shall be made by a written notice signed by the fiscal, prohibiting—

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

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

Disposal of property seized until sale.

Proviso as to perishable property.

As to attachment of negotiable instrument.

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

Civil Procedure Code.

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

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

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

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

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

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

Seizure of property deposited in any court.

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

Provision as to question of title, or priority.

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

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

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

Civil Procedure Code.

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

Notice by fiscal.

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

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

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

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

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

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

Seizure of any other decrees.

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

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

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

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

The notice shall specify the parties to the action, the judgment-debtor, the dates of judgment and seizure, and the name, situation, and boundaries of the land seized, and shall be proclaimed at some place on or adjacent to such

Publication of such notice.

Civil Procedure Code.

Registration of seizure.

property by beat of tom-tom or other customary mode, and a copy of the notice shall be affixed by the fiscal to a conspicuous part of the property and of the court-house and of the fiscal's office. Upon payment to the fiscal by the decree-holder of a fee of fifty cents, the fiscal shall forthwith transmit a copy of such notice to the registrar of lands of the district in which such land is situate, and such registrar shall within two weeks of the date of seizure register the particulars contained in such notice in a book to be by him kept for that purpose. In case the seizure is removed or the property seized is sold, and the fiscal grants a conveyance thereof to the purchaser under section 286, the fiscal shall, upon payment of a fee of fifty cents by any person at whose instance or for whose benefit such removal is made, or by the person in whose favour such conveyance is granted, certify such removal or sale to the registrar, who shall forthwith register such removal or sale in the same book, which shall be open to the inspection (upon written application on that behalf) of any person upon payment of a fee of twenty-five cents. But in no case shall the fiscal enter upon actual possession of the immovable property so seized, or receive the rents and profits thereof, unless expressly directed so to do by order made under chapter L.

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

238 When a seizure of immovable property has been effected and made known and registered as in the last preceding section provided, any private alienation of the property seized, whether by sale, gift, mortgage, lease, or otherwise, after the seizure and before the removal of the same or the sale and conveyance of the property by the fiscal, shall be void as against all claims enforceable under the seizure.

When seizure must be ordered to be withdrawn.

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

List to be made of property seized.

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

Claims to Property Seized.

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

241 In the event of any claim being preferred to, or objection offered against the seizure or sale of, any immovable or movable property which may have been seized in execution of a decree or under any order passed before decree, as not liable to be sold, the fiscal or deputy fiscal shall, as soon as the same is preferred or offered, as the case may be, report the same to the court which passed such decree or order ;

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and the court shall thereupon proceed in a summary manner to investigate such claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects as if he were a party to the action.

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

Proviso

242 The claim or objection shall be made at the earliest opportunity, and if the property to which the claim or objection applies shall have been advertised for sale, the sale may (if it appears to the court necessary) be postponed for the purpose of making the investigation mentioned in section 241. Provided that no such investigation shall be made if it appears to the court that the making of the claim or objection was designedly and unnecessarily delayed with a view to obstruct the ends of justice.

Claim to be made at earliest opportunity.

Proviso.

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

Claimant to adduce evidence

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

Discretion of court to release the property claimed ;

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

or to disallow the claim.

Civil Procedure Code.

Court may continue seizure notwithstanding mortgage.

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

Action by party claiming right.

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

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

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

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

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

Undertaking to be given by applicant.

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

Undertaking, to whose benefit it entitles.

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

Interest of judgment-debtor may be sold.

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

*Civil Procedure Code.**Of the Sale and Disposition of the Property Seized.**(A) Of Sales Generally.*

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

Property seized, when money, to be dealt with as proceeds of sale.

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

When it is a decree of court, to be realized by judgment-creditor as assignee thereof.

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

In all other cases fiscal to sell.

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

Notice of sale :
I.—For movable property.

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

II.—In all cases of immovable property, the like notice of sale shall be given as is hereinbefore required in sales of movable property, and the fiscal, deputy fiscal, or other officer shall also cause to be made four copies of the notice of sale in English and four in the native language prevailing within the district, one of each of which he shall cause to be posted at his office, 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.

II.—For immovable property.

256 Whenever the property seized under one writ shall exceed the value of one thousand rupees, the fiscal, deputy fiscal, or other officer shall, in addition to the notice hereinbefore required, advertise the sale thereof, enumerating briefly the goods for sale, the nature and situation of the land, and the time and place of the sale, in the *Government Gazette* ; and no such sale shall take place until it shall have

Advertisement where property exceeds one thousand rupees in value.

Civil Procedure Code.

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.

And in other cases at cost of party.

257 The fiscal, deputy fiscal, or other officer shall be also at liberty, at the request of both parties, or either of them, on payment to him by the applicant of all costs or expenses attending the publication, to advertise any sale of movable or immovable property in manner hereinbefore mentioned, although it does not exceed the value of one thousand rupees.

Proceedings at the sale.

258 Every sale shall be held by an officer of the fiscal, or some other person duly authorized by the fiscal or deputy fiscal by writing under his hand. When the proceeds do not exceed the sum of seven thousand five hundred rupees, the fiscal or deputy fiscal shall recover a fee of three per cent. on the proceeds actually recovered on return thereof made to the court in respect of every sale and resale of movable property, and two per cent. on the proceeds of sale of immovable property belonging to the debtor. When the proceeds, whether of movable or immovable property, exceed that sum, the fiscal or deputy fiscal shall recover a fee of one hundred and fifty rupees, and of five rupees for every thousand rupees of the proceeds over and above the said sum of seven thousand five hundred rupees. And in every case after the seizure of property and publication of sale thereof, in which the sale shall be postponed or stayed at the request or with the concurrence of the party suing out the writ, the fiscal or deputy fiscal shall recover half of the above fees on the estimated value of such property from the party at whose instance the writ shall be stayed, and in default of immediate payment thereof the fiscal shall certify the amount of such fees to the court whence the execution issued. Provided, however, that such fee shall never exceed fifty rupees or the actual expenditure already incurred by the fiscal towards carrying out the sale, whichever sum shall be the largest. The fees recovered under this section shall be brought to account and appropriated in such manner as the Governor, with the advice of the Executive Council, shall from time to time direct.

Provided.

Court may in certain cases postpone sale.

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

Civil Procedure Code.

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

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

Deposit by purchaser.

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

Payment in full.

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

Default in payment, consequence of.

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

Fresh notification on resale.

264 When the property sold in execution of a decree is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of such co-sharer.

Bid by a co-sharer.

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

Fiscal may require payment of deposit.

266 The second sale, taking place in consequence of such non-payment of balance of purchase money, shall be made in the manner hereinbefore prescribed for the first sale, and if the amount of the purchase money for which the property is sold at such second sale shall fall short of the amount for which the first sale was concluded, then the first

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

Civil Procedure Code.

purchaser and his sureties, if any, shall be held liable to pay the fiscal the amount of this difference, and the fiscal on non-payment thereof by such purchaser and his sureties within one week after demand made by him upon them respectively in writing, shall certify the amount of the said difference to the court whence the execution issued. And the like course shall be observed in respect of any subsequent sale rendered necessary by failure in payment of the purchase amount.

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

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

Forfeiture of deposit.

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

Differences realized to augment the purchase money.

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

The amounts of fiscal's certificates to be recovered as by execution of decrees.

270 The amount certified by the fiscal to be payable to him for half fees under the provisions of section 258 and the amounts of the differences certified by the fiscal and directed to be reported to the court by sections 266 and 267 shall, in the case of such half fees at the instance of the fiscal and in the case of such differences respectively at the instance either of the fiscal, or of the judgment-creditor, or of the

Civil Procedure Code.

judgment-debtor, be recoverable from the persons declared in those sections to be liable to pay the same, in the same way as if the certificate were a decree for money passed by the court to which it is returned against those persons; and the cost (to be fixed by the court) of any notice, publication, or proclamation required under any of the provisions of this Ordinance to be given or made by the fiscal by beat of tom-tom or in any other manner whatsoever, shall in every instance, where provision for the payment thereof is not otherwise specially made, be prepaid by the person at whose instance or in whose interest the same is required.

Costs of notice, publication, or proclamation.

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

No officer conducting sale to bid.

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

Holder of decree may bid or purchase.

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

And purchase money may be set off against decree.

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

Place of sale of immovable property.

(B) Sales of Movable Property.

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

Sale of a share in any public company.

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

Of other movable property.

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

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

What may vitiate sale.

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

Delivery to purchaser.

Civil Procedure Code.

Delivery where
third party is in
possession.

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

Delivery of
unsecured debt
or share.

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

Endorsement of
negotiable
instrument or
share.

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

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

" *A. B.* by *C. D.*, Judge of the district court of — (or as the case may be), in an action by *E. F.* against *A. B.*"

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

Power of court
to make vesting
order.

281 In the case of any movable property not hereinbefore provided for, the court may make an order and execute such document as may be necessary vesting such property in the purchaser, or as he may direct ; and such property shall vest accordingly.

(C) Sales of Immovable Property.

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

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

Civil Procedure Code.

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

and may be set aside for material irregularity.

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

283 If no such application as is mentioned in the last preceding section is made within the thirty days, or if such application is made and the objection disallowed, the court shall at any time after the expiration of the thirty days, on the application of the decree-holder or of the purchaser, pass an order confirming the sale as regards the parties to the suit and the purchaser. Provided that no order confirming the sale shall be made if it appear to the court that the judgment-debt was satisfied at the time that the writ of execution issued.

Order confirming the sale.

Proviso.

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

Order setting aside the sale.

284 The purchaser at any such sale may apply to the court by petition on summary procedure to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the court may, on such application, make such order as it thinks fit; provided that both the judgment-debtor and the decree-holder are made respondents to the petition.

When purchaser may apply to set aside sale.

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

and get back his purchase money.

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

286 If the court shall have confirmed the sale, and the purchaser shall have paid the full amount of the purchase money according to the conditions of sale, and shall have supplied the fiscal or deputy fiscal with stamps of the proper amount required by law for the conveyance of the land sold to him (which stamps he shall be bound to supply when he pays the purchase money in full), and if the sale was not effected in execution of a decree specifically directing the

Conveyance to purchaser;

Civil Procedure Code.

sale, then the fiscal or deputy fiscal shall forthwith make out and execute a conveyance in duplicate of the property according to the form No. 56 in the second schedule hereunto annexed, or such other form, or expressed in such terms, as the court may deem expedient, which conveyance shall be binding and of force though not executed before a notary public. The fiscal or deputy fiscal shall deliver the original to the purchaser and transmit the duplicate to the registrar of lands for the district in which the land is situate, in like manner as now is or shall be required to be done by notaries in respect of deeds executed before them; and the fiscal or deputy fiscal shall be entitled to recover for such conveyance, when the amount of purchase shall be under thirty rupees, a fee of fifty cents; when it shall exceed thirty rupees, a fee of one rupee; when it shall exceed one hundred rupees, a fee of one rupee and fifty cents; when it shall exceed two hundred rupees, a fee of two rupees and fifty cents; and when it shall exceed five hundred rupees, a fee of three rupees and seventy-five cents, and no more; and such fee shall be brought to account and appropriated in such manner as the Governor shall direct.

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

to contain
sufficient map of
the premises.

Provided, however, that to all conveyances made by the fiscal to complete a sale effected in execution of a decree of court, in the event of there being no diagram or map of the premises which are the subject of the conveyance already appended to a title deed thereof delivered to the purchaser, there shall be annexed a sufficient map exhibiting, when possible, some permanent physical feature of the ground; and the purchaser shall pay in advance the expense of preparing it in addition to the fee prescribed for the conveyance. Such diagram or map shall be prepared by a competent surveyor licensed by the fiscal for that purpose, and such surveyor shall be an officer of the fiscal within the meaning of section 325.

Court may order
delivery of
possession to
purchaser.

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

Order how to be
enforced.

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

Civil Procedure Code.

288 When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a conveyance in respect thereof has been made to the purchaser under section 286, the court shall order delivery thereof to be made by affixing a notice of the sale having taken place, both in English and in the native language or languages prevailing within the district, in some conspicuous place on the property, and proclaiming to the occupant by beat of tom-tom, or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser, and the cost (to be fixed by the court) of such proclamation shall in every case be prepaid by the purchaser.

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

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

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

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

Fiscal may enter.

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

Person in possession may use and enjoy until confirmation.

- (1) He may use it and enjoy it in like manner and for the like purposes as it was used and enjoyed before the sale, doing no permanent injury to the property.
- (2) He may make the necessary repairs to a building or other erection thereupon. But this provision does not permit an alteration in the form or structure of the building or other erection.
- (3) He may use and improve the land in the ordinary course of husbandry, and may collect, gather, harvest, and store the crops and produce thereof, but shall not be entitled to them.
- (4) He may apply any wood or timber on the land to the necessary reparation of a fence, building, or other erection which was thereupon at the time of the sale.

Civil Procedure Code.

On confirmation and execution of conveyance, fiscal to deliver possession to grantees.

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

Judgment-debtor may be restrained from waste.

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

Punishment for committing waste.

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

And for disobeying order.

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

Moneys paid to, and realized by, the Fiscal.

Payments to fiscals, and by fiscals' officers, how to be made.

296 Payments to fiscals, and by fiscals' officers, shall be made in manner and subject to the rules following, and not otherwise:

- (1) Whenever any person, whether the original debtor or a purchaser of property sold in execution, shall (except as in clause (3) hereinafter provided) have occasion to pay money to the fiscal or deputy fiscal, he shall signify the sum to such fiscal or deputy fiscal, who shall give him a note addressed to the government agent or assistant government agent of the form No. 53 in the second schedule hereto annexed, which the person who is to pay the money shall carry to the office of such government agent or assistant government agent, and deliver to the shroff or receiver of the office, and pay to him the amount stated in such note.
- (2) The receipt shall then be acknowledged by the signature of the government agent or assistant

Civil Procedure Code.

government agent on that part of the note reserved for that purpose, which shall be cut off and delivered to the person who shall have made the payment, the remaining part being reserved as the authority for receiving the money.

- (3) In cases of payment of ready money, whether under the provisions of section 275 or otherwise, or a partial payment for immovable property under the provisions of section 280, the fiscal or deputy fiscal shall give a receipt accordingly; the stamps for such receipt to be furnished by the purchaser.
- (4) The fiscal's officers shall make payment of all deposits and ready money received by them, within such time after the receipt thereof as the fiscal shall prescribe, to the office of the government agent or assistant government agent, being furnished for that purpose with a note of the said form in the second schedule hereto.
- (5) A register of such notes in the form No. 59 in the said schedule, or in any other form as the Governor may from time to time prescribe, shall be kept by the fiscal, liable to the call of Government at any period.
- (6) In every case in which a payment shall have been made under sub-section (1) or (4) the government agent or the assistant government agent shall within forty-eight hours forward a receipt for such payment to the fiscal or deputy fiscal.

297 All moneys which may be paid into the office of any government agent or assistant government agent shall be retained until disposed of by order of the court whence the process of execution shall have issued: Provided always that nothing herein contained shall be constructed to affect the powers vested by law in the Commissioners of the Loan Board.

Moneys paid into government agent's office to be subject to order of court.

Arrest and Imprisonment.

298 If the fiscal return to the writ of execution that he is unable to find any property of the judgment-debtor, movable or immovable, or if before the return to the writ of execution is made the court is satisfied on the application of the judgment-creditor made by petition, to which the judgment-debtor need not be named respondent, that the judgment-debtor--

When debtor may be arrested in execution.

- (a) Has not pointed out to the fiscal any property for seizure and sale, although requested so to do; or
- (b) Has not, after reasonable efforts made for the purpose, been found by the fiscal, and the judgment-creditor does not know of any property of the judgment-debtor which can be seized in execution; or
- (c) With intent to obstruct or delay the execution of the decree, is about to abscond or to leave the jurisdiction

Civil Procedure Code.

of the court, or with the like intent has disposed of or removed his property or any part thereof from the reach of the fiscal; or

- (d) Is about to leave the island under circumstances affording reasonable probability that the judgment-creditor will thereby be obstructed or delayed in the execution of the decree;

the court may issue a warrant for the arrest of the judgment-debtor, but in no case whatever shall the court issue a warrant under this Ordinance for the arrest or imprisonment of a woman in execution of a decree for money.

Arrest under warrant.

Under the warrant so issued the judgment-debtor may be arrested at any hour, and on any day, and in any place, subject to the provisions hereinafter in section 303 contained, and shall thereupon, as soon as practicable, be brought before the court. Provided that no house shall be entered after sunset and before sunrise for the purpose of making an arrest under this section. Provided also that when the judgment-debtor pays the amount of the decree or order in execution of which he is arrested, and the costs of the arrest, to the officer arresting him, such officer shall at once release him.

Proviso 1.

Proviso 2.

No arrest for sum under two hundred rupees.

299 Notwithstanding anything in the last foregoing section, no warrant for the arrest of a judgment-debtor shall, except as in this section otherwise provided, issue in execution of a decree wherein the sum awarded, inclusive of interest, if any, up to the date of the decree, but exclusive of any further interest and of costs, shall not amount to two hundred rupees or upwards.

Exception in case of fraud.

If at any time it shall appear to the court before which any action shall be tried that the defendant in incurring the debt or liability which is the subject of such decree has obtained credit from the plaintiff under false pretences, or with a fraudulent intent, or has wilfully contracted such debt or liability without having at the time of so contracting the same a reasonable assurance of being able to pay or discharge the same, or has made or caused to be made any gift, delivery, or transfer of any property, or has removed or concealed any property with an intent to defraud his creditors or any of them, it shall be lawful for such court in its discretion in making such decree to order that such defendant be taken and detained in execution for any time not exceeding six months, and whether or not execution against the property of such defendant shall be issued in virtue of such decree.

Where debtor is unable to pay, court may order release:

300 When a judgment-debtor is brought before the court after being arrested in execution of a decree for money, and it appears to the court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree, or, if that amount is payable by instalments, the amount of any instalment thereof, the court may, upon such terms, if any, as it thinks fit, make an order directing his release.

Civil Procedure Code.

301 Before making an order under section 300 the court may take into consideration any allegation of the decree-holder touching any of the following matters :

- (a) The decree being for a sum for which the judgment-debtor was bound as a trustee or as acting in any other fiduciary capacity to account ;
- (b) The transfer, concealment, or removal by the judgment-debtor of any part of his property after the date of the institution of the action in which the decree was made, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree ;
- (c) Any undue or unreasonable preference given by the judgment-debtor to any of his other creditors ;
- (d) His refusal or neglect to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it ;
- (e) The likelihood of his absconding or leaving the jurisdiction of the court with the object or effect mentioned in sub-section (b).

but may take certain matters into consideration :

302 While any of the matters mentioned in section 301 are being considered, the court may in its discretion order the judgment-debtor to be imprisoned, or release him on his furnishing sufficient security for his appearance on the requisition of the court.

and pending decision may imprison or release on security.

303 A judgment-debtor released under section 300 or 302 may be re-arrested.

Re-arrest.

304 If the court does not make such an order as is mentioned in section 300, it shall, subject to the other provisions of this Ordinance, commit the judgment-debtor to jail.

Committal.

305 Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

On arrest, debtor to be brought before the court unless he pays.

Upon the judgment-debtor being brought before the court under such warrant of arrest, if he pays the amount of the decree and the costs of the arrest into court, or if he gives security for the payment of the same to the satisfaction of the judgment-creditor, or if he satisfies the court as is next hereinafter provided, either that he has no seizable property or that he is ready and willing to point out all such saleable property as he possesses, for sale in satisfaction of the decree against him, then the court shall release him from arrest ; otherwise, the court shall commit him to jail in execution of the decree by warrant in the form No. 61 in the second schedule hereto annexed, or to the like effect.

Court, if he pays or gives security for debt, or on being satisfied that he has no property, to release him ; otherwise to commit him to jail.

Civil Procedure Code.

Debtor in custody may at any time apply for discharge,

306 Any judgment-debtor arrested or imprisoned in execution of a decree for money may apply by petition in the way of summary procedure to the court which passed the decree for his discharge from custody, on the ground either that he has no property which can be sold in execution of the decree, or that he is ready and willing to point out all such saleable property as he possesses for sale in execution of the decree.

on sufficient affidavit.

307 The affidavit by which such petition is supported shall state :

- (a) The facts of the petitioner's arrest, or imprisonment ;
- (b) The amount, kind, and particulars of his property, and the value of so much thereof as does not consist of money ;
- (c) The situation and circumstances of the property ;
- (d) The petitioner's willingness to enable the fiscal to seize it ;
- (e) The amount and particulars of all pecuniary claims against him ; and
- (f) The names and residences of his creditors, so far as they are known to, or can be ascertained by, him.

Procedure thereon.

308 On any such application so supported being made, the court shall make an order thereon in the alternative (b) of section 377, provided the petitioner pays the cost of serving the order upon the judgment-creditor at whose instance he was arrested or imprisoned, and on the other judgment-creditors, if any, mentioned in the affidavit.

Court may commit, or release on security pending the hearing.

309 Where the applicant is under arrest and not yet committed to prison, the court may commit him to prison until the day appointed for the hearing of the petition, or until the day to which the hearing may be from time to time adjourned ; or release him on his furnishing sufficient security that he will appear when called upon.

Examination of petitioner.

310 On the day fixed for the hearing of the petition or on any subsequent day to which the court may have adjourned the hearing, the court shall, if all the parties are present, or if it is satisfied that notice of the day was duly served on the absent parties, examine the petitioner as to his then existing circumstances and his future means of paying the money due from him under the decree, and shall hear the judgment-creditor and other respondents in opposition to the applicant's discharge, and may, if it thinks fit, postpone the hearing to allow the respondents to adduce evidence.

When court may discharge petitioner.

311 If at such hearing the court is satisfied—

- (a) That the statements in the affidavit are substantially true ;
- (b) That the applicant has not, with intent to defraud his judgment-creditor, concealed, transferred, or removed any part of his property since the institution of the action in which the decree in the course of being executed was passed ; and

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(c) That he has not committed any act of bad faith regarding the matter of his petition ;
it shall discharge the petitioner.

If, however, at such hearing the court is not satisfied that these three conditions are fulfilled, it shall commit the petitioner to prison, or shall refuse to discharge him from prison, as the case may be.

312 A judgment-debtor who has been discharged from arrest or imprisonment in execution of a decree under the last preceding section shall not be again arrested in execution of the same decree,

Effect of discharge.

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

Sufficient interim subsistence money to be deposited before arrest.

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

Subsistence allowance during imprisonment to be fixed on commitment.

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

Allowance to be paid monthly in advance.

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

316 Sums of money disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the action.

Subsistence money to be deemed costs.

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

Provided.

317 The judgment-debtor shall be discharged from jail—

When debtor entitled to be discharged from jail.

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

Civil Procedure Code.

Proviso 1. Provided that in the first, second, third, and fourth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the court.

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

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

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

(B)—Decrees for delivery of Movable Property.

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

Form of writ.

Fiscal to procure delivery thereunder.

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

Procedure on default.

If the judgment-debtor fails to comply with the fiscal's demand, and if the fiscal is unable to obtain for the judgment-creditor delivery of the specific movable or share thereof mentioned in the writ, then the court upon being satisfied of these facts may, on application made to it by the judgment-creditor by petition, to which the judgment-debtor is made respondent, direct a writ of execution by seizure and sale of the judgment-debtor's property, or a warrant for the arrest of the judgment-debtor, or both, to issue to the fiscal.

Amount to be levied and manner of execution.

322 The amount of money directed to be levied in the writ of execution by seizure and sale issuing under the preceding section shall be the amount of pecuniary loss, as nearly as the court can estimate it, which is occasioned to the judgment-creditor by reason of the judgment-debtor's default in making delivery of the specific movable or share thereof according to the terms of the decree, and which the court shall award by way of compensation to the judgment-creditor by the order directing the writ to issue; and the

Civil Procedure Code.

execution of this writ, and of the warrant of arrest issuing under the same section, shall be effected according and subject to the rules prescribed for the writ of execution and warrant of arrest issued for the enforcement of decrees falling under head (A).

(C)—Decrees for possession of Immovable Property.

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

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

Form of writ.

324 Upon receiving the writ the fiscal or his officer shall as soon as reasonably may be repair to the ground, and there deliver over possession of the property described in the writ to the judgment-creditor or to some person appointed by him to receive delivery on his behalf, and if need be by removing any person bound by the decree who refuses to vacate the property; provided that as to so much of the property, if any, as is in the occupancy of a tenant or other person entitled to occupy the same as against the judgment-debtor, and not bound by the decree to relinquish such occupancy, the fiscal or his officer shall give delivery by affixing a copy of the writ in some conspicuous place on the property and proclaiming to the occupant by beat of tom-tom, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property; and provided also that if the occupant can be found, a notice in writing containing the substance of such decree shall be served upon him, and in such case no proclamation need be made.

Fiscal how to proceed thereunder.

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

Resistance to execution of Proprietary Decrees.

325 If in the execution of a decree for the possession of property under heads (B) and (C) the officer charged with the execution of the writ is resisted or obstructed by any person, or if after the officer has delivered possession the judgment-creditor is hindered by any person in taking complete and effectual possession, the judgment-creditor may at any time within one month from the time of such resistance or obstruction complain thereof to the court by a petition in which the judgment-debtor and the person resisting and obstructing shall be named respondents, and which shall be dealt with by the court in accordance with the alternative (b) of section 377.

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

Civil Procedure Code.

Punishment of person obstructing if acting on behalf of judgment-debtor.

326 On the hearing of the matter of the petition of complaint so made the court, if it is satisfied that the obstruction or resistance complained of was occasioned by the judgment-debtor or by some person at his instigation, may commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct the judgment-creditor to be put into possession of the property.

If resistance be made by *bonâ fide* claimant in possession, court to direct action and

327 If the resistance or obstruction is found by the court to have been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the court shall direct the petition of complaint to be numbered and registered as a plaint in an action between the decree-holder as plaintiff and the claimant as defendant; and the court shall, without prejudices to any proceedings to which the claimant may be liable for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if an action for the property had been instituted by the decree-holder against the claimant; and shall pass such order as it thinks fit for executing or staying execution of the decree.

to try and determine the same.

So too, if *bonâ fide* claimant be dispossessed in effecting the execution.

328 If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the action in which the decree was passed, he may apply to the court by petition stating his grounds of dispute.

Procedure.

If after examining the applicant, it appears to the court that there is probable cause for making the application, the application shall be numbered and registered as a plaint in an action between the applicant as plaintiff and the decree-holder as defendant, and the court shall proceed to investigate the matter in dispute in the same manner and with the like power as if an action for the property had been instituted by the applicant against the decree-holder, and shall pass such order as it thinks fit for executing or staying execution of the decree or restoring the applicant to possession.

In hearing an application under this section, the court shall confine itself to the grounds of dispute above specified.

Nothing in this section or section 326 applies to a person to whom the judgment-debtor has transferred the property after the institution of the action in which the decree is made.

If the property which the judgment-creditor is obstructed or hindered in obtaining possession of is an undivided share of property, the court shall in the actions instituted under section 327 and this section cause all the shareholders to be made parties.

Civil Procedure Code.

329 The final order passed under either of sections 327 and 328 shall be in the nature of, and shall have the same force as, a decree in a regular action, and shall be subject to the same conditions as to appeal or otherwise.

Effect of final order in these cases.

330 If it appears at the hearing of the judgment-creditor's complaint that the resistance or obstruction was occasioned by any person other than the judgment-debtor, not in occupation of the property sold but claiming a right thereto as proprietor, mortgagee, lessee, or under any other title, the court shall pass such order on the matter of the resistance or obstruction as it thinks fit.

Procedure where party resisting is not judgment-debtor and not in possession.

The party against whom such order is passed may within one month institute an action to establish the right which he claims to the present possession of the property, but subject to the result of such action, if any, the order shall be final.

(D)—Decrees for Execution of Conveyance or Transfer of Property.

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

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

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

Service of the draft conveyance on judgment-debtor.

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

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

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

Objections to draft.

333 The execution of a conveyance or the endorsement of a negotiable instrument by the court under the last preceding section may be in the following form: "C. D., judge of the court of ——— (as the case may be), for A. B., in an

Execution of the instrument by the court.

Civil Procedure Code.

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

(E, F)—Mandatory and Restraining Decrees.

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

334 When a decree or order, falling under either of the heads (*E*) or (*F*) has been passed, and the judgment-debtor has had an opportunity of obeying the decree or order, but has wilfully failed to obey it, application to the court for execution or enforcement of the decree or order may be made by the judgment-creditor by petition to which the judgment-debtor shall be made respondent; and which shall set out the damage, if any, caused to the judgment-creditor by the disobedience of the judgment-debtor to the decree or order. And if the court on the hearing of such application is satisfied that the judgment-creditor is entitled to obtain execution or enforcement of the decree or order, it shall direct a writ of execution by seizure and sale of the judgment-debtor's property, or a warrant for the arrest of the judgment-debtor, or both, to issue to the fiscal.

Court may issue writ of execution by seizure and sale.

Amount to be levied under writ.

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

General Provisions.

Discretion of court to issue execution.

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

When subsequent application may be made for execution of decree partly satisfied.

337 Where an application to execute a decree for the payment of money or delivery of other property has been made under this chapter and granted, no subsequent application to execute the same decree shall be granted unless the court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the

Civil Procedure Code.

decree, or that execution was stayed by the decree-holder at the request of the judgment-debtor. Also no such subsequent application shall be granted after the expiration of ten years from any of the following dates (namely):

- (a) The date of the decree sought to be enforced, or of the decree, if any, on appeal affirming the same; or
- (b) Where the decree or any subsequent order directs the payment of money or the delivery of property to be made at a specified date,—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

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

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

Application by one of several decree-holders for execution of the decree on behalf of the whole.

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

For the purposes of this chapter the term "legal representative" shall mean an executor or administrator, or in the case of an estate below the value of one thousand rupees, the next of kin who have adiated the inheritance. Provided, however, that in the event of any dispute arising as to who is the legal representative, the provisions of section 397 shall, *mutatis mutandis*, apply.

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

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

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

Proviso 1.

Civil Procedure Code.

- Proviso 2.** Provided also that where a decree against several persons has been transferred to one of them, it shall not be executed against the others.
- Proviso 3.** In the case where one decree of court is seized in execution of another decree, the judgment-creditor of this second decree is in the situation of assignee of the judgment-creditor of the decree which is seized, provided the latter person is identical with the judgment-debtor of the decree in execution of which the seizure is made.
- Transferee bound by equities.** **340** Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.
- Legal representative of deceased debtor, how made liable.** **341** If the judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the court which passed it, by petition, to which the legal representative of the deceased shall be made respondent, to execute the same against the legal representative of the deceased.
- and extent of liability.** Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the court executing the decree may on the application of the decree-holder compel the said representative to produce such accounts as it thinks fit.
- Fiscal may adjourn sale. Proviso.** **342** The fiscal may in his discretion adjourn a sale, provided that the date to which the sale is adjourned is published in the same manner as was the original notice of sale; and provided also that he report to the court in his return to the writ of execution, or sooner, the cause for which the adjournment was made.
- Stay of proceedings and adjournment of sale by court.** **343** The court may for sufficient cause stay execution proceedings at any stage thereof, and make order for adjournment of a sale. The application to the court to stay proceedings shall be made by petition, to which all persons interested in the matter of the execution shall be made parties, and no such order shall be made until after payment of all fiscal's fees then due.
- All questions arising in execution to be determined by order of court and not by separate action.** **344** All questions arising between the parties to the action in which the decree was passed, or their legal representatives, and relating to the execution of the decree, shall be determined by order of the court executing the decree, and not by separate action.
- Procedure where there are cross decrees between the parties.** **345** If cross decrees between the same parties for the payment of money be produced to the court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.
- If the two sums be equal, satisfaction shall be entered up on both decrees.

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

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

Explanation 3.—This section does not apply unless—

- (a) The decree-holder in one of the actions in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both actions; and
- (b) The sums due under the decrees are definite and unconditional.

Illustrations.

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

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

Procedure where parties recover different amounts under same decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

347 In cases where there is no respondent named in the petition of application for execution, if more than one year has elapsed between the date of the decree and the application for its execution, the court shall cause the petition to be served on the judgment-debtor, and shall proceed thereon, as if he were originally named respondent therein. Provided that no such service shall be necessary if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed or from the date of the last order against the party, against whom execution is applied for, passed on any previous application for execution.

Proceedings where one year has elapsed from date of decree.

proviso.

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

Execution against surety.

Civil Procedure Code.

Decree-holder
to certify
payment to the
court.

349 If any money payable under a decree is paid out of court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, he shall certify such payment or adjustment to the court whose duty it is to execute the decree. The judgment-debtor may also by petition inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree-holder to show cause on a day to be fixed by the court why such payment or adjustment should not be recorded as certified. And if after due service of such notice the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly. No such payment or adjustment shall be recognized by any court unless it has been certified as aforesaid.

How and to
whom money
paid into court
may be paid out.

350 Money, which in the course of an action or in satisfaction of a decree or order has been paid into, and received by, the court to the separate account of a specified person, or which by an order of court has after receipt been carried to such separate account, may be paid out to the specified person on his *ex parte* application. But in all other cases money in court, whether realized in execution of a decree or not, shall only be paid out on notice to all the parties to the action, or such of them as are interested in the money. And if, before the proceeds of execution have been paid to the party in whose favour the execution issued, notice shall be given to the court of any claim to such proceeds by any other person or persons, the court shall before making any order for the payment of such proceeds cause notice to issue to all persons whose claims shall have been notified to the court, as well as to the parties to the action, that the court will on the day specified in the notice proceed to determine the respective rights of the persons claiming such proceeds or any part thereof (form No. 64, second schedule). And on such day 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 claims cannot be conveniently heard and adjudicated upon in the manner aforesaid, refer the parties to a separate action.

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

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

Where several
decree-holders
are entitled to
share rateably
in proceeds of a

352 Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the court by which such assets are held for execution of decrees for money against

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the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons.

sale of debtor's property.

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

Proviso.

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

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

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

Order for payment of money enforced as a decree.

354 In the event of an order being made by the civil court under the provisions of this Ordinance for the payment of a fine, and in the event of the fine not being paid into court at the time appointed therefor by the order, the amount of the said fine shall be levied by the fiscal from the property of the person against whom the order was made; and the court shall forthwith, on the occurrence of the default, of its own motion issue its writ or precept to the fiscal for this purpose.

Fine imposed by civil court how to be levied.

CHAPTER XXIII.

Of Service of Process.

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 or for the sequestration of any property, shall usually be directed to the fiscal of the province or district in which the court issuing the writ or warrant is situate; but any such writ or warrant may be issued to any headman, constable, or officer of police empowered to act within such province or district. 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 any province or district within which such party does actually and voluntarily reside, or carry on business, or personally work for gain, or is possessed of such property.

Writs or warrants to be usually issued to the fiscal for execution.

Civil Procedure Code.

and other
processes for
service.

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 province or district in which the court issuing such processes, notices, or orders is situate under a precept of that court as is hereinbefore 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.

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

357 It shall be the duty of every fiscal upon receiving any writ, or warrant, or precept directed to him by any court, by himself or by his officers, to execute such writ or warrant, and to serve every process, notice, or order conveyed to him under such precept according to the exigency of the writ, warrant, or precept.

Proceedings
against fiscal for
contempt, &c.

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 district other than that of the court issuing such process, order, or direction, be referred by such court to the court possessing similar jurisdiction within the district of such fiscal or deputy fiscal, and shall be dealt with by the latter court as if such neglect or refusal related to its own process or orders.

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

359 It shall be the duty of every headman, constable, or officer of police, upon receiving any writ or warrant or precept directed to him by any court to execute such writ or warrant, and to serve every process, notice, or order conveyed to him under such precept according to the exigency of the writ, warrant, or precept in any place within the district or division in which such headman, constable, or officer is empowered to act.

Endorsement of
process by fiscal.

360 It shall be competent to any fiscal to whom any writ, warrant, or precept has been directed under the foregoing sections, and to the fiscal's officer to whom the fiscal may have entrusted such writ, warrant, or precept for execution to endorse thereon the name of any headman, constable, or officer of police empowered to act within such fiscal's province or district, or the name of any other fiscal; and such endorsement shall operate—

(a) In the case of a headman, 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;

(b) In the case of the fiscal, to impose upon the fiscal whose name is so endorsed the like duty of executing the endorsed writ, warrant, or precept as

Civil Procedure Code.

he would be under, by virtue of section 357, if such writ, warrant, or precept were directed to him immediately by the court from which it issued.

361 Every fiscal and fiscal's officer shall within his province or district, and every headman, constable, or officer of police shall, within the local limits in which he is empowered to act, afford his aid and assistance to any one charged under the foregoing sections with the duty of executing any writ or warrant, or of serving any process, notice, or order of court.

Duty of every fiscal to assist.

362 Every mandate, writ, warrant, precept, or other process issuing from the Supreme Court, or from any district court or court of requests shall have full force and validity in every place throughout the island; 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.

Every writ or process to be valid for the whole island.

Protection of officer executing the same.

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.

Proviso 1.

Proviso 2.

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

What acts not within last section.

Civil Procedure Code.

Form of precept.

364 Unless otherwise in this Ordinance enacted the precept of the court to the fiscal directing the service of any process, order, or notice, or other document, not amounting to a writ to levy money, or to take any person in arrest, or to detain any person in custody, or to deliver possession of property, shall be in the form 17 given in the schedule II. hereto.

When process may not be served.

365 Process in civil cases, whether at the suit of the Crown or individuals, shall not be served or executed between the period of sunset and sunrise; nor on a Sunday, Good Friday, or Christmas day, nor on any minister of religion while performing his functions in any place of public worship, nor upon any individual of any congregation during the performance of public worship at any such place.

Outer door not to be forced.

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

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

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

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

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

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

369 In all civil cases where process of execution may issue against the person of a party, it shall be necessary, in order to constitute an arrest, that the body of the person to be arrested shall be actually seized or touched by the officer executing the process, unless such person express his acquiescence in the arrest without being so seized or touched.

Fiscal's return of writ or precept.

370 Every fiscal or deputy fiscal shall, on the receipt of any process, note thereon the day he received the same, and on the service or execution thereof the date and mode of such service or execution.

When the writ of execution or precept for service has been carried into effect, or on the day appointed in the writ or precept for the return thereof, whichever date shall first occur, the fiscal or deputy fiscal shall return the writ or precept to the court from which it issued with his report of what has been done under it.

Report to be accompanied by affidavit to be attached as an exhibit.

371 The report of the fiscal or deputy fiscal constituting his return to the writ of execution or to the precept for service of any process shall be fair written and shall state concisely the mode in which the process has been served, or the steps which have been taken to effect service; and

Civil Procedure Code.

shall be accompanied by an affidavit made by the officer charged with the duty of executing the process, which affidavit shall set out the facts of the service effected, or of the endeavour made by the officer to effect the service. The process and the affidavit shall be attached to the report as exhibits, and shall be referred to therein by means of a distinguishing letter or other mark put upon them, each initialled and dated by the fiscal.

372 The fiscal or deputy fiscal, or other person specially appointed by the Governor in that behalf, is hereby authorized to administer the oath or affirmation which is requisite to the making of the affidavit in the last section mentioned. And every officer who makes a false statement of fact in any such affidavit commits (in addition to any offence of which under the provisions of the Ceylon Penal Code he may by so doing be guilty) an offence which is punishable as contempt of court.

Power of fiscal or other person to administer oath therefor.

PART II.**OF SUMMARY PROCEDURE.****CHAPTER XXIV.***Of Summary Procedure.*

373 Every application to the court, or action, of summary procedure shall be instituted upon a duly stamped written petition presented in open court by the applicant; or, in the court of requests, may be made orally by the applicant in person, whose statement then being reduced into writing by the court or by some officer specially deputed by the court for that purpose, shall, upon the requisite stamp being furnished and affixed on behalf of the applicant, if a stamp be necessary, be deemed and treated as a written petition.

Summary procedure by petition.

374 The petition shall be distinctly written in the English language, upon good and suitable paper, and shall contain the following particulars:

Form of petition.

- (a) The name of the court and date of presenting the petition.
- (b) The name, description, and place of abode of the petitioner or petitioners.
- (c) The name, description, and place of abode of the respondent or respondents.
- (d) A plain and concise statement of the facts constituting the ground of the application and its circumstances, and of the petitioner's right to make it. Such statement shall be set forth in duly numbered paragraphs.
- (e) A prayer for the relief or order which the petitioner seeks.

Civil Procedure Code.

If incidental to an action, petition to be entitled therein.

375 If the application is instituted in the course of, or as incidental to, a pending action, whether of regular or summary procedure, the petition shall be headed with a reference to its number in the court, and the names of the parties thereto, and shall be filed as part of the record of such action, and all proceedings taken and orders made on such petition shall be duly entered in the journal required to be kept by section 92.

Affidavits and exhibits to be attached to petition.

376 With the petition, and, so far as conveniently can be, attached thereto, shall be exhibited such affidavits, authenticated copy records, processes, or other documentary evidence as may be requisite to furnish *prima facie* proof of the material facts set out or alleged in the petition, or the court may in its discretion permit or direct the petitioner to adduce oral evidence before the court for this purpose, which shall be taken down by the court in writing.

If grounds are sufficient, order may be *nisi*, or interlocutory.

377 If the court is satisfied on the evidence exhibited or adduced that the material facts of the petition are *prima facie* established, and is of opinion that on the footing of these facts the petitioner is entitled to the remedy, or to the order in his favour, for which the petition prays, or any part thereof, then the court shall accordingly make either—

- (a) An order *nisi*, conditioned to take effect in the event of the respondent not showing cause against it on a day appointed by the order for that purpose; or
- (b) An interlocutory order appointing a day for the determination of the matter of the petition, and intimating that the respondent will be heard in opposition to the petition if he appears before the court for that purpose on the day so appointed.

Order as to costs.

378 In the alternative marked (a) the order *nisi* may comprise an order against the respondent, or any of the respondents, to pay the costs of the petitioner.

Form of order.

379 In either of the alternatives (a) and (b) of section 377 the order made shall be put into writing, and shall contain a prefatory recital of the petition, and of the exhibits and other evidence adduced in support thereof. And a copy of the order together with a copy of the petition shall be served upon the respondent by the fiscal in the manner and subject to the rules hereinbefore prescribed for the service of the summons in a regular action.

Service on respondent.

If grounds are insufficient, petition to be refused.

380 If the court is not satisfied on the evidence exhibited or adduced that the material facts of the petition are *prima facie* established, or is of opinion that on the footing of those facts the petitioner is not entitled to the relief which he asks, then in either case the court shall refuse the petition.

Petition and order thereon to be filed.

381 The petition with its exhibits, adduced evidence, and the order made thereon, shall be filed in court whether the order is in the alternative (a) or (b), section 377, or is an order refusing the petition.

Civil Procedure Code.

382 If on the day appointed in an order made under section 377 for the determination of the matter of the petition, the petitioner does not appear before the court either in person or by proctor to support the petition, the court shall dismiss the petition, and shall have power to make such order for the payment of costs by the petitioner to the respondent as to the court shall seem just.

Non-appearance of petitioner on day appointed.

383 If on such day the petitioner appears, and the respondent does not appear, and if the court is satisfied by the affidavit of the serving officer, stating the fact of the service, or by oral evidence, that the order has been duly served upon the respondent in time reasonably sufficient to enable him to appear, then, if the order is an order *nisi* made under (a) of section 377, the court shall make it absolute, and shall pass no other order adverse to the respondent; but otherwise it shall make such order within the prayer of the petition as it shall consider right on the facts proved. Provided, however, that in the latter case the court shall make no order to pay costs against the respondent, except in cases where the prayer of the petition expressly asks for the costs of the application, and the court thinks it fit that the respondent should pay them. Nothing in this section shall prevent the court from dismissing the petition at this stage in the absence of the respondent, if it sees reason to think that the order ought not to have issued in the first instance.

When court may make order *nisi* absolute.

Provido.

384 If on such day both the petitioner and the respondent appear, the proceedings on the matter of the petition shall commence by the respondent in person, or by his proctor, stating his objections, if any, to the petitioner's application; and the respondent shall then be entitled to read such affidavits or other documentary evidence as may be admissible, or by leave of the court to adduce oral evidence in support of his objections, or to rebut and refute the evidence of the petitioner, provided that no affidavit or other documentary evidence shall be so read without express leave of court, unless a copy of the document shall have been served on the petitioner or his proctor at least forty-eight hours before the day when the matter of the petition comes on to be heard and determined; and the oral evidence shall be taken down in writing by the judge.

Proceedings where both parties appear.

Provido.

385 In the event of the respondent stating objections to the application, and not otherwise, and after the respondent's evidence, if any, shall have been read or given, the petitioner shall be entitled by way of reply to comment upon the respondent's case.

Right to reply.

386 When the respondent's evidence has been taken, it shall be competent to the court, on the request of the petitioner, to adjourn the matter to enable the petitioner to adduce additional evidence; or, if it thinks necessary, it may frame issues of fact between the petitioner and respondent, and adjourn the matter for the trial of these issues by

Additional evidence when admitted.

Civil Procedure Code.

oral testimony. And on the day to which the matter is so adjourned, the additional evidence shall be adduced, and the issues tried in conformity with, as nearly as may be, the rules hereinbefore prescribed for the taking of evidence at the trial of a regular action.

Final order.

387 The court after the evidence has been duly taken and the petitioner and respondent have been heard either in person or by their respective proctors or recognized agents, shall pronounce its final order in the matter of the petition in open court, either at once or on some future day, of which notice shall be given in open court at the termination of the trial.

Endorsement on order nisi.

388 The final order so pronounced may be endorsed on the order *nisi* or on the interlocutory order, as the case may be.

Proviso.

In the case of the order *nisi*, the final order, if endorsed, will be simpliciter either in the shape of "order discharged" or of "order made absolute." Provided that an order *nisi*, if it consists of separable parts, may be discharged in part and made absolute in part; and nothing herein enacted shall prevent any order being made by consent of the petitioner and respondent on the footing of the order *nisi*.

In the case of the interlocutory order, the court may make such order within the prayer of the petition as it shall consider right on the facts proved, and it may make any such order upon the petitioner and respondent for the payment of costs as to the court shall seem just.

Final order made on non-appearance of respondent, not appealable, but may be set aside.

389 No appeal by a respondent shall lie against any final order which has been made, in the case of the respondent's non-appearance, on the footing of either an order *nisi*, or an interlocutory order in the matter of a petition; but it shall be competent to the court, within a reasonable time after the passing of such order, to entertain an application in the way of summary procedure instituted by any respondent against whom such order has been made, to have such final order set aside upon the ground that the applicant had been prevented from appearing after notice of the order *nisi* or interlocutory order by reason of accident or misfortune, or that such order *nisi* or interlocutory order had never been served upon him. And if the ground of such application is duly established to the satisfaction of the court, as against the original petitioner, the court may set aside the final order complained of upon such terms and conditions as the court shall consider it just and right to impose upon the applicant; and upon the final order being so set aside, the court shall proceed with the hearing and determination of the matter of the original petition as from the point at which the final order so set aside was made.

Parties.

390 In an application, or action, of summary procedure the persons, petitioning or respondent, are the parties to the action.

Civil Procedure Code.

391 On the institution of an application of summary procedure which is not made in, or incidental to, any already pending action, the court shall commence and keep a journal entitled as of the matter of the application, according to the rules prescribed in section 92, and this journal so kept shall be the record of the matter of the application.

Journal.

PART III.

INCIDENTAL PROCEEDINGS.

CHAPTER XXV.

Of the Continuation of Actions after alteration of a Party's Status.

392 The death of a plaintiff or defendant shall not cause the action to abate if the right to sue on the cause of action survives.

On death of a party action does not abate if right to sue survives.

393 If there be more plaintiffs or defendants than one and any of them dies, and if the right to sue on the cause of action survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the court shall, on application in the way of summary procedure, make an order to the effect that the action do proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

On death of one out of more plaintiffs or defendants than one if right to sue survive to or against the rest action to proceed.

394 If there are more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the court may cause the legal representative, if any, of the deceased plaintiff to be made a party, and shall thereupon cause an entry to that effect to be made on the record and proceed with the action.

If, on death of one of several plaintiffs, the right to sue survives to the rest jointly with legal representative of deceased, legal representative may be made plaintiff.

For the purposes of this chapter legal representative shall mean an executor or administrator, or in the case of an estate below the value of one thousand rupees, the next of kin who have adiated the inheritance.

395 In case of the death of a sole plaintiff or sole surviving plaintiff the legal representative of the deceased may, where the right to sue survives, apply to the court to have his name entered on the record in place of the deceased plaintiff, and the court shall thereupon enter his name and proceed with the action.

On death of sole plaintiff, legal representative may be substituted.

396 If no such application be made to the court by any person claiming to be the legal representative of the deceased plaintiff, the court may pass an order that the action shall abate, and award to the defendant the costs which he may have incurred in defending the action, to be recovered from the estate of the deceased plaintiff; or the court may, if it think proper, on the application of the defendant, and upon

or action may be declared to abate.

Civil Procedure Code.

such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the action in order to a final determination of the matter in dispute, or for both those purposes.

In case of dispute, court to decide who is legal representative.

397 In the event of any dispute arising as to who is the legal representative of a deceased plaintiff, it is competent to the court either to stay the action until the question has been decided in another action, or to decide at once, as between the parties before it, who shall be admitted to be such legal representative for the purpose of prosecuting the action. And this question shall in such case be dealt with and tried by the court as an issue preliminary to the trial of the merits of the action.

Of substitution of legal representative of deceased defendant.

398 If there be more defendants than one, and any of them die before decree and the right to sue on the cause of action does not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives, the plaintiff may make an application to the court, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead. The court shall thereupon, on being satisfied that there are grounds therefor, enter the name of such representative on the record in the place of such defendant, and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the action, and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the action.

Provido,

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

The legal representative of a deceased defendant may apply to have himself made a defendant in place of the deceased defendant, and the provisions of this section, so far as they are applicable, shall apply to the application and to the proceedings and consequences ensuing thereon.

Action not abated by marriage of female party.

399 The marriage of a female plaintiff or defendant shall not cause the action to abate, but the action may, notwithstanding, be proceeded with to judgment; and where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband where the husband is by law entitled to the subject-matter of the decree.

Civil Procedure Code.

400 The bankruptcy or insolvency of a plaintiff in any action which his assignee might maintain for the benefit of his creditors shall not bar the action, unless such assignee declines to continue the action and to give security for the costs thereof, within such time as the court may order.

Effect of
bankruptcy.

401 If the assignee neglects or refuses to continue the action and to give such security within the time so ordered, the defendant may apply for the dismissal of the action on the ground of the plaintiff's bankruptcy or insolvency, and the court may dismiss the action and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

When assignee
does not
continue action.

402 If a period exceeding twelve months in the case of a district court, or six months in a court of requests, elapses subsequently to the date of the last entry of an order or proceeding in the record without the plaintiff taking any step to prosecute the action where any such step is necessary, the court may pass an order that the action shall abate.

When court
itself may order
action to abate.

403 When an action abates or is dismissed under this chapter, no fresh action shall be brought on the same cause of action.

No fresh action
to be brought
where action has
abated; but
court may set
aside order.

But the plaintiff or the person claiming to be the legal representative of a deceased or insolvent plaintiff may, within such period of time as may seem to the court under the circumstances of the case to be reasonable, apply for an order to set aside the order for abatement or dismissal; and if it be proved that he was prevented by any sufficient cause from continuing the action, the court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

404 In other cases of assignment, creation, or devolution of any interest pending the action, the action may, with the leave of the court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come, either in addition to or in substitution for the person from whom it has passed, as the case may require.

Continuation of
action in other
cases of
assignment of
party's interest.

405 The application under section 398 may be made *ex parte*, but in all other applications for the exercise of the discretion of the court under this chapter all the parties to the action, not being the applicants, or such of them as may be affected by the order sought, must be made respondents on the face of the application.

Applications
under this
chapter how to
be made.

CHAPTER XXVI

Of the Withdrawal and Adjustment of Action.

406 If, at any time after the institution of the action, the court is satisfied on the application of the plaintiff (a) that the action must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to

Withdrawal and
adjustment
of action.

Civil Procedure Code.

withdraw from the action or to abandon part of his claim with liberty to bring a fresh action for the subject-matter of the action, or in respect of the part so abandoned, the court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the action, or abandon part of his claim, without such permission, he shall be liable for such costs as the court may award, and shall be precluded from bringing a fresh action for the same matter or in respect of the same part. Nothing in this section shall be deemed to authorize the court to permit one of several plaintiffs to withdraw without the consent of the others.

Permission to bring fresh action not to affect prescription.

Adjustment of actions out of court.

407 In any fresh action instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of prescription or limitation in the same manner as if the first action had not been brought.

408 If an action be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the action, such agreement, compromise, or satisfaction shall be notified to the court by motion made in presence of, or on notice to, all the parties concerned, and the court shall pass a decree in accordance therewith, so far as it relates to the action, and such decree shall be final, so far as relates to so much of the subject-matter of the action as is dealt with by the agreement, compromise, or satisfaction.

CHAPTER XXVII.

Of Payment of Money into Court.

Payment of money into court.

409 The defendant in any action brought to recover a debt or damage may, at any stage of the action, deposit in court such sum of money as he considers a satisfaction in full of the plaintiff's claim.

Notice thereof.

410 Notice in writing of the deposit shall be given by the defendant to the plaintiff, and the amount of the deposit shall (unless the court otherwise directs) be paid out of court to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice.

411 No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Plaintiff may accept in part or

412 If the plaintiff accepts such amount only as satisfaction in part of his claim, he may prosecute his action for the balance; and if the court eventually decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the action incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Civil Procedure Code.

413 If the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the court a statement to that effect, embodied in a motion for judgment, and the court shall pass judgment accordingly, and in directing by whom the costs of each party are to be paid the court shall consider which of the parties is most to blame for the litigation.

in full.

Illustrations.

- (a) A owes B one hundred rupees. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into court. B accepts it in full satisfaction of his claim, but the court should not allow him any costs, the litigation being presumably groundless on his part.
- (b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into court. B accepts it in full satisfaction of his claim. The court should also give B his costs of action, A's conduct having shown that the litigation was necessary.
- (c) A owes B one hundred rupees, and is willing to pay him that sum without action. B claims one hundred and fifty rupees, and sues A for that amount. On the plaint being filed, A pays one hundred rupees into court, and disputes only his liability to pay the remaining fifty rupees. B accepts the one hundred rupees in full satisfaction of his claim. The court should order him to pay A's costs.

414 When a defendant by his answer or any party to an action by petition professes to pay money into court, or when a defendant by his answer sets up a tender of any sum of money before action brought, the answer or the petition shall not be received or filed by the court unless either the sum of money so professed to have been paid into court, or so alleged to have been tendered, is actually paid into court, or the requisite steps for the purpose are taken by the defendant or other party, as the case may be.

Money must be actually paid.

415 The enactments of this chapter shall apply, *mutatis mutandis*, to the case of payment of money into court made by any party to the action in satisfaction of the claim of any other party.

This chapter to apply to any party.

CHAPTER XXVIII.

Of Security for Costs.

416 If at the institution, or at any subsequent stage, of an action, it appears to the court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of the jurisdiction of the court, the court may in its discretion, and either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Security for costs in case of non-residence.

Civil Procedure Code.

Where defendant
is non-resident.

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 out of the jurisdiction of the court, 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.

If not furnished
when ordered,
action may be
dismissed.

418 In the event of such security not being furnished within the time so fixed, the court shall dismiss the action, unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 406, or show good cause why such time should be extended, in which case the court may extend it.

Dismissal may
be set aside.

When an action is dismissed under this section the plaintiff may within thirty days, and after due notice in writing to the defendant, apply for an order to set the dismissal aside, and if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs, or otherwise as it thinks fit, and shall appoint a day for proceeding with the action.

What amounts to
non-residence.

419 Whoever leaves, or is about to leave, the jurisdiction under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs, shall be deemed to be residing out of the jurisdiction within the meaning of section 416 or 417.

CHAPTER XXIX.

*Of Commissions.**A.—Commissions to examine Witnesses.*

Commission to
examine sick
person within
jurisdiction ;

420 Any court may in any action issue a commission for the examination on interrogatories or otherwise, and on oath or affirmation, of persons resident within the local limits of its jurisdiction who are from sickness or infirmity unable to attend the court, or of women who, according to the customs and manners of the country, ought not to be compelled to appear in public.

to whom to be
issued.

421 The commission for the examination of a person who resides within the local limits of the jurisdiction of the court issuing the same may be issued to any person whom the court thinks fit to execute the same.

Commission to
examine in other
cases ;

422 Any court may in any action issue a commission for the examination of—

(a) Any person resident beyond the local limits of its jurisdiction ;

Civil Procedure Code.

- (b) Persons who are about to leave such limits before the date on which they are required to be examined in court; and
- (c) Civil and military officers of Government who cannot in the opinion of the judge attend the court without detriment to the public service; and
- (d) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public.

Such commission shall ordinarily be issued to any court, except the Supreme Court, within the local limits of whose jurisdiction such person resides, and which can most conveniently execute the same. Provided that, under special circumstances, the commission may be directed to any person whom the court issuing the commission thinks fit to appoint.

to whom to be issued.

Proviso.

423 When any court to which application is made for the issue of a commission for the examination of a person residing at any place not within the colony is satisfied that his evidence is necessary, the court may issue such commission.

Evidence of non-resident person must be necessary.

424 Every court receiving a commission for the examination of any person shall examine him pursuant thereto.

Court to execute the commission.

425 After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) be recorded in the action.

Return thereof.

426 Evidence taken under a commission shall not be read as evidence in the action without the consent of the party against whom the same is offered, unless—

Evidence taken under commission when admissible.

- (a) The person who gave the evidence is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined; or is a person whom the court, in accordance with the customs and manners of the country, sees reason to exempt from personal appearance in court; or
- (b) The court in its discretion, for good cause to be assigned by it, dispenses with the proof of any of the circumstances mentioned in the last preceding section and authorizes the evidence of any person being read as evidence in the action, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

427 The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by—

Foreign courts to which provisions apply.

Civil Procedure Code.

- (a) Courts situate within the limits of British India, and established by the authority of Her Majesty or of the Governor-General in Council; or
- (b) Courts situate in any part of the British Empire other than British India; or
- (c) Courts of any foreign country for the time being in alliance with Her Majesty.

B.—Commissions for Local Investigations.

Commission to make local investigation.

428 In any action or proceeding in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, and the same cannot be conveniently conducted by the judge in person, the court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report to the court.

Return thereof.

429 The commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, subscribed with his name, to the court.

C.—Commissions to examine Accounts.

Commission to examine accounts;

430 In any action in which an examination or adjustment of accounts is necessary, the court may issue a commission to such person as it thinks fit, directing him to make such examination.

Court to furnish instructions.

431 The court shall furnish the commissioner with such part of the proceedings of the action and such detailed instructions as appear necessary, and the instructions shall distinctly specify whether the commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

General Provisions.

Evidence taken on commission shall be filed and recorded in the action.

432 The commission in every case within this chapter shall be entitled as in the action, whether of regular or summary procedure, in which it issued, and on its return shall, with all the proceedings, evidence, and documents, if any, taken therein, be filed and recorded as of that action.

Commissioner may be examined personally.

The report of the commissioner or commissioners in each case within (B) and (C), and the evidence taken by a commissioner (but not the evidence without the report), shall be evidence in the action; but the court, or, with the permission of the court, any of the parties to the action, may examine the commissioner personally in open court touching any of the matters referred to him, or mentioned in his report, or as to the manner in which he has made the investigation or conducted his proceedings.

Court may order payment into court of expenses.

433 Before issuing any commission under this chapter the court may order such sum (if any) as it thinks reasonable for the expenses of the commission, to be paid into court by the party at whose instance or for whose benefit the commission is issued.

Civil Procedure Code.

434 Any commissioner appointed under this chapter shall have authority to administer an oath or affirmation, and may, unless otherwise directed by the order of appointment—

Powers of commissioners.

- (a) Examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the commissioner thinks proper to call upon to give evidence in the matter referred to him;
- (b) Call for and examine documents and other things relevant to the subject of inquiry;
- (c) At any reasonable time enter upon or into any land or building mentioned in the order.

435 The provisions of this Ordinance relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a court situate within, or by a court situate beyond, the limits of the colony.

Provisions of Code as to witnesses to apply.

436 Whenever a commission is issued under this chapter, the court shall direct that the parties to the action shall appear before the commissioner in person or by their recognized agents or proctors.

Parties should appear before commissioner.

If the parties do not so appear, the commissioner may proceed *ex parte*.

Affidavits.

437 Whenever any order has been made by any court for the taking of evidence on affidavit, or whenever evidence on affidavit is required for production in any application or action of summary procedure, whether already instituted or about to be instituted, an affidavit or written statement of facts conforming to the provisions of section 181 may be sworn or affirmed to by the person professing to make the statement embodied in the affidavit before any court or justice of the peace or commissioner to administer oaths within the local limits of whose jurisdiction he is at the time residing, and the fact that the affidavit appears to be entitled in an action in a competent court shall be sufficient authority to such court or justice of the peace to administer the oath or affirmation.

Evidence on affidavit.

438 Every affidavit shall be entitled as in the court and action in which it is to be used, and shall be signed by the declarant in the presence of the court, justice of the peace, or commissioner before whom it is sworn or affirmed.

Affidavit to be duly entitled and to be signed by the declarant.

439 In the event of the declarant being a blind or illiterate person, or not able to understand writing in the English language, the affidavit shall at the same time be read over or interpreted to him in his own language, and the jurat shall express that it was read over or interpreted to him in the presence of the court, justice of the peace, or commissioner, and that he appeared to understand the contents; and also

Case of illiterate person.

Civil Procedure Code.

that he made his mark or wrote his signature in the presence of the court, justice of the peace, or commissioner. And when a mark is made instead of a signature, the person who writes the marksman's name against the mark shall also sign his name and address in the presence of the court, justice of the peace, or commissioner.

Alteration of affidavit.

440 Every affidavit must be fairly written, and must exhibit no erasures or blotting or blanks; if any alteration is needed to be made in the original writing before it is sworn or affirmed to, every excision of a word, or letter, or figure shall be made by so drawing a line through it as to leave the word, letter, or figure still legible; and every added word, letter, or figure shall be added by interlineation, not by superposition or alteration; and every excision and interlineation shall be initialled by the judge, justice of the peace, or commissioner before whom the affidavit is affirmed or sworn.

PART IV.**ACTIONS IN PARTICULAR CASES.****CHAPTER XXX.***Actions by Paupers.*

Paupers.

441 Subject to the following rules, any action may be brought by a pauper.

Explanation.—A person is a "pauper" when he is not entitled to property worth fifty rupees, other than his necessary wearing apparel and the subject-matter of the action.

When a pauper may not sue.

442 No action shall be brought by a pauper to recover compensation for libel, slander, or abusive language.

Form of petition for leave to sue.

443 The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 40 in regard to plaints in actions; a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be subscribed in the manner hereinbefore prescribed for the subscription of plaints.

Application to be verified, and particulars of verifications.

444 Attached to every such application shall be an affidavit sworn or affirmed by the applicant and by two headmen or respectable persons of the place at which the applicant resides, to the following effect:

- (a) That the applicant is a pauper;
- (b) That he has not within the two months next before the presentation of his application disposed of any property fraudulently, or with a view to obtain the benefit of this chapter;
- (c) That he has not entered into any agreement with reference to the subject-matter of the proposed action under which any person has obtained an interest in that subject-matter.

Civil Procedure Code.

445 Notwithstanding anything contained in section 24, the application shall be presented to the court by the applicant in person.

Application must be made in person,

446 If the application be not framed or presented in the manner prescribed by sections 443 and 445, the court shall reject it.

or court will reject it.

447 If the application be in proper form, it shall forthwith be referred to one of the proctors of the court, who shall be selected in rotation for this purpose, and shall inquire of the applicant what are the grounds of his proceeding and the evidence by which he proposes to support it, and after examining any documents or other evidence which the applicant may produce to him, the proctor referee shall certify to the court his opinion whether or not the applicant has a good cause of action against the defendant.

Court to direct a proctor to make inquiry of applicant, and to certify his opinion to the court, which will accordingly reject the application, or make order for hearing the question of pauperism.

If such proctor shall certify that the applicant has not a good cause of action, the court shall reject the application; but if he shall certify that the applicant has a good cause of action, the court shall, on the footing of the application and of the proctor's certificate, make an interlocutory order under alternative (b) of section 377, appointing a day for the determination of the question of pauperism, and intimating that the opposite party or respondent will be heard in opposition to the application on this ground upon the day appointed. And the proceedings thereupon shall be in accordance with the provisions of chapter XXIV.

448 If on the day so appointed, or on a subsequent day to which the hearing may have been adjourned, the question of pauperism be determined in favour of the applicant, then the application to be allowed to sue as a pauper shall be granted, and an order to that effect shall be made by the court.

On pauperism being found, leave to sue to be granted.

449 And upon the application being granted it shall be numbered and filed, and shall be deemed the plaint in the action, and the action shall proceed in all other respects as an action instituted under chapter VII, except that the plaintiff shall not be liable to any stamps in respect of any petition, appointment of the proctor, or other proceeding connected with the action.

Proceedings thereon.

450 If the plaintiff succeeds in the action, the court shall calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the action.

Recovery of value of stamps.

451 If the plaintiff fails in the action, or if he is dispaupered, or if the action is dismissed under section 84, or struck off the file under section 88, the court shall order the plaintiff, or any person added under section 18 as plaintiff in the action, to pay the stamp fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

When court may order plaintiff to pay stamp fees.

Civil Procedure Code.

Refusal of application no bar to pauper's right to sue.

452 An order of refusal to allow the applicant to sue as a pauper made under section 447 shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute an action in the ordinary manner in respect of such right, on first paying the costs of his unsuccessful application.

Application to defend as a pauper.

453 A defendant in any action may apply to the court in which such action is pending for leave to defend the action as a pauper. The application shall be made in the same manner as, and shall contain the particulars by this chapter required to be contained in, applications to sue as a pauper, except that the particulars necessary to be inserted in answers in actions shall be substituted for those necessary in plaints, and shall, *mutatis mutandis*, and so far as the same is practicable, be subject to the same rules and conditions as are in this chapter prescribed with regard to applications for leave to sue as a pauper.

When court may order plaintiff to be dispaupered.

454 The court may on motion made by the other party, of which one week's notice in writing has been given to the party permitted to sue or defend as a pauper, order such party to be dispaupered—

- (a) If he is guilty of vexatious or improper conduct in the course of the action;
- (b) If it appears that his means are such that he ought not to continue to sue or defend as a pauper; or
- (c) If he has entered into an agreement with reference to the subject-matter of the action under which any other person has obtained an interest in such subject-matter.

Costs of application to be costs in cause.

455 The costs of an application for permission to sue or defend as a pauper, and of an inquiry into pauperism, are costs in the action.

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CHAPTER XXXI.

Actions by or against the Crown or Public Officers.

Actions by or against the Crown.

456 All actions by or against the Crown shall be instituted by or against (as the case may be) the Attorney-General. Provided that in courts of requests, any person duly appointed under sub-section (d) of section 25 may institute an action for and in the name of the Crown as party plaintiff.

In actions by the Crown instituted by the Attorney-General, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "the Attorney-General."

Attorney-General does not in this section include the Solicitor-General or any Crown counsel.

Civil Procedure Code.

457 In any action to which the Crown is a party, processes of court other than the original summons issuing against the Crown shall be served upon the Attorney-General, or the Crown counsel having jurisdiction in the district where the court is situate; but the original summons shall be served upon the Attorney-General.

Service of process.

458 The court, in fixing the day for the Attorney-General to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and may extend the time at its discretion.

Attorney-General to have reasonable time to appear.

459 Where the defendant is a public officer, the court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the court that the summons may be most conveniently so served.

Service on public officer.

460 If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel; and the court upon such application may extend the time for so long as appears to be requisite.

Public officer may apply for time to answer.

461 No action shall be instituted against the Attorney-General as representing the Crown, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of one month next after notice in writing has been delivered to such Attorney-General or officer (as the case may be), or left at his office, stating the cause of action and the name and place of abode of the person intending to institute the action and the relief which he claims; and the plaint in such action must contain a statement that such notice has been so delivered or left.

Attorney-General and public officer entitled to notice.

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

Writ against person or property in such action.

463 If the Government undertake the defence of an action against a public officer, the Attorney-General shall apply to the court, and upon such application the court shall substitute the name of the Attorney-General as a party defendant in the action.

When Attorney-General may intervene.

464 If such application is not made by the Attorney-General on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in an action between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

In event of no such intervention, action to proceed as against private party.

465 In an action against a public officer in respect of such act as aforesaid, the court shall exempt the defendant from appearing in person when he satisfies the court that he cannot absent himself from his duty without detriment to the public service.

Public officer need not appear in person.

Civil Procedure Code.

CHAPTER XXXII.

Actions by Aliens, and by or against Foreign Rulers.

Actions by
aliens.

466 Alien enemies residing in Ceylon with the permission of the Governor, and alien friends, may sue in the courts of this island as if they were subjects of Her Majesty.

No alien enemy residing in Ceylon without such permission, or residing in a foreign country, shall sue in any of such courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State, or of the Colonial Secretary of this island, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

By foreign
states.

467 A foreign state may sue in the courts of this colony provided that—

- (a) It has been recognized by Her Majesty; and
- (b) The object of the action is to enforce the private rights of the head, or of the subjects, of the foreign state.

The court shall take judicial notice of the fact that a foreign state has not been recognized by Her Majesty.

Recognized
agents of foreign
powers.

468 Persons specially appointed by order of Government at the request of any sovereign prince or ruling chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without the island, or at the request of any person competent in the opinion of the Government to act on behalf of such prince or chief, to prosecute or defend any action on his behalf, shall be deemed to be the recognized agents by whom appearances and applications may be made or acts may be done under this Ordinance on behalf of such prince or chief.

A person appointed under this section may authorize or appoint persons to make and do appearances, applications, and acts in any such action, as if he were himself a party to the action.

When foreign
state may be
sued.

469 Any such prince or chief, and any ambassador or envoy of a foreign state may, with the consent of Government, certified by the signature of the Colonial Secretary (but not without such consent), be sued in any competent court.

Such consent shall not be given unless—

- (a) The prince, chief, ambassador, or envoy has instituted an action in such court against the person desiring to sue him; or
- (b) The prince, chief, ambassador, or envoy by himself or another trades within the local limits of the jurisdiction of such court; or

Civil Procedure Code.

(c) The prince, chief, ambassador, or envoy is in possession of immovable property situate within such limits, and is to be sued with reference to such possession or for money charged on that property.

No such prince, chief, ambassador, or envoy shall be arrested under this Ordinance; and no decree shall be executed against the property of any such prince, chief, ambassador, or envoy, unless with consent of Government certified as aforesaid.

CHAPTER XXXIII.

Actions by and against Corporations and Companies.

470 In actions by or against any corporation, or by or against a board or other public body, or any company authorized to sue or be sued, the name and the style of the corporation, board, public body, or company, or of the officer (if any) in whose name any such corporation, board, public body, or company is authorized to sue and be sued, as the case may be, may be inserted as the name of the plaintiff or defendant; and the plaint or answer may be subscribed on behalf of the corporation, board, public body, or company by any member, director, secretary, manager, or other principal officer thereof who is able to depose to the facts of the case; and in any case in which such corporation, board, public body, or company is represented by a proctor, shall be subscribed by such proctor.

Actions by or against a corporation or company.

471 When the action is against a corporation, or against a board or other public body, or a company authorized to sue and be sued in the name of an officer or of a trustee, except in cases where a particular mode of service is directed by law, the summons may be served—

Service on corporation or company.

(a) By leaving it at the registered office (if any) of the corporation, board, public body, or company; or

(b) By giving it to the secretary or other principal officer of the corporation, board, public body, or company;

and the court may in such summons or by special order require the personal appearance of such secretary or other principal officer of the corporation, board, public body, or company who may be able to answer material questions relating to the action.

CHAPTER XXXIV.

Actions by and against Trustees, Executors, and Administrators.

472 In all actions concerning property vested in a trustee, executor, or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator

Actions against trustees, executors, and administrators

Civil Procedure Code.

shall represent persons so interested; and it shall not ordinarily be necessary to make them parties to the action. But the court may, if it think fit, order them, or any of them, to be made such parties.

All executors should be made parties.

473 When there are several trustees, executors, or administrators, they shall all be made parties to an action by or against one or more of them.

Proviso.

Provided that executors who have not proved their testator's will, and trustees, executors, and administrators beyond the local limits of the jurisdiction of the court, need not be made parties.

Executors and administrators liable in costs.

474 In every action brought by an executor or administrator in right of his testator or intestate, such executor or administrator shall, unless the court shall otherwise order, be liable to pay costs to the defendant in case of judgment being entered for the defendant, and in all other cases, in which he would be liable if such plaintiff were suing in his own right upon a cause of action accruing to himself; and the defendant shall have judgment for such costs, and they shall be recovered accordingly.

Husband of executrix not to be made party.

475 Unless the court directs otherwise, the husband of a married executrix or administratrix shall not be a party to an action by or against her in her representative capacity.

CHAPTER XXXV.

Actions by and against Minors and Persons under other Disqualification.

Action by minor.

476 Every action by a minor shall be instituted in his name by an adult person, who in such action shall be designated in the plaint the next friend of the minor, and may be ordered personally to pay any costs in the action as if he were the plaintiff.

Next friend and guardian *ad litem*.

477 Every application to the court on behalf of a minor (other than an application under section 487) shall be made in his name by his next friend or his guardian for the action, and shall be so expressed to be made on the face of the application.

Procedure where no next friend.

478 If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the proctor or other person by whom it was presented. Such application shall be made on summary procedure by the defendant; and the court, after hearing the objections, if any, of the person against whom it is made, may make such order in the matter as it thinks fit.

Court may appoint guardian *ad litem*.

479 Where the defendant to an action is a minor, the court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the action for such minor, and generally to act on his behalf in the conduct of the case.

Civil Procedure Code.

480 Every order made in an action or on any application before the court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the action, as the case may be, may be discharged on application made on summary procedure for the purpose; and, if the proctor of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, it may on such application be discharged with costs to be paid by such proctor, provided he was duly made a respondent to the application.

No order to affect minor not represented.

481 Any person being of sound mind and full age may be appointed next friend of a minor, provided his interest is not adverse to that of such minor and he is not a defendant in the action. Such appointment shall be made after application by way of summary procedure supported by affidavit, showing the fitness of the person proposed, and also that he has no interest adverse to the minor, and to such application the defendant shall be made respondent. And on the occasion of any such application being made the minor should appear personally in court unless prevented by good cause, such as extreme youth or illness.

Who may act as next friend.

482 If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the action, ceases to reside within the colony, or for any other sufficient cause, application may be made on summary procedure on behalf of the minor or by a defendant for his removal; and the court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

On cause shown court may remove next friend.

483 Unless otherwise ordered by the court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

Retirement of next friend.

The application for the appointment of a new next friend shall be on summary procedure supported by affidavit, showing the fitness of the person proposed, and also that he has no interest adverse to the minor, and to such application the defendant shall be made respondent.

484 On the death or removal of the next friend of a minor further proceedings shall be stayed until the appointment of a next friend in his place.

Death or removal of next friend.

485 If the proctor of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may, on summary procedure, apply to the court for the appointment of one, making the defendant a respondent to the application; and the court may thereupon appoint such person as it thinks fit.

Appointment of new next friend.

Civil Procedure Code.

Minor's right of election on coming of age.

486 A minor plaintiff, or a minor not a party to an action on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the action or application.

Discharge of next friend on election to proceed.

487 If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

The title of the action or application shall, upon such order being made, be altered so as to read thenceforth thus : "A. B., late a minor, by C. D., his next friend, but now of full age."

Procedure on election of sole plaintiff to abandon on payment of costs.

488 If he elects to abandon the action or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the action or application, on re-payment of the costs incurred by the defendant, or respondent, or which may have been paid by his next friend.

Application to be *ex parte*.

489 Any application under section 487 or section 488 may be made *ex parte*; and the affidavit of facts upon which it is based must satisfy the court that the late minor has attained his full age.

Procedure on election of a co-plaintiff to repudiate.

490 A minor co-plaintiff on coming of age, and desiring to repudiate the action, must apply to have his name struck out as co-plaintiff; and the court, if it finds that he is not a necessary party, shall dismiss him from the action on such terms as to costs or otherwise as it thinks fit.

The next friend, as well as the defendant, shall be served with the petition of application as respondent, and it must be proved by affidavit that the late minor has attained his full age; the costs of all parties of such application and of all or any proceedings theretofore had in the action shall be paid by such persons as the court directs.

If the late minor be a necessary party to the action, the court may direct him to be made a defendant.

Procedure when ex-minor applies to have action dismissed as unreasonable or improper.

491 If any minor on attaining majority can prove to the satisfaction of the court that an action instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply by way of summary procedure to have the action dismissed.

Notice of the application shall be served on all the parties concerned, including the next friend, and the court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the action.

Minor may be person sue for wages.

492 Nothing in the foregoing sections shall affect the right of any minor to prosecute any proceedings in a court of requests for any money which may be due to him for wages or piecework, or for work as a servant, artificer, or labourer, in the same manner as if he were of full age.

Application for appointment of guardian *ad litem*.

493 An order for the appointment of a guardian for the action may be obtained upon application on summary procedure in the name and on behalf of the minor or by

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respective days on which petition of appeal was filed and security given, and whether either the plaintiff sued or the defendant defended *in forma pauperis*. But where an appeal is taken from the decision of a judge of the Supreme Court sitting alone as in section 40 of "The Courts Ordinance, 1889," provided, the registrar of such court shall, after doing all acts and things necessary to be done by such secretary or clerk as aforesaid preparatory to forwarding proceedings in appeal to the Supreme Court as in this section provided, proceed in manner in section 768 prescribed.

The fiscal's return to the process issued under this section shall immediately upon being received by the court of first instance be transmitted to the Supreme Court, but where the appeal is from the decision of a judge of the Supreme Court so sitting alone as in the last-mentioned Ordinance provided, such return shall be made to and filed by the registrar with the proceedings in appeal.

And when a petition of appeal has been so received, but the petitioner has failed to give the security and to make the deposit as in this section provided, then the petition of appeal shall be held to have abated, and the further proceedings in this section prescribed shall not be necessary.

757 The security to be required from a party appellant shall be by bond (form No. 129, schedule II.) with one or more good and sufficient surety or sureties, or shall be by way of mortgage of immovable property or deposit and hypothecation by bond of a sum of money sufficient to cover the costs of the appeal and to no greater amount.

Security to be by bond and with surety.

758 The petition of appeal shall be distinctly written in the English language upon good and suitable paper, and shall contain the following particulars :

Language and frame of appeal.

- (a) The name of the court in which the case is pending.
- (b) The names of the parties to the action.
- (c) The names of the appellant and of the respondent.
- (d) The address to the Supreme Court.
- (e) A plain and concise statement of the grounds of objection to the judgment, decree, or order appealed against—such statement to be set forth in duly numbered paragraphs.
- (f) A demand of the form of relief claimed.

The court in deciding any appeal shall not be confined to the grounds set forth by the appellant, but it shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of being heard on that ground.

Grounds of decision in appeal.

759 If the petition of appeal is not drawn up in the manner in the last preceding section prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended, within a time to be fixed by the court; or be amended then and there. When the court rejects under this section any petition of appeal, it shall record the reasons

Where petition to be rejected.

Civil Procedure Code.

of such rejection. And when any petition of appeal is amended under this section, the judge, or such officer as he shall appoint in that behalf, shall attest the amendment by his signature.

When one of several plaintiffs or defendants may appeal against whole decree.

760 Where there are more plaintiffs or more defendants than one in an action, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

CHAPTER LIX.

Of the Execution of Decrees under Appeal.

Execution pending appeal may be stayed before expiration of appeal time by the court which passed the decree. Proviso.

761 Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but, if any application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the court which passed the decree may for sufficient cause order the execution to be stayed:

Provided that no order shall be made under this section unless the court making it is satisfied—

- (a) That substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) That the application has been made without unreasonable delay; and
- (c) That security is given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

Application how to be made.

762 Every application to the court for stay of execution under the immediately preceding section must be made by petition, in which the judgment-creditor shall be named respondent.

Application for execution of decree pending appeal must be on notice to debtor; and execution will only be granted on security.

763 In the case of an application being made by the judgment-creditor for execution of a decree which is appealed against, the judgment-debtor shall be made respondent.

If, on any such application, an order is made for the execution of a decree against which an appeal is pending, the court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Supreme Court.

And when an order has been passed for the sale of immovable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall, on the application of the judgment-debtor, be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the court which passed the decree thinks fit.

Civil Procedure Code.

764 No such security in appeal shall be required from the Crown or (when Government has undertaken the defence of the action) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Exception in favour of Government.

CHAPTER LX.

Of Appeal notwithstanding Lapse of Time.

765 It shall be competent to the Supreme Court to admit and entertain a petition of appeal from a decree of any original court, although the provisions of sections 754 and 756 have not been observed; provided that the Supreme Court is satisfied that the petitioner was prevented by causes not within his control from complying with those provisions; and provided also that it appears to the Supreme Court that the petitioner has a good ground of appeal, and that nothing has occurred since the date when the decree or order which is appealed from was passed to render it inequitable to the judgment-creditor that the decree or order appealed from should be disturbed.

Appeal notwithstanding lapse of time.

Proviso.

766 In every such petition of appeal as is the subject of the last section the judgment-creditor shall be named respondent, and the petition shall be accompanied by a certified copy of the decree or order appealed from, and of the judgment on which it is based as well as by such affidavits of facts and other materials as may constitute *prima facie* evidence that the conditions precedent to the petition of appeal being entertained, which are prescribed in the last section, are fulfilled. Also, every such petition shall be presented immediately to the Supreme Court in its appellate jurisdiction, and in addition to the prayer for relief in respect to the subject of appeal it shall contain a prayer that the appeal may be admitted notwithstanding the lapse of time.

Petition therefor

to be presented immediately to the Supreme Court.

767 On any such petition being forwarded to the Supreme Court, the question whether or not it ought to be admitted shall be a preliminary question to be determined forthwith on summary procedure, according to the provisions of alternative (b), section 377, and for this purpose the jurisdiction of the court may be exercised by a single judge thereof. If upon the hearing of this question the Supreme Court is satisfied that the conditions prescribed in section 765 are fulfilled, it may order the petition of appeal to be admitted upon such conditions as to costs, security, or otherwise as to the court may seem just, and in the event of its doing so the registrar shall, where the court of first instance is the Supreme Court, proceed as in section 763 provided; but where such court is a district court or court of requests, the Supreme Court shall issue a mandate to such court, directing it to forward to the Supreme Court the record of the proceedings of the action in which the decree or order appealed from was passed; if however, on the contrary, the court is not satisfied that the said conditions are fulfilled, it shall dismiss the petition and make such order as to costs as may seem to the court just.

Order of Supreme Court thereon.

Civil Procedure Code.

CHAPTER LXL.

Hearing of the Appeal.

Hearing of
appeal.

768 When the petition of appeal has been preferred to the Supreme Court in manner in section 756 prescribed, or in the event of the petition of appeal being presented immediately to the Supreme Court, when the order for its admission has been made, the registrar shall, unless the court otherwise orders, number the petition and enter it in the roll of causes for hearing, according to the standing orders of court for the time being relative to the course of business of the court; and the matter of the appeal shall come on for hearing before the court in the order of its position on that roll, and according to the said standing orders without further notice to the parties concerned; provided 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 doors of the court, and that no appeal shall come on for hearing until it has been in that list in the case of appeals from district courts for fourteen, or in the case of appeals from courts of requests for seven days; and 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.

Proviso 1.

Proviso 2.

Right of
appellant to be
heard and
respondent, if
required.

769 When the appeal comes on for hearing, the appellant shall be heard in support of the appeal. The court shall then, if it does not at once dismiss the appeal or affirm the decree appealed from, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply. If the appellant does not appear either by counsel or in person, and has not been allowed to appeal *in forma pauperis*, the appeal may in the discretion of the court be dismissed. Provided that on sufficient cause shown it shall be lawful for the Supreme Court to reinstate, upon such terms as the court shall think fit, any appeal that has been dismissed for non-appearance.

When party may
obtain re-hearing
of appeal.

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 affidavits returned by the fiscal, or other evidence, that the notice of appeal was duly served upon him or his proctor, as prescribed in section 756, or if it appears to the court at such hearing that any person who was a party to the action in the court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the court may adjourn the hearing to a future day, to be fixed by the court, and direct that such person be made a respondent, and may issue the requisite notices of appeal to the fiscal for service.

Right of
respondent to
object to decree.

771 When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if he

Civil Procedure Code.

satisfies the court that the notice of appeal was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the court may re-hear the appeal, on such terms as to costs or otherwise as the court thinks fit to impose upon him.

772 Any respondent, though he may not have appealed against any part of the decree, may, upon the hearing, not only support the decree on any of the grounds decided against him in the court below, but take any objection to the decree which he could have taken by way of appeal, provided he has given to the appellant or his proctor seven days' notice in writing of such objection.

Rights of respondent at hearing.

Such objection shall be in the form prescribed under head (e) of section 758.

773 Upon hearing the appeal it shall be competent to the Supreme Court to exercise any of the powers in that behalf conferred upon it by section 40 of "The Courts Ordinance, 1889," or to order a new or further trial on the ground of discovery of fresh evidence subsequent to the trial.

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

774 On the termination of the hearing of the appeal, the Supreme Court shall either at once or on some future day, which shall either then be appointed for the purpose, or of which notice shall subsequently be given to the parties or their counsel, pronounce judgment in open court; and if the bench hearing the appeal is composed of more than one judge, each judge may, if he desires it, pronounce a separate judgment.

Judgment of the court.

The judgment, which shall be given or taken down in writing, and shall be signed and dated by the registrar, shall, unless the decree or order appealed from is simply affirmed, or the petition of appeal is dismissed, state—

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

775 When the bench hearing the appeal is composed of two judges, and the judges composing the bench do not agree as to the decree which should be passed by the court on the appeal, then the appeal shall be re-heard by the full court of three judges on a day specially appointed for the purpose, of which notice shall be given to the parties or their counsel. And after such re-hearing any judge dissenting from the decree which the majority consider ought to be passed on appeal, shall state in writing the decree which he thinks ought to be made, and shall state his reasons for the same. Provided that in the case of appeals from the decision of a judge of the Supreme Court sitting alone as in "The Courts Ordinance, 1889," provided, when the two judges hearing the appeal do not agree, the original judgment shall stand affirmed.

When appeal may be re-heard.

Civil Procedure Code.

When all the judges, of which the bench hearing the appeal is composed, are unanimous in regard to the decree which ought to be passed, the judges shall pronounce the judgments in order of seniority, commencing with the judge who is senior in rank, but, if otherwise, they shall pronounce their judgments in the reverse order.

Decree of the
Supreme Court :

776 The decree of the Supreme Court shall be passed in accordance with the judgments of the judges of which the bench hearing the appeal is composed, if they are unanimous in regard to it, but, if otherwise, in accordance with the judgments of the majority of them. It shall bear date the day on which the judgment was pronounced, and shall contain the following particulars :

how framed :

- (a) The heading "In the Supreme Court ;"
- (b) The court number and title of the appeal ;
- (c) The names of the parties ;
- (d) The names of the appellant and of the respondents cited ;
- (e) The parties present and heard ;
- (f) A clear specification of the order made and relief granted or other determination of the appeal.

The decree shall also state by what parties, and in what proportions the costs of the action are to be paid.

to be sealed ;
and returned to
court of first
instance.

The decree shall be sealed with the seal of the court.

As soon as the decree is sealed all the proceedings in the case sent up to the Supreme Court on appeal (together with the petition of appeal and order thereon, if any, a copy of the judgment or judgments pronounced on appeal, and the decree of the Supreme Court) shall be forthwith returned to the court of first instance ; which shall conform to and execute such decree in all particulars.

Execution of
the decree
passed in appeal.

777 When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the court which passed the decree against which the appeal was preferred ; and such court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in an action.

CHAPTER LXII.

Of Pauper Appeals.

Pauper appeals.

778 Any person entitled under this Ordinance or any other law to prefer an appeal, who is unable to pay for the stamps required for the petition of appeal, may, on an application for that purpose made to the Supreme Court in accordance with the rules hereinbefore prescribed for applications for the admission of an appeal notwithstanding lapse of time, so far as the same are applicable, be allowed

Civil Procedure Code.

to appeal as a pauper; provided that the court shall reject the application unless upon a perusal thereof, and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed from is erroneous or unjust; and provided further, that the question as to the pauperism of the applicant shall be inquired into and determined by the Supreme Court in the same manner as is prescribed for the case of an application in the court of first instance to be allowed to sue as a pauper; and provided lastly, that if the applicant was allowed to sue as a pauper in the court against whose decree the appeal is made, no further inquiry into his pauperism shall be necessary unless the Supreme Court sees special cause to direct such inquiry.

CHAPTER LXIII.

Appeals to the Queen in Council.

779 Subject to such rules as may from time to time be made by Her Majesty in Council regarding appeals from the courts of this colony, and to the provisions hereinafter and in "The Courts Ordinance, 1889," contained, it shall be lawful for any person or persons, being a party or parties to any civil suit or action pending in the Supreme Court, to appeal to Her Majesty in Council against any final judgment, decree, or sentence, or against any rule or order made in any such civil suit or action, and having the effect of a final or definitive judgment, decree, or sentence.

Appeal to Queen in Council subject to rules.

780 Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Supreme Court to have the judgment, decree, sentence, rule, or order against which he is desirous so to appeal, brought before the Supreme Court collectively by way of review; and shall also give security for the payment of all costs of such hearing in review, which may be awarded to the respondent.

Application to be made to Supreme Court.

Such application must be made within two calendar months from the date of the judgment, decree, sentence, rule, or order complained of.

781 Every petition must state the grounds of appeal, and pray for a certificate, either that, as regards amount, or value, and nature, the case fulfils the requirements of section 42 of "The Courts Ordinance, 1889," or that it is otherwise a fit one for appeal to Her Majesty in Council.

Petition for leave to appeal.

Upon receipt of such petition the court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

The power of the court under this section in regard to issuing notice and hearing cause shown against the certificate may be exercised by a single judge sitting at Colombo.

Civil Procedure Code.

When certificate granted court to hold hearing in review.

782 If such certificate is refused, the petition shall be dismissed.

If the certificate is granted, then the court shall fix a day for hearing the case in review before all the judges of the court collectively holding general sessions at Colombo; and seven days' notice of such day shall be given by the registrar to all parties.

The judgment, decree, order, or sentence of the Supreme Court after such hearing in review shall be pronounced, made, or passed, in accordance with the rules hereinbefore prescribed for the judgment and decree on appeal.

When party aggrieved may appeal from judgment in review, and to whom.

783 The person feeling aggrieved by such judgment, decree, order, or sentence in review, shall, if he desires to appeal therefrom, apply by petition to the Supreme Court within fourteen days after the same shall have been pronounced, for leave to appeal therefrom to Her Majesty in Council, and with this petition he shall present his petition of appeal to Her Majesty in Council; and shall within three months from the date of such judgment, decree, order, or sentence—

- (a) Give security for the prosecution of the appeal and for the payment of all such costs as may be awarded by Her Majesty in Council to the party respondent; and
- (b) Deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy of the whole record of the action; except
 - (1) Formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;
 - (2) Papers which the parties agree to exclude;
 - (3) Accounts or portions of accounts which the officer empowered by the court for that purpose considers unnecessary, and the parties have not specifically asked to be included; and
 - (4) Such other documents as the Supreme Court may direct to be excluded;

and when the appellant prefers to print in Ceylon the copy of the record, except as aforesaid, he shall also, within such time as is in the first clause of this section mentioned, deposit the amount required to defray the expense of printing such copy.

Of the security to be given by appellant.

Proviso.

The nature, amount, and sufficiency of the security to be given by the appellant under section 780 and this section shall be determined by the Supreme Court upon the motion of the appellant made by petition, of which notice shall be duly served on the respondent; provided that such security shall in no case exceed the sum of three thousand rupees, and shall be given either by a surety or sureties or by a mortgage of immovable property situate and being within this colony, or by deposit and hypothecation by bond of a sum of money.

Civil Procedure Code.

534 If at the final hearing, or on the determination of the issues thus framed, it shall appear to the court that the *prima facie* proof of the material allegations of the petition has not been rebutted, then the order *nisi* shall be made absolute, and probate or grant of administration with the will annexed, or grant of administration only, as the case may be, shall issue accordingly, subject to the conditions hereinafter prescribed. If, on the other hand, it shall then appear to the court that the *prima facie* proof of any material allegations in the petition has been rebutted, the order *nisi* shall be discharged, and the petition dismissed. And in the event of the respondent or objector having at such hearing or trial of issues established his right to have probate or grant of administration of the deceased's estate issued to him instead of to the petitioner, then the court shall further make an order to that effect in his favour.

When order *nisi* shall be made absolute; and

when discharged.

Provided, however, that the dismissal of the petition shall not be a bar to a renewal of the application by the petitioner as long as grant either of probate of the deceased's will, or of administration of his property, shall not have been made, either on the occasion of this application or subsequently thereto, to some other person than the petitioner.

Provided.

535 At any time after the filing of a petition in a district court, asking to have the will of a deceased person proved, or that the grant of probate thereof or of administration of a deceased person's property be made, and before the final hearing of the petition, it shall be competent to any person, interested in the said will or in the said deceased person's property or estate, though not a respondent on the face of the petition, to intervene, by filing in the same court a *caveat* against the allowing of the petitioner's claim or a notice of opposition thereto, and any order *nisi* which may be made upon such petition shall be served upon such objector as if he had been originally named a respondent in the petition.

Who may file a *caveat*.

Effect thereof.

536 In any case where probate of a deceased person's will has issued on an order absolute in the first instance, or a grant of administration of a deceased person's property has been made, it shall be competent to the district court to recall the said probate or grant of administration, and to revoke the grant thereof, upon being satisfied that the will ought not to have been held proved, or that the grant of probate or of administration ought not to have been made; and it shall also be competent to the district court to recall the probate or grant of administration at any time upon being satisfied that events have occurred which render the administration thereunder impracticable or useless.

Power of district court to recall or revoke probate or grant of administration.

537 All applications for the recall or revocation of probate or grants of administration shall be made by petition, in pursuance of the rules of summary procedure hereinbefore prescribed; and no such application shall be entertained unless the petitioner shows in his petition that he has such an interest in the estate of the deceased person as entitles him in the opinion of the court to make such application.

Applications therefor to be by petition.

Civil Procedure Code.

Inventory and valuation.

538 In every case where an order absolute has been passed by a district court declaring any person entitled to have issued to him probate of a deceased person's will, or grant of administration of a deceased person's property, it shall be the duty of the said person, executor, or administrator, in whose favour such order is made, to take the oath of an executor or administrator according to the form prescribed in schedule II, hereto, and thereafter to file in court, within a time to be appointed therefor in the order, an inventory of the deceased person's property and effects, with a valuation of the same, such inventory and valuation to be verified on oath or affirmation by the said executor or administrator in the form 92 given in the said schedule, and where the court requires it to enter into a bond with two good and sufficient sureties in the form 90 given in the said schedule, for the due administration of the deceased person's property.

Security.

The bond so entered into shall render the sureties responsible in any suit brought for the administration of the deceased person's property for all deficiencies, depreciation, or loss of that property attributable to the default of their principal, and liable to make good the same to the same extent and in like manner as if the said default were their own, subject, however, to the conditions of the bond in that behalf.

Limited probate and administration.

539 It is competent to the district court to make a grant of probate or a grant of administration, limited either in respect to its duration, or in respect to the property to be administered thereunder, or to the power of dealing with that property which is conveyed by the grant in the following cases:

- (a) When the original will of the deceased person has been lost since the testator's death, but a copy has been preserved, probate of that copy may be granted, limited until the original be brought into court.
- (b) In the like event, and with the like limitation, if no copy has been preserved, probate of a draft will may be granted, or if in addition no draft is available, then probate of the contents or of the substance and effect of the will, so far as they can be established by evidence, may be granted.
- (c) When the original will is in the hands of some person residing out of the island, who cannot be compelled to give it up to the executor, and if the executor produces a copy, then probate of that copy may be granted, limited until the original be brought into court. If, however, the will has been duly proved out of the island, probate may be granted to the executor on a proper exemplification of the foreign probate without any limitation in the grant.
- (d) If the sole executor of a will resides, or if there are more executors than one and all the executors reside, out of the island, or such of the executors as reside in the island decline to act, then the court

Civil Procedure Code.

may grant administration with copy of the will annexed to any person within the island, as attorney of the executor or of the executors, who shall be appointed for that purpose by power of attorney, the grant so made being limited for the use and benefit of the principal until the executor or one of the executors comes in and obtains probate for himself. If the document admitted to proof in this case be a copy of or substitute for the original, on account of the original itself not being forthcoming by reason of one of the just-mentioned causes, the grant shall further be limited until the original is brought into court. Provided also, that if the person applying for the grant is not the attorney of all the executors, where there are more than one, the grant of administration shall not be made to him until the remaining executors have declined to act.

- (c) In the case of a will, and there being no executor within the island willing to act, grant of administration with copy of the will annexed may be made to the attorney of an absent residuary legatee, or heir, limited until the principal shall come in and obtain administration for himself: or in the like case, the grant may be made to the guardian of a minor residuary legatee, within the island, limited during the minority, or to the manager of the estate of a lunatic residuary legatee within the island, limited during the lunacy.
- (d) In the case of intestacy, grants of administration of the deceased person's property may be made, limited in like manner to the guardian of a minor heir or to the manager of the estate of a lunatic heir.
- (e) The court may grant probate or administration limited to any particular property or for any particular purpose, in any case where it considers that a larger grant is unnecessary.

In all the foregoing cases, the material and relevant facts necessary to justify the court in making the limited grant must be set out in the petition of application, and must be established by *prima facie* evidence before the order is made, as is prescribed in section 524.

540 If no limitation is expressed in the order making the grant, then the power of administration, which is authenticated by the issue of probate, or is conveyed by the issue of a grant of administration, extends to every portion of the deceased person's property, movable and immovable, within this colony, or so much thereof as is not administered, and endures for the life of the executor or administrator or until the whole of the said property is administered, according as the death of the executor or administrator, or the completion of the administration, first occurs.

Power of administration when not limited.

Civil Procedure Code.

Court may dispense with security.

541 In all cases of the issue of probate security shall not be required, unless for some special reason the court deems that security is absolutely necessary for the protection of the estate; and in cases where the grant of administration is limited in regard to the dealing with the property which is the subject thereof, it shall be within the discretion of the court to dispense with the giving of the bond under section 538; and in all cases the court may limit the amount secured by the bond to the value of the movable property, which appears to the court likely to come into the hands of the administrator and to be liable to misappropriation. Provided that every order, dispensing with the bond or limiting the amount to be secured thereby in cases of administration, or requiring security in cases of probate, shall adjudicate upon the facts upon which the court intends it to rest.

Provided,

Person dying intestate, death to be reported by next of kin.

542 When any person shall die in Ceylon without leaving a will, it shall be the duty of the widow, widower, or next of kin of such person, if such person shall have left property in Ceylon amounting to or exceeding in value one thousand rupees, within one month of the date of his death to report such death to the court of the district in which he shall have so died, and at the same time to make oath or affirmation or produce an affidavit verifying the time and place of such death, and stating if such is the fact that the intestate has left property within the jurisdiction of that or any other (and in that event, what) court, and the nature and value of such property.

Penalty for neglect.

543 Every person made liable to report any death under, or to furnish any information required by, section 542, who shall wilfully omit to report such death or to furnish such information within the time therein prescribed therefor, shall be guilty of an offence, and liable to a fine not exceeding one thousand rupees.

Who may apply for administration in case of intestacy.

544 In any case where a person is so reported to have died intestate, and also in any case in which the applicant produces an order of the Supreme Court appointing any court to have sole testamentary jurisdiction over the estate or effects of any person who has died out of Ceylon intestate as to any property in Ceylon, 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.

In event of no application, court may appoint.

545 In case no such person shall apply for letters of administration, and it appears to the court necessary or convenient to appoint some person to administer the estate or any part thereof, it shall be lawful for the court in its discretion, and in every such case where the estate amounts to or exceeds in value one thousand rupees it shall be obligatory on such court, to appoint some person, whether he would under ordinary circumstances be entitled to take out administration or otherwise, to administer the estate: and

Compulsory, where estate is over one thousand rupees.

Civil Procedure Code.

all the provisions of sections 519 to 521, both inclusive, shall apply, so far as the same can be made applicable, to any such appointment.

546 If any person shall die leaving property in the island, the judge of the court of any district in which such property shall be situate shall, on the facts being verified to his satisfaction and it being made to appear that there is not resident, within the local limits of his jurisdiction, some next of kin or other person entitled to administration of the estate of the person so dying, issue letters *ad colligenda* in the form 91 in the schedule II. hereto annexed, to one or more responsible persons to take charge of such property until the same shall be claimed by some executor or administrator lawfully entitled to administer the same.

Issue of letters
ad colligenda.

547 No action shall be maintainable for the recovery of any property, movable or immovable, in Ceylon, belonging to or included in the estate or effects of any person dying testate or intestate in or out of Ceylon, where such estate or effects amount to or exceed in value the sum of one thousand rupees, unless grant of probate or letters of administration duly stamped shall first have been issued to some person or persons as executor or administrator of such testator or intestate: and in the event of any such property being transferred without such probate or administration being so first taken out, every transferor and transferee of such property shall be guilty of an offence, and liable to a fine not exceeding one thousand rupees; and in addition to any fine imposed under the provisions of this section it shall be lawful for the Crown to recover from such transferor and transferee, or either of them, such sum as would have been payable to defray the cost of such stamps as would by law have been necessary to be affixed to any such probate or letters of administration. And the amount so recoverable shall be a first charge on the estate or effects of such testator or intestate in Ceylon, or any part of such estate or effects, and may be recovered by action accordingly.

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

Transfer of such
property, where
an offence.

Penalty.

548 When a person is appointed executor of a will for a particular purpose only of the will, and not executor of the will generally, probate will be granted to him limited for that purpose only.

Probate when
executor is
appointed for
limited purpose.

549 When a sole executor or a sole surviving executor to whom probate has been granted, or a sole administrator or a sole surviving administrator to whom a grant of administration has been made, dies leaving a part of the deceased's property unadministered, then a fresh grant of administration may be made in respect of the property left unadministered, according to the rules hereinbefore prescribed for a first grant.

Fresh grant,
when allowed.

550 Errors in names and descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly.

Rectification of
errors in grant.

Civil Procedure Code.

Compensation of
executors and
administrators.

551 Compensation shall be allowed to executors and administrators by way of commission as well on property not sold but retained by the heirs, as on property sold by such executors and administrators, at such rate not exceeding three per cent., and on cash found in the estate and on property specially bequeathed, at such rate not exceeding one and a half per cent. as the court shall, after taking into consideration the circumstances of each particular case with reference to the trouble incurred by such executors or administrators, determine. In no case shall a larger sum than five thousand rupees be allowed to any executor or administrator as such compensation, unless it shall be made apparent to the court that such unusual trouble has fallen upon him as to entitle him, in the opinion of the court, to receive further remuneration.

Compensation of
several
executors.

552 Each executor or administrator shall be entitled to the full compensation allowed by law to a sole executor or administrator, unless there are more than three, in which case the compensation to which three would be entitled shall be apportioned among them all according to the services rendered by them respectively, and a like apportionment shall be made in all cases where there shall be more than one executor or administrator. But where the will provides a specific compensation for an executor or administrator, he shall not be entitled to any allowance other than that so provided, unless he files in court a written renunciation of the specific compensation.

Filing of the
account, and
payment into
court.

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, a true 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.

Failure of
executor or
administrator to
administer
within the year
to make him
liable for
interest.

554 If any executor or administrator shall fail to pay over to the creditors, heirs, legatees, or other persons the sums of money to which they are respectively entitled, within one year after probate or administration granted, such executor or administrator shall be liable to pay interest out of his own funds for all sums which he shall retain in his own hands after that period, unless he can show good and sufficient cause for such detention.

CHAPTER XXXIX.

Actions in Lunacy.

Definition of
"lunatic."

555 The word "lunatic" as used in this Ordinance shall, unless the contrary appears from the context, mean every person found by due course of law to be of unsound mind and incapable of managing his affairs.

Civil Procedure Code.

- 556** Whenever any person who is possessed of property is alleged to be a lunatic, the district court within whose jurisdiction such person is residing may, upon such application as is hereinafter mentioned, institute an inquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs. District court to institute inquiry.
- Application for such inquiry may be made on petition in the way of summary procedure by any relative of the alleged lunatic, or by the provincial superintendent of police, or at the instance of the Attorney-General, or, if the property of the alleged lunatic consists in whole or in part of land or of any interest in land, by the government agent or assistant government agent of the district in which it is situate. Application for, how to be made.
- 557** When the district court on such application being made to it is not satisfied by affidavit or other evidence that such inquiry as aforesaid ought to be instituted, it shall dismiss the petition. May be dismissed
- 558** When the district court on any such application being made to it is satisfied by affidavit or other sufficient evidence that such inquiry as aforesaid ought to be instituted, it shall pass an order to that effect and then appoint a time and place for holding the inquiry. or proceeded with.
- 559** As soon as such order shall have been passed, the district court shall cause a copy of the petition and of the order made thereon to be served upon the alleged lunatic. If it shall appear that the alleged lunatic is in such a state that personal service on him would be ineffectual, the court may direct such substituted service of the petition and order as it shall think proper. The court may also direct a copy of such petition and order to be served upon any specified relative of the alleged lunatic. Proceeding in such case.
- 560** The district court may also at any time before or pending the inquiry, require the alleged lunatic to attend at such convenient time and place as it may appoint, for the purpose of being personally examined by the court or by any person from whom the court may desire to have a report of, or testimony as to the mental capacity and condition of such alleged lunatic. The court may likewise make an order authorizing any person or persons therein named to have access to the alleged lunatic for the purpose of a personal examination. Alleged lunatic may be required to attend.
- 561** The district court, if it think fit, may appoint two or more persons to act as assessors to the court in the said inquiry. Assessors.
- 562** The issue to be tried on such inquiry shall be, whether the alleged lunatic is or is not of unsound mind and incapable of managing his affairs. Issue.
- 563** The trial of this issue shall be effected by *viva voce* examination and cross-examination of witnesses, as nearly as may be as is hereinbefore directed for the trial of the matter of an ordinary civil action; and the inquiry, whether held in court or in a private house, shall be public. Trial of; to be public.

Civil Procedure Code.

Lunatic to be present.

564 The alleged lunatic shall be present at the inquiry and shall take part as a party defendant therein either by his proctor or counsel or in person, unless his state of health, or his behaviour, is such as to render either his being present or his participating in the proceedings unfitting or unseemly.

Any relative of the alleged lunatic may also, if the court thinks fit, appear and take part in the inquiry on behalf of the alleged lunatic.

Adjudication on the issue,

Costs.

565 Upon the completion of the inquiry, the court shall adjudicate whether the alleged lunatic is or is not of unsound mind and incapable of managing his affairs. And at the same time the court may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or by the alleged lunatic, if he be adjudged to be of sound mind, or out of his estate, if he be adjudged of unsound mind and incapable of managing his affairs, or otherwise, as it may think proper.

When petition to be dismissed.

566 When a person has been adjudged not to be of unsound mind and not incapable of managing his affairs, the court shall dismiss the petition.

Manager to be appointed.

567 When a person has been adjudged to be of unsound mind and incapable of managing his affairs, the district court shall appoint a manager of the estate. Any near relative of the lunatic or any other suitable person may be appointed manager.

Guardian of person.

568 Whenever a manager of the estate of a lunatic is appointed by the district court, the court shall appoint a fit person to be guardian of the person of the lunatic. The manager may be appointed guardian; provided always that the heir-at-law of the lunatic shall not in any case be appointed guardian of his person.

Payment to.

569 If the person appointed to be manager of the estate of a lunatic, or the person appointed to be guardian of a lunatic's person, shall be unwilling to discharge the trust gratuitously, the court may fix such allowance or allowances to be paid out of the estate of the lunatic as, under the circumstances of the case, may be thought suitable.

Duties of.

570 The person appointed to be guardian of a lunatic's person shall have the care of his person, and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the court, either at the time when the guardian is appointed or afterwards, on an application made by such guardian by petition in the way of summary procedure, for the maintenance of the lunatic and of his family.

Powers of.

571 Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a lunatic; and may collect and pay all just

Civil Procedure Code.

claims, debts, and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immovable property for any period exceeding five years, without an order of the district court previously obtained.

Restriction.

572 Every person appointed by the district court to be manager of the estate of a lunatic shall, within a time to be fixed by the court, deliver in court an inventory of the immovable property belonging to the lunatic, and of all such movable property, sums of money, goods, and effects as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the court annually, within three months of the close of the year, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands. If any relative of the lunatic, or the Attorney-General, by petition to the court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the court may summon the manager and inquire summarily into the matter and make such order thereon as it shall think proper.

Inventory.

Account.

573 All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the lunatic or of the estate shall be paid into the kachchéri on account of the estate, and shall be dealt with thereafter in such manner as is prescribed by law in the case of suitors' deposits.

Excess over expenditure, to be paid into kachchéri.

574 It shall be lawful for any relative of a lunatic to sue for an account from any manager appointed under this Ordinance, or from such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

Relative may sue for account.

575 The district court, for any sufficient cause, may on the application of the guardian or of a relative of the lunatic or of the Attorney-General, provincial superintendent of police, or (where the property of the lunatic consists in whole or in part of land, or of any interest in land) of the government agent or assistant government agent, made by petition in the way of summary procedure, remove any manager appointed by the court, and may appoint any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him. The court may also, for any sufficient cause, in like manner remove any guardian appointed by the court.

Manager or guardian how to be removed

576 The district court may on any application made to it by a relative of the lunatic or a public officer under section 575 impose a fine not exceeding five hundred rupees on any manager of the estate of a lunatic who wilfully neglects or

Punishment for neglect or refusal to account.

Civil Procedure Code.

refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the court, and may realize such fine by attachment and sale of his property under the rules in force for the execution of decrees of court, and may also commit him to close custody until he shall deliver such accounts or property.

Where not necessary, court need not appoint manager.

577 If it appears to the district court, having regard to the situation and condition in life of the lunatic and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the court may, instead of appointing such manager, order that the property if money, or if of any other description the proceeds thereof, when realized in such manner as the court shall direct, be paid to such persons as the court may think fit, to be applied for the maintenance of the lunatic and his family.

Further inquiry when lunatic so found is alleged to have recovered.

578 When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the district court, or if the court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the court may institute an inquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs. The inquiry shall be conducted in the manner provided in section 580 and the four following sections of this Ordinance; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the court shall make an order for his estate to be delivered over to him, and such order shall be final.

Saving of last-mentioned Ordinance.

579 In all cases in which this chapter is applicable, the procedure herein provided shall be followed, anything in Ordinance No. 1 of 1873 to the contrary notwithstanding.

Appeal to Supreme Court.

580 Every order made by a district court under the provisions of this chapter shall be subject to an appeal to the Supreme Court, and such appeal may be prosecuted by, or at the instance of, the person suspected or adjudged to be of unsound mind, or of any relative or friend of his, or of any medical practitioner who shall have certified or testified to his state of mind; and the Supreme Court shall take cognizance of such appeal, and deal with the same as an appeal from an Interlocutory order of the district court, and make such order thereon as to the said court shall seem fit. And it shall be the duty of the district court to conform to and execute such order.

Proceedings exempt from stamp and schedule duty.

581 No stamp duty shall attach or be payable for any application, process, or other document filed in court under the provisions of this chapter. Nor shall it be necessary to attach schedules to processes issued to the fiscal under such provisions.

Civil Procedure Code.

CHAPTER XL.

Actions for the Appointment of Guardians.

582 Every person who shall claim a right to have charge of property in trust for a minor, under a will or deed, or by reason of nearness of kin, or otherwise, may apply to the district court for a certificate of curatorship; and no person shall be entitled to institute or defend any action connected with the estate of a minor, of which he claims the charge, until he shall have obtained such certificate. Provided that when the property is below the value of one thousand rupees, or for any other sufficient reason, any court having jurisdiction may allow any relative of a minor to institute or defend an action on his behalf, although a certificate of curatorship has not been granted to such relative. And provided further that any such person so claiming to have charge of any such property under the provisions of a will of which probate shall have been duly granted, may institute or defend any such action without having obtained such certificate.

Certificate of right to have charge of minor's property.

Explanation.—A person to whom letters of administration of a deceased person's estate have been granted under chapter XXXVIII, of this Ordinance does not thereby obtain a right to have charge, within the meaning of this section, of such portion or share of his deceased's estate, if any there be, as descends to a minor heir.

583 Any relative or friend of a minor, in respect of whose property such certificate has not been granted, may apply by petition in the way of summary procedure to the district court, to appoint a fit person to take charge of the property and person or of either property or person of such minor.

Application for appointment of person to have charge of property or person of minor.

584 If the property is situate in more than one district, any such application as aforesaid shall be made to the district court of the district in which the minor at the time of the application resides.

To be made in district where minor resides.

585 If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the court shall grant a certificate of curatorship to such person. If there is no person so entitled, or if such person is unwilling to undertake the trust and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the court may grant a certificate to such relative.

Charge of property of minor to whom to be granted.

The court may also, if it think fit (unless a guardian have been appointed by the father), appoint such person as aforesaid or such relative, or any other relative or friend of the minor, to be guardian of the person of the minor.

Same person may be appointed guardian of person.

The court may call upon any headman for a report on the character and qualification of any relative or friend of the minor, who may be desirous or willing to be entrusted with the charge of the property or person of such minor, and who resides in the division.

Court may call upon headman to report on qualification.

Civil Procedure Code.

When charge of property may be granted to any fit person.

586 If no title to a certificate is established to the satisfaction of the court by a person claiming under a will or deed, and if there is no near relative willing and fit to be entrusted with the charge of the property of the minor, and the court shall think it necessary for the interest of the minor that provision should be made by the court for the charge of the property and person of such minor, the court may grant a certificate to any fit person whom the court may appoint for the purpose.

Guardian to have charge of the person and maintenance; to be appointed at the same time;

587 Whenever the court shall grant a certificate of curatorship to the estate of a minor to any person under the last section, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor. The person to whom a certificate of curatorship has been granted may be appointed guardian, provided he would not be the legal heir of the minor, if the minor then died. If the person appointed to be guardian be unwilling to discharge the trust gratuitously, the court may assign him such allowance, to be paid out of the estate of the minor, as under the circumstances of the case it may think suitable. The court may also fix such allowance as it may think proper for the maintenance and education of the minor; and such allowance and the allowance of the guardian (if any) shall be paid to the guardian by the other person as aforesaid. In any case in which the court is satisfied that it will be for the interest of the minor, it may direct the raising of such allowance out of the *corpus* of the estate, by mortgage or sale or such other mode of realization as it thinks fit.

his allowance.

Costs of inquiries.

588 In all inquiries held by the district court under this chapter, the court may make such order as to the payment of costs by the person on whose application the inquiry was made, or out of the estate of the minor, or otherwise, as it may think proper.

Inventory.

Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this chapter, shall, within a time to be fixed by the court, file in court an inventory of the property belonging to the minor, and shall also twice every year, namely, within one month from January 1 and July 1, respectively, in each year, file an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate and the balance in hand.

Accounts.

Impeachment of the inventory and accounts.

589 Any relative of the minor or the minor himself by a next friend or the Attorney-General may, by petition and by way of summary procedure, impeach and falsify the correctness of the said inventory and periodic accounts, or complain of delay in the filing of them; and the court may on any such application make such order as it shall think proper.

Any relative of minor may sue curator for accounts.

590 It shall be lawful for any relative of a minor, with the leave of the court, or the minor himself by a next friend, at any time during the continuance of the minority, to sue for an account from any person to whom a certificate shall

Civil Procedure Code.

have been granted under the provisions of this Ordinance, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

591 The district court, for any sufficient cause shown on petition by way of summary procedure preferred by the guardian, or by a relative, or by a next friend of the minor, or by the Attorney-General, may recall any certificate granted under this chapter and may grant a certificate to any other person; and may compel the person whose certificate has been recalled to make over the property in his hands to his successor, and to account to such successor for all moneys received and disbursed by him. The court may also for sufficient cause in like manner remove any guardian appointed by the court.

Recall of the certificates.

592 The district court may permit any person to whom a certificate shall have been granted under this Ordinance, and any guardian appointed by the court, to resign his trust; and may give him a discharge therefrom on his accounting to his successor, duly appointed, for all moneys received and disbursed by him, and making over the property in his hands.

Resignation and discharge of curator of property or guardian of person of minor.

The application to be discharged from the trust shall be made by petition in the way of summary procedure, in which petition a near relative of the minor or the Attorney-General shall be named a respondent; and it shall be competent to the court to direct that any other person be made a respondent.

593 Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this chapter, if he is not willing to discharge the trust gratuitously shall be entitled to receive such allowance, to be paid out of the minor's estate, as the district court shall by order, made when the curator is appointed or afterwards on an application made by the curator by petition in the way of summary procedure, think fit to direct.

Allowance of curator.

594 Every guardian appointed by the district court under this chapter, who shall have charge of any minor, shall be bound to provide for his education in a suitable manner. The general superintendence and control of the education of all such minors shall be vested in the district court.

Minor's education.

CHAPTER XLI.

Actions for Appointment and Removal of Trustees.

595 Applications to the district court for the exercise of its jurisdiction for the appointment or removal of a trustee, and not asking any further remedy or relief, may be made by petition in the way of the summary procedure hereinbefore prescribed.

Trustees.

Civil Procedure Code.

CHAPTER XLII.

Matrimonial Actions.

Procedure in matrimonial actions.

596 In all actions for divorce *à vinculo matrimonii*, or for separation *à mensâ et thoro*, or for declaration of nullity of marriage, the pleadings shall be by way of plaint and answer, and such plaint and answer shall be subject to the rules and practice by this Ordinance provided with respect to plaints and answers in ordinary civil actions, so far as the same can be made applicable, and the procedure generally in such matrimonial cases shall (subject to the provisions contained in this chapter) follow the procedure hereinbefore set out with respect to ordinary civil actions.

Court of district in which petitioner resides to have jurisdiction.

597 Any husband or wife may present a plaint to the district court within the local limits of the jurisdiction of which he or she, as the case may be, resides, praying that his or her marriage may be dissolved on any ground for which marriage may, by the law applicable in this colony to his or her case, be dissolved.

Co-defendant.

598 Upon any such plaint presented by a husband, in which the adultery of the wife is the cause or part of the cause of action, the plaintiff shall make the alleged adulterer a co-defendant to the said action, unless he is excused from so doing on one of the following grounds, to be allowed by the court upon an application for the purpose:

- (1) That the defendant is leading the life of a prostitute, and that the plaintiff knows of no person with whom the adultery has been committed;
- (2) That the name of the alleged adulterer is unknown to the plaintiff, although he has made due efforts to discover it;
- (3) That the alleged adulterer is dead;

and it shall be lawful in any such plaint to include a claim for pecuniary damages against such co-defendant.

Affidavit where co-defendant is excused.

599 The prayer to be excused from making the alleged adulterer a co-defendant, and the allegations of fact upon which it is founded, supported by affidavit of fact or other sufficient evidence, shall be embodied in the plaint.

Connivance, condonation, counter-charge.

600 Upon the trial had upon the footing of any such plaint for the dissolution of a marriage, the court shall satisfy itself, not only as to the facts alleged, but also whether or not the plaintiff has been in any manner accessory to or conniving at the act or conduct which constitutes the ground upon which the dissolution of marriage is prayed for in the plaint, or has condoned the same, and shall also inquire into any counter-charge which may be made by the defendant or co-defendant against the plaintiff.

Plaint, when to be dismissed.

601 In case the court, on the evidence in relation to any such plaint, is not satisfied that the plaintiff's case has been proved, or finds that the plaintiff has, during the marriage, been accessory to or conniving at the act or conduct which

Civil Procedure Code.

constitutes the ground upon which the dissolution of marriage is prayed for, or has condoned the same, or that the plaint is presented or prosecuted in collusion with either of the defendants, then and in any of the said cases the court shall dismiss the plaint.

602 In case the court is satisfied on the evidence that the case of the plaintiff has been proved, and does not find that the plaintiff has been in any manner accessory to or conniving at the act or conduct which constitutes the ground upon which the dissolution of marriage is prayed for, or has condoned the same, or that the plaint is presented or prosecuted in collusion with either of the defendants, the court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections 604 and 605 hereinafter made and declared.

Otherwise
decree to be
passed.

Provided that the court shall not be bound to pronounce such decree if it finds that the plaintiff has, during the marriage, been guilty of adultery, or if the plaintiff has, in the opinion of the court, been guilty of unreasonable delay in presenting or prosecuting such plaint, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse, or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

Proviso.

No adultery shall be deemed to have been condoned within the meaning of this chapter unless where conjugal cohabitation has been resumed or continued.

603 In any action instituted for dissolution of marriage, if the defendant opposes the relief sought on any ground which would have enabled him or her to sue as plaintiff for such dissolution, the court may in such action give to the defendant on his or her application the same relief to which he or she would have been entitled in case he or she had presented a plaint seeking such relief.

Defendant, when
entitled to relief

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 pronouncing thereof, or such longer period as the Supreme Court by general or special order from time to time directs.

Decree to be
decree *nisi*.

During that period any person shall be at liberty, in such manner as the Supreme Court by general or special order from time to time directs, and in the absence of any such order, by petition on summary procedure to which the plaintiff and the defendants shall, if reasonably possible, be made respondents, to show cause against the said decree being made absolute by reason of the same having been obtained by collusion or by reason of material facts not having been brought before the court. On cause being so shown, the court shall deal with the case by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

Civil Procedure Code.

Costs.

The court may order the costs of counsel and witnesses, and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Decree when to be made absolute.

605 Whenever a decree *nisi* has been made and no sufficient cause has been shown why the same should not be made absolute as in the last preceding section provided within the time therein limited, such decree *nisi* shall on the expiration of such time be made absolute.

Procedure on suspicion of collusion during progress of action in district court.

606 During the progress of the action, any person suspecting that any parties to the action are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the Supreme Court by general or special order from time to time directs, and in the absence of any such order, by petition on summary procedure supported by affidavit of fact or other sufficient evidence, to apply to the district judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

Actions of nullity of marriage.

607 Any husband or wife may present a plaint to the district court within the local limits of the jurisdiction of which he or she (as the case may be) resides, praying that his or her marriage may be declared null and void.

Such decree may be made on any ground which renders the marriage contract between the parties void by the law applicable to this colony.

Court of district in which applicant resides to have jurisdiction.

608 Application for a separation *à mensâ et thoro* on any ground on which by the law applicable to this colony such separation may be granted, may be made by either husband or wife by plaint to the district court, within the local limits of the jurisdiction of which he or she, as the case may be, resides, and the court, on being satisfied on due trial of the truth of the statements made in such plaint, and that there is no legal ground why the application should not be granted, may decree separation accordingly.

Separated wife's property.

609 In every case of such separation under this chapter the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, devolve as the same would have devolved if she had died unmarried.

Provido.

Provided that if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

Civil Procedure Code.

610 In every case of such separation under this chapter the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceedings; and her husband shall not be liable in respect of any contract, act, or costs entered into, done, omitted, or incurred by her during the separation.

Separated wife's contracts and rights to sue.

Provided that where, upon any such separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use to the persons who supplied them.

Proviso 1.

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Proviso 2.

611 Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of separation has been pronounced, may, at any time thereafter, present a petition to the court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence at the hearing, and that there was reasonable excuse for such absence, and also for the alleged desertion, where desertion was the ground of such decree.

When decree for separation may be reversed by the court which made it.

Such petition shall be deemed and shall be dealt with by the court as a plaint in a regular action, and the party in whose favour the decree of separation sought to be reversed was passed shall be made a defendant therein. And the court may, after trial in regular course of procedure, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly, but such reversal shall not prejudice or affect the rights or remedies which any other person would have had in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the time of the sentence of separation and of the reversal thereof.

612 Whenever in any plaint presented by a husband the alleged adulterer has been made a co-defendant, and the adultery has been established, the court may order the co-defendant to pay the whole or any part of the costs of the proceedings in addition to any damages which may be awarded, where such damages have been claimed.

Co-defendant may be ordered to pay costs.

Provided that the co-defendant shall not be ordered to pay the plaintiff's costs, nor shall any damages be awarded—

- (1) If the defendant was at the time of the adultery living apart from her husband and leading the life of a prostitute; or
- (2) If the co-defendant had not at the time of the adultery reason to believe the defendant to be a married woman.

Civil Procedure Code.

Intervenant
under section
606 may be
ordered to pay
costs.

613 Whenever any application is made under section 606, the court if it thinks that the applicant had no grounds, or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

Alimony
pendente lite.

614 In any action under this chapter, whether it be instituted by a husband or a wife, the wife may present a petition for alimony pending the action. Such petition shall be preferred and dealt with as of summary procedure, and the husband shall be made respondent therein; and the court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the action as it may deem just.

Proviso.

Provided that alimony pending the action shall in no case be less than one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

Permanent
alimony.

615 The court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of separation obtained by the wife, order that the husband shall, to the satisfaction of the court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

Proviso.

In every such case the court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support, as the court may think reasonable. Provided, that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the court seems fit.

Form of decree
for alimony.

616 In all cases in which the court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the court, and may impose any terms or restrictions which to the court seem expedient, and may from time to time appoint a new trustee if it appears to the court expedient so to do.

Court may order
settlement of
property;

617 Whenever the court pronounces a decree of dissolution of marriage for adultery of the wife, if it is made to appear to the court that the wife is entitled to any property, the court may, if it thinks fit, order such settlement as it

Civil Procedure Code.

thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the court at the time of or after the pronouncing of a decree of dissolution of marriage, or separation, shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

618 The court, after a decree absolute for dissolution of marriage or a decree of nullity of marriage, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the court seems fit. Provided that the court shall not make any order for the benefit of the parents or either of them at the expense of the children.

and inquire into
ante and post-
nuptial
settlements.

Provido.

619 In any action for obtaining a separation, the court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such action, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said court.

Court may order
maintenance of
children pending
action ;

620 The court after a decree of separation may, upon application by way of summary procedure for this purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

and after decree
of judicial
separation ;

621 In any action for obtaining a dissolution of marriage or a decree of nullity of marriage, the court may from time to time, before making its decree absolute or its decree (as the case may be), make such interim orders, and may make such provision in the decree absolute or decree, as the court deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the action, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the court.

and pending an
action for
dissolution ;

622 The court after a decree absolute for dissolution of marriage or a decree of nullity of marriage, may, upon application by petition on summary procedure for the purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance, and education

and after decree
absolute therein.

Civil Procedure Code.

of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said court as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

Adjournment
and further
evidence.

623 The court may from time to time adjourn the hearing of any petition or plaint under this chapter, and may of its own motion require further evidence thereon if it sees fit so to do.

Appeal.

624 All decrees and orders made by the court in any action or proceeding under this chapter shall be enforced, and may be appealed from, in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the laws, rules, and orders for the time being in force.

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, 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.

proviso.

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.

In the event of such an appeal having been presented, then when it has been dismissed, or when in the result thereof the marriage is required to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death.

Protection of
third parties
dealing with
wife after decree
made and before
reversal.

626 Every decree for separation or order to protect property obtained by a wife under this chapter shall, until reversed or discharged, be deemed valid, so far as necessary for the protection of any person dealing with the wife.

No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order and of the reversal, discharge, or variation thereof.

All persons who in reliance on any such decree or order, make any payment to, or permit any transfer to be made, or act to be done by the wife who shall have obtained such decree or order, shall (notwithstanding the same may then have been reversed, discharged, or varied, or notwithstanding the separation of the wife from her husband may have ceased or may at some time since the making of the decree or order have been discontinued) be protected and indemnified as if at the time of such payment, transfer, or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued, unless at the time of the payment, transfer, or

Civil Procedure Code.

other act such persons had notice of the reversal, discharge, or variation of the decree or order or of the cessation or discontinuance of the separation.

627 Nothing in this chapter contained shall be taken to apply to any marriage between persons professing the Mohammedan faith or to any marriage affected by the provisions of Ordinance No. 3 of 1870.

Saving of the application of this Ordinance as to certain marriages.

CHAPTER XLIII.

Interpleader Actions.

628 When two or more persons claim adversely to one another payment of the same sum of money or delivery of the same property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute an action of interpleader against all the claimants, for the purpose of obtaining a decision as to the party to whom the payment should be made or the property delivered, and of obtaining indemnity for himself.

Interpleader actions.

Provided that if any action is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute an action of interpleader.

Proviso.

629 In every action of interpleader the plaintiff must, in addition to the other statements necessary for plaints, state—

Frame of plaint.

- (a) That the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder ;
- (b) The claims made by the defendants severally ; and
- (c) That there is no collusion between the plaintiff and any of the defendants ;

and such plaint shall also be supported by an affidavit of the plaintiff verifying the statements contained therein.

630 When the thing claimed is capable of being paid into court or placed in the custody of the court, the plaintiff must so pay or place it before he can be entitled to any order in the action.

Property claimed to be deposited in court.

631 At the hearing the court may—

- (a) Declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the action ;

Procedure at the hearing.

or if it thinks that justice or convenience so require—

- (b) Retain all parties until the final disposal of the action ; and if it finds that the admissions of the parties or other evidence enable it to do so, may—
- (c) Adjudicate upon the title to the thing claimed ;

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or else it may—

(d) Direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the court.

Who may not be sued in interpleader.

632 Nothing in this chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader action against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader action against A and C.

Of the plaintiff's costs therein.

633 When the action is properly instituted, the court may provide the plaintiff's costs by giving him a charge on the thing claimed, or in some other effectual way.

Procedure where stakeholder is sued by defendant.

634 If any of the defendants in an interpleader action is actually suing the stakeholder in respect of the subject of such action, the court in which the action against the stakeholder is pending shall, on being duly informed by the court which passed the decree in the interpleader action in favour of the stakeholder, that such decree has been passed, stay the proceedings as against him, and his costs in the action so stayed may be provided for in such action; but if and so far as they are not provided for in that action, they may be added to his costs incurred in the interpleader action.

CHAPTER XLIV.

Actions which fail for want of Jurisdiction.

Power to make order for costs notwithstanding want of jurisdiction.

635 When an action fails for want of jurisdiction in the court to entertain and determine the matter of the action on its merits, it shall, nevertheless, be competent to the court to make such order on the parties for the payment of costs as to it shall seem just; and every such order for the payment of costs is a decree for money within chapter XX.

When want of jurisdiction caused by exclusive jurisdiction of any village Tribunal, averment of jurisdiction in plaint is traversed.

636 When the want of jurisdiction is caused by reason of the exclusive jurisdiction of any village 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 village tribunal has exclusive jurisdiction.

Civil Procedure Code.

637 The order of court so dismissing the action shall adjudicate upon the facts which found the jurisdiction of such village tribunal; and if not appealed against, or if, in the event of an appeal, not reversed, this order shall be conclusive evidence of jurisdiction on the same claim being made before such village tribunal.

Order of dismissal not relevant on appeal, conclusive as to jurisdiction of other court.

638 Also the decision of a village tribunal declining jurisdiction shall be conclusive evidence against such jurisdiction in an action upon the same claim brought in any other court.

And conversely

CHAPTER XLV.

Actions relating to Public Charities.

639 In case of any alleged breach of any express or constructive trust created for public charitable purposes, or whenever the direction of the court is deemed necessary for the administration of any such trust, the Attorney-General acting *ex officio*, or two or more persons having an interest in the trust, and having obtained the consent in writing of the Attorney-General, may institute an action in the court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

Actions for carrying into effect trusts for public charity.

- (a) Removing any trustee or trustees of the charity, and, if necessary, appointing new trustees thereof;
- (b) Vesting any property in the trustees of the charity;
- (c) Declaring the proportions in which its objects are entitled;
- (d) Authorizing the whole or any part of its property to be let, sold, mortgaged, or exchanged;
- (e) Settling a scheme for its management;

or granting such further or other relief as the nature of the case may require.

CHAPTER XLVI.

Of Actions to realize Moneys due or secured upon Mortgages.

640 Every mortgagee or person entitled to bring any action for the realization of moneys secured to him upon a mortgage shall sue the mortgagor as defendant, whether such mortgagor is or is not in possession of the property mortgaged at the time of action brought.

Mortgagor to be sued whether in possession or not.

641 In every such case where the mortgagor is dead, such mortgagee or person shall be entitled to sue the executor or administrator of such deceased mortgagor.

Where mortgagor dead, executor or administrator to be sued.

642 In every such case where no executor has been appointed or no administration has been taken out to the estate and effects of such deceased mortgagor, and the property mortgaged amounts to or exceeds in value one thousand rupees, it shall be obligatory on such mortgagee or person, before proceeding with his action, to apply to the court to appoint an administrator to the estate and effects of

Where no executor or administrator, mortgagee to apply for the appointment of an administrator if mortgaged

Civil Procedure Code.

property exceeds one thousand rupees.

Where such property under one thousand rupees, person may be appointed to represent the estate without administration.

Notice to paise incumbancers.

Application by paise incumbancers to be joined.

such deceased mortgagor under the provisions of chapter XXXVIII., and any such administration may be limited or otherwise under the provisions of section 539. Provided that in every such case where the property mortgaged is under the value of one thousand rupees, the court may, on the application of such mortgagee or person, before action brought, and on its appearing to the court necessary or desirable, appoint some person to represent the estate of the deceased mortgagor for all the purposes of the action, on such notice to such persons (if any) as the court shall think fit; and the order so made and any order consequent thereon shall bind the estate of the deceased mortgagor in the same manner in all respects as if a duly constituted administrator of the deceased mortgagor had been a party to the action.

643 On the issue of the summons in any action under this chapter, such mortgagee or person shall issue notice thereof in writing, to which a copy of the summons shall be annexed, to all grantees, mortgagees, lessees, and other incumbancers whose deed of conveyance, mortgage, lease, or other incumbrance shall be of date subsequent to that of the mortgage on which such action is brought, and who shall have at any time previous to the bringing of such action notified to him in writing that they have duly registered their deeds, and shall have also furnished him with an address for the service of such notice, which shall be the same as the address furnished by them to the registrar of lands for the district in which the property is situate. Any notice mentioned in this section may be sent by post, and the production of a receipt for the registered cover under which any such notice was sent shall be sufficient proof that it was so sent. And every registrar of lands shall keep a separate book, in a form to be prescribed by the Registrar-General, in which addresses for the service of such notices shall be entered.

644 Any person so noticed may on the day fixed in the summons for the defendant to appear and answer apply under the provisions of section 18 to be joined as a defendant in the action. Every person so noticed not so applying to be joined as defendant, and every such grantee, mortgagee, lessee, or other incumbancer whose deed shall not have been registered, or who shall not have furnished such address as aforesaid, shall be bound by the judgment in the action in all respects as fully as though he had been a party thereto. Provided always that the mortgage in respect of which such judgment shall be given shall have itself been duly registered, and such mortgagee or person shall have furnished an address to the registrar of lands and to every grantee, mortgagee, lessee, or other incumbancer from whom he has received such notification as in the last preceding section mentioned. Provided, also, that the provisions of chapter XII. of this Ordinance with regard to the cure of default in appearance or pleading shall, so far as they can be made applicable thereto, apply to any case of intervention under this section.

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645 In cases of actions brought to obtain realization of a mortgage or pledge, if the fiscal return to the procept for service of summons that the defendant is not to be found, and if the plaintiff shall, by his own statement, subject to punishment for contempt of court in case of his making a false statement, verify his demand to the satisfaction of the court, and further satisfy the court that, notwithstanding all reasonable effort on his part, the defendant cannot be found, a mandate of sequestration (form 98, schedule II.) shall, on the motion of the plaintiff, issue to the fiscal from the court, directing him to seize and sequester the houses, lands, goods, money, or other property which are the subject of the mortgage or pledge, and to detain or secure the same till the defendant shall appear or answer. And the fiscal shall cause due notice in writing to be served on all persons in whose possession or power such property of the defendant, whether movable or immovable, shall be, of the sequestration having issued, and requiring them to reserve and retain the same, and all issues, rents, profits, and interest accruing therefrom, to abide the further order of the court.

Sequestration may issue in certain cases.

646 The property so sequestered shall either remain under sequestration or be sold, at the discretion of the court, regard being had to the nature of such property and the interests of all parties concerned. As soon as conveniently may be after such sequestration, written notices in English and the native language or languages of the district shall be affixed at the court-house and at such other public and conspicuous places, or shall be advertised in such public newspapers as the court shall direct, stating the names and designations of the parties, the cause of action, that such sequestration has issued, the description of the property sequestered, and calling on the defendant to appear. Proclamation shall also be made two several days in open court, at such intervals as the court in its discretion shall consider fit and just towards all parties, calling on the defendant to appear on pain of the court proceeding *ex parte*.

Notice of sequestration to be published.

647 If the defendant shall appear on or before the day of the last proclamation, and shall give such security for the ultimate satisfaction of such decree as may be passed against him in the action as the court shall consider the nature of the case to require, the sequestration shall thereupon be dissolved, and the action shall proceed as in ordinary cases; and in default of his giving such security, he shall be admitted to appear and defend such action, but the property shall remain under sequestration. If the defendant shall not appear on or before such day of last proclamation, the court shall, on motion of the plaintiff, proceed to hear the case *ex parte*.

Sequestration how dissolved.

648 If the property sequestered be claimed by a third party, the right thereto shall be tried between the claimant and the plaintiff as an incidental action; and the proceedings in the original action shall be stayed, if the court shall consider such stay necessary for the purposes of justice, but not otherwise.

Property sequestered claimed by third party.

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Where mortgagor insolvent, assignee to be joined.

649 In every case where an action is brought against a mortgagor against whom proceedings in insolvency are in progress in any court in this colony, the assignee in insolvency shall be joined as a co-defendant.

PART V.**PROVISIONAL REMEDIES.****CHAPTER XLVII.***Of Arrest and Sequestration before Judgment.*

Arrest before judgment.

650 If a plaintiff or one of several plaintiffs in any action either at the commencement thereof or at any subsequent period before judgment, shall, by way of motion on petition, supported by his own affidavit and *visà voce* examination (should the judge consider such examination desirable), subject, however, to the exceptions hereinafter contained, satisfy the judge that he has a sufficient cause of action against the defendant, either in respect of a money claim of or exceeding two hundred rupees or because he has sustained damage to that amount, and that he has no adequate security to meet the same, and that he does verily believe that the defendant is about to quit the island, and if he shall at the same time further establish to the satisfaction of the judge by affidavit or (if the judge shall so require) by *visà voce* testimony such facts that the judge infers from them that the defendant is about to quit the island, and will do so unless he be forthwith apprehended, such judge may order a warrant (form No. 100, schedule II.), to arrest the body of the defendant and to bring him before the court unless he shall give bail in, or make deposit of, such an amount as the said judge shall consider reasonable and adequate, which amount the said judge at the time of making the said order shall set out on the face thereof; and the said warrant may be executed within one calendar month from the date thereof, including the day of such date, and not afterwards, in any district of the island. Provided that if the plaintiff shall be in possession of any security in part, he or the person making the application on his behalf shall, on pain of punishment as for contempt of court, set forth the same particularly in his application and the amount thereof, which amount shall be deducted from the amount of security to be required from the defendant.

Provida.

Arrested person to be discharged on giving bail,

651 The defendant being arrested on such warrant, shall at once be brought up before the court by which it was issued in custody of the fiscal, unless he shall give reasonable security (form No. 101, schedule II.) to the fiscal to appear and answer the plaintiff's claim and to abide by and perform the judgment of the court, or to surrender himself or be surrendered to be charged in execution for the same; in which case the fiscal shall be authorized to discharge him. If he is brought before the court under the warrant, or if he appears in discharge of the bail taken by the fiscal, he must

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give bail (No. 102, schedule II.) to abide by and perform the judgment of the court, and pay any sum or sums which may be awarded against him, or to surrender himself or be surrendered by his sureties, to be charged in execution for the same; or if he is unable or unwilling to give such bail, he shall be committed to prison (form No. 103, schedule II.) until he does so, or until the determination of the action; and in the event of the decree being passed against him, then until the execution of the decree subject to the provisions of chapter XXII. in regard to imprisonment in execution of a decree for money; and provided also that no person shall in any case be imprisoned under this section for a longer period than three months before decree.

otherwise
committed to
prison.

652 The defendant may, instead of giving bail, as is hereinbefore directed, deposit with the fiscal or in court the sum mentioned in the warrant, and thereupon he shall be discharged from custody, and a minute of the same shall be made on the warrant; and the sum so deposited shall be applied in satisfaction of the judgment should the same eventually pass against the defendant, and the surplus, if any, shall be refunded to the defendant.

Or instead of
bail may make
payment to fiscal.

653 If a plaintiff in any action, either at the commencement thereof or any subsequent period before judgment, shall, by way of motion on petition supported by his own affidavit and *vidâ voce* examination (if the judge should consider such examination necessary) satisfy the judge that he has a sufficient cause of action against the defendant, either in respect of a money claim of or exceeding two hundred rupees or because he has sustained damage to that amount, and that he has no adequate security to meet the same, and that he does verily believe that the defendant is fraudulently alienating his property to avoid payment of the said debt or damage; and if he shall at the same time further establish to the satisfaction of the judge by affidavit, or (if the judge should so require) by *vidâ voce* testimony such facts that the judge infers from them that the defendant is fraudulently alienating his property with intent to avoid payment of the said debt or damage, or that he has with such intent quitted the island leaving therein property belonging to him, such judge may order a mandate (form No. 104, schedule II.) to issue to the fiscal, directing him to seize and sequester the houses, lands, goods, money, securities for money and debts, wheresoever or in whose custody soever the same may be within his district, to such value as the court shall think reasonable and adequate and shall specify in the mandate, and to detain or secure the same to abide the further orders of the court.

Of sequestration
before judgment.

Explanation.—Sequestration of immovable property has the effect of sequestering all rents and profits which proceed thereout, pending the sequestration.

654 Before making the order for a warrant of arrest or mandate of sequestration, the judge shall require the plaintiff to enter into a bond (form No. 105, schedule II.), with or without sureties, in the discretion of the judge, to the effect

But plaintiff
before such
warrant of
arrest or

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sequestration is issued must give security.

that the plaintiff will pay all costs that may be awarded and all damages which may be sustained by reason of such arrest or sequestration, by the defendant or by any other person in whose possession such property shall have been so sequestered; and it shall be competent to the court to award such damages and costs of suit either to the defendant or to those in whose possession such property shall have been so sequestered.

Who may make affidavit in lieu of plaintiff.

655 In substitution for the affidavit of the plaintiff required by sections 650 and 653—

When the action is brought by the Attorney-General, then any officer of the Crown; and

When the action is brought by a corporation, board, public body, or company, then any principal officer of such corporation, board, public body, or company; and

When the plaintiff is absent from the island, then his attorney duly authorized to bring and conduct the action; and

When the plaintiff, or if there are more plaintiffs than one when such of the plaintiffs as are in the island, or when such attorney of the plaintiff as is just above-mentioned is or are unable from want of personal knowledge or from bodily or mental infirmity to make the required affidavit, then any recognized agent of the plaintiff,

may be allowed by the court to make an affidavit in these matters instead of the plaintiff.

Proviso.

Provided that in each of the foregoing cases the person who makes the affidavit instead of the plaintiff must be a person having personal knowledge of the facts of the cause of action, and must in his affidavit swear or affirm that he deposes from his own personal knowledge of the matter therein contained, and shall be liable to be examined as to the subject-matter thereof at the discretion of the judge, as the plaintiff would have been if the affidavit had been made by him.

Punishment for wilful false statement.

656 Any person wilfully making any false statement by affidavit or otherwise in the course of any of the proceedings aforesaid may be punished as for a contempt of court, besides his liability to be tried and punished for perjury where such statement is on oath or affirmation.

Manner of sequestration.

657 The sequestration ordered in pursuance of section 653 shall be made in the manner hereinbefore provided for sequestration or seizure of property preliminary to sale thereof in execution of a decree for money.

Manner of investigating any claim to property sequestered.

658 If any claim be preferred to the property sequestered before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property seized in execution of a decree for money.

Costs and damages where sequestration wrongful.

659 If upon any such investigation the court is satisfied that the property sequestered was not the property of the defendant, it shall pass an order releasing such property from seizure, and shall decree the plaintiff to pay such costs

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and damages by reason of such sequestration, as the court shall deem meet. If otherwise, the court shall disallow the claim, and make such order as to costs as it shall deem meet.

660 Sequestration before judgment shall not affect the rights, existing prior to the sequestration, of persons not parties to the action, nor bar any person holding a decree against the defendant from applying for the sale of the property under sequestration in execution of such decree.

Effect of sequestration on prior rights.

661 Where property is under sequestration by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to again seize the property as preliminary to sale or delivery in execution of such decree.

Subsequent seizure of property under decree unnecessary.

CHAPTER XLVIII.

Of Injunctions.

662 Every application for an injunction for any of the purposes mentioned in section 87 of "The Courts Ordinance, 1889," except in cases where an injunction is prayed for in a plaint in any action, shall be by petition, and shall be accompanied by an affidavit of the applicant or some other person having knowledge of the facts, containing a statement of the facts on which the application is based.

When injunction may be granted.

663 An injunction granted by the court on any such application may in case of disobedience be enforced by the punishment of the offender as for a contempt of court.

Disobedience to injunction how punished.

664 The court shall in all cases, except when it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction cause the petition of application for the same together with the accompanying affidavit to be served on the opposite party: and where the application is made after the defendant has answered, the injunction shall in no case be granted before such service. But the court may in its discretion enjoin the defendant until the hearing and decision of the application.

Application to be on notice to opposite party.

665 An injunction directed to a corporation or board or other public body or company is binding not only on the corporation, board, public body, or company itself, but also on all members or officers of the corporation, board, public body, or company, whose personal action it seeks to restrain.

Effect on corporation, &c.

666 An order for an injunction made under this chapter may be discharged, or varied, or set aside by the court, on application made thereto on petition by way of summary procedure by any party dissatisfied with such order.

How set aside or varied.

667 If it appears to the court that the injunction was applied for on insufficient grounds, or if, after the issue of an injunction which it has granted, the action is dismissed or judgment is given against the applicant by default or otherwise, and it appears to the court that there was no probable ground for applying for the injunction, the court may, on the

When court may award compensation to respondent.

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application of the party against whom the injunction issued, award against the party obtaining the same in its decree such sum as it deems a reasonable compensation for the expense or injury caused to such party by the issue of the injunction. An award under this section shall bar any action for compensation in respect of the issue of the injunction.

CHAPTER XLIX.

Of Interim Orders.

Order for sale of perishable property.

668 Any court may, on the application of any party to an action, order the sale by any person named in such order, and in such manner and on such terms as it thinks fit, of any movable property, being the subject of such action, which is subject to speedy and natural decay. The party carrying out the sale shall, within such time as the court shall limit, and after deducting thereout such expenses as the court allows him, deposit the proceeds of the sale in court to the credit of the action.

Order for detention, preservation, or inspection of property.

669 The court may, on the application of any party to an action, and on such terms as it thinks fit—

- (1) Make an order for the detention, preservation, or inspection and survey of any property being the subject of such action ;
- (2) For all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such action ; and
- (3) For all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

Application herein to be made by way of summary procedure.

670 Every application under either of the two preceding sections shall be made by petition in the way of summary procedure ; and every party who is sought to be effected by the order must be named a respondent in the petition. Any such application may be made by a plaintiff after service of summons, or by a defendant after he has appeared in the action.

CHAPTER L.

Of the Appointment of Receivers.

When court may appoint a receiver.

671 Whenever it appears to the court to be necessary for the restoration, preservation, or better custody or management of any property, movable or immovable, the subject of an action or under sequestration, the court may on the application of any party who shall establish a *prima facie* right to or interest in such property, by order—

- (1) Appoint a receiver of such property, and, if need be
- (2) Remove the person, in whose possession or custody the property may be, from the possession or custody thereof ;

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(3) Commit such property to the custody or management of such receiver ; and

(4) Grant to such receiver such fee or commission on the rents and profits of the property by way of remuneration as the court thinks fit, and all such powers as to bringing and defending actions and for the realization, management, protection, preservation, and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the court thinks fit.

And give him powers over subject of action or a sequestration.

672 Notice of an application for the appointment of a receiver under this chapter must be served on the adverse party, unless he has left the island without leaving a recognized agent, or unless he has failed to appear in the action and the time limited for his appearance has expired ; or if he has left a recognized agent, such notice may be given to such agent.

Notice of application.

673 Every receiver so appointed as aforesaid shall—

- (1) Give such security (if any) as the court thinks fit duly to account for what he shall receive in respect of the property ;
- (2) Pass his accounts at such periods and in such form as the court directs ;
- (3) Pay the balance due from him therein as the court directs ; and
- (4) Be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Receivers to give security and pass accounts.

674 The court may at any time, on sufficient cause shown therefor, remove a receiver or require him to give fresh security.

Power of court to remove, or require fresh security.

675 Nothing in sections 671 and 673 authorizes or empowers the court to remove from the possession or custody of property under sequestration any person whom the parties to the action or some or one of them have or has not a present right so to remove.

Powers conferable by the court not to exceed those of parties themselves.

PART VI.

OF SPECIAL PROCEEDINGS.

CHAPTER LL.

Of Reference to Arbitration.

676 If all the parties to an action desire that any matter in difference between them in the action be referred to arbitration, they may at any time before judgment is pronounced apply, in person or by their respective proctors, specially authorized in writing in this behalf, to the court for an order of reference.

Matter in difference in an action may by consent of parties be referred to arbitration.

Civil Procedure Code.

Mode of submission.

Every such application shall be in writing, and shall state the particular matter sought to be referred, and the written authority of the proctor to make it shall refer to it, and shall be filed in court at the time when the application is made, and shall be distinct from any power to compromise or to refer to arbitration which may appear in the proxy constituting the proctor's general authority to represent his client in the action.

Appointment of arbitrator.

The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the court, the court shall nominate the arbitrator.

The matter in difference to be referred to arbitrator by order of court.

677 The court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award and specify such time in the order.

When once a matter is referred to arbitration, the court shall not deal with it in the same action, except as hereinafter provided.

Appointment of an umpire.

678 If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

- (a) By the appointment of an umpire; or
- (b) By declaring that the decision shall be with the majority if the major part of the arbitrators agree; or
- (c) By empowering the arbitrators to appoint an umpire; or
- (d) Otherwise, as may be agreed between the parties; or, if they cannot agree, as the court determines.

If an umpire is appointed, the court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

In event of death, &c., court may appoint new arbitrator; or supersede arbitration.

679 If the arbitrator, or where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects, or becomes incapable to act, or leaves the island under circumstances showing that he will probably not return at an early date, the court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving the island, or make an order superseding the arbitration, and in such case shall proceed with the action.

When court may appoint umpire.

680 Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if within seven days after such notice has been served, or such further time as the court may in each case allow, no umpire be appointed, the court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Civil Procedure Code.

681 Every arbitrator or umpire appointed under the foregoing sections shall have the like powers as if his name had been inserted in the order of reference.

Powers of umpire appointed after reference.

682 The court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire to examine as the court may issue in actions tried before it.

Court to issue process.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or being guilty of any contempt to an arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties, and punishments, by order of the court on the representation of such arbitrator or umpire, as they would incur for the like offences in actions tried before the court.

Power of arbitrators to take evidence.

683 If from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the court may, if it think fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the action.

Extension of time for award.

684 When an umpire has been appointed, he may enter on the reference in the place of the arbitrators—

When umpire may enter on the reference in lieu of arbitrators.

(a) If they have allowed the appointed time to expire without making an award; or

(b) When they have delivered to the court or to the umpire a notice in writing, stating that they cannot agree.

685 When an award in an action has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Award to be filed in court.

686 Upon any reference by an order of court the arbitrators or umpire may, with the consent of the court, state the award as to the whole or any part thereof in the form of a special case, for the opinion of the court; and after the filing of such special case upon notice to the parties, the court shall upon an appointed day hear argument and deliver its opinion thereon; and such opinion shall be added to and form part of the award.

Award may be in form of special case.

687 Within fifteen days from the date of receipt of notice of the filing of the award any party to the arbitration may by petition apply to the court to set aside the award, or to modify or to correct the award, or to remit the award to the arbitrators for reconsideration, on grounds mentioned in the following sections.

Application to set aside or correct the award.

688 The court may, by order, modify or correct an award—

When court may correct award.

(a) Where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred; or

Civil Procedure Code.

(b) Where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

and make order as to costs.

689 The court may also make such orders as it thinks fit respecting the costs of the arbitration, if any question arises respecting such costs and the award contains no sufficient provision concerning them.

When court may remit award for reconsideration.

690 The court may remit the award on any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit—

- (a) Where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;
- (b) Where the award is so indefinite as to be incapable of execution;
- (c) Where an objection to the legality of the award is apparent upon the face of it.

When an award is void;

691 An award remitted under section 690 becomes void on the refusal of the arbitrators or umpire to reconsider it.

when it may be set aside.

No award shall be set aside except on one of the following grounds, namely:

- (a) Corruption or misconduct of the arbitrator or umpire;
- (b) Either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;
- (c) The award having been made after the issue of an order by the court superseding the arbitration and restoring the action;

When it is not valid.

and no award shall be valid unless made within the period allowed by the court.

Judgment to be according to the award.

692 If the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if it has been made, and the court has refused such application, then the court shall, after the time for making such application has expired, on a day of which notice shall be given to the parties, proceed to give judgment according to the award; or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

And decree to be framed thereon.

Upon the judgment so given a decree shall be framed, and shall be enforced in manner provided in this Ordinance for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with the award.

Agreement to refer any difference to arbitration may be filed in court.

693 When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement, or to be appointed by any court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in such court.

Civil Procedure Code.

The application shall be by petition in the way of summary procedure as hereinbefore provided, in which the parties to the agreement other than the petitioner or petitioners shall be named respondents.

Application therefor.

694 On such application being made, if no sufficient cause be shown to the contrary, the court may cause the agreement to be filed, and shall make an order of reference thereon; and may also nominate the arbitrator when he is not named therein and the parties cannot agree as to the nomination.

Court to order reference thereon.

695 The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the court under the last preceding section, and to the award of arbitration and to the enforcement of the decree founded thereupon.

Provisions of this chapter to apply to such reference.

696 When any matter has been referred to arbitration without the intervention of a court of justice, and an award has been made thereon, any person interested in the award may within six months of the making of the award apply to the court having jurisdiction over the matter to which the award relates, that the award be filed in court.

Award made on a reference independently of court may be filed in court.

697 The application shall be by petition in the way of summary procedure as hereinbefore provided, in which the parties to the arbitration other than the petitioner or petitioners shall be named respondents.

Application therefor.

698 If on the hearing of such application no ground, such as is mentioned or referred to in sections 690 or 691, be shown against the award, the court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

Filing and enforcement of such award.

CHAPTER LII.

Of Proceedings on Agreement of Parties.

699 Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writing, stating such question in the form of a case for the opinion of the court, and providing that, upon the finding of the court with respect to such question—

Agreed statement of case for decision of court.

- (a) A sum of money fixed by the parties, or to be determined by the court, shall be paid by one of the parties to the other of them; or
- (b) Some property, movable or immovable, specified in the agreement, shall be delivered by one of the parties to the other of them; or
- (c) One or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the court to decide the question raised thereby.

Civil Procedure Code.

When value of property is to be stated therein.

700 If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

To what court agreement may be presented.

701 The agreement, if framed in accordance with the rules hereinbefore contained, may for the determination of the question or questions thereby raised be brought before the court which would have jurisdiction to entertain an action, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement. And for this purpose it shall be presented to the court as an exhibit to a petition preferred by one or more of the parties to the agreement in the way of summary procedure, to which petition the other parties to the agreement shall be named respondent, and in which petition it shall be alleged that the agreement was duly executed by all the parties, and that the controversy is real, and that the agreement is submitted *bonâ fide* for the purpose of determining the rights of the parties: such petition shall be verified by affidavit, and the prayer of the petition shall conform to the stipulations of the agreement within section 699.

Judgment and decree thereon.

702 If at the hearing of this petition on consideration of the evidence before it the court is satisfied that the allegations of the petition are established, and is further of opinion that the subject of the agreement is fit to be decided, then it shall proceed to pronounce judgment between the parties upon the facts and questions stated in the agreement, and upon the judgment so given a decree shall be framed and passed, and shall be enforced in the manner provided in this Ordinance for the execution of decrees.

CHAPTER LIII.

Of Summary Procedure on Liquid Claims.

Action by summary procedure on liquid claims.

703 All actions where the claim is for a debt or liquidated demand in money arising upon a bill of exchange, promissory note, or cheque, or instrument or contract in writing for a liquidated amount of money, or on a guarantee where the claim against the principal is in respect of such debt or liquidated demand, bill, note, or cheque, may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Ordinance; but the summons shall be in the form No. 19 contained in the second schedule hereto annexed, or in such other form as the Supreme Court may from time to time prescribe.

Leave required to defend.

704 In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the action, unless he obtains leave from the court as hereinafter mentioned so to appear and defend; and in

Civil Procedure Code.

default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest to the date of payment, and such costs as the court may allow at the time of making the decree.

Without such leave decrees at once with speedy execution.

The defendant shall not be required, as a condition of his being allowed to appear and defend, to pay into court the sum mentioned in the summons, or to give security therefor, unless the court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

Proviso,

705 The plaintiff who so sues and obtains such summons as aforesaid must on presenting the plaint produce to the court the instrument on which he sues, and he must make affidavit that the sum which he claims is justly due to him from the defendant thereon. If the instrument appears to the court to be properly stamped, and not to be open to suspicion by reason of any alteration or erasure or other matter on the face of it, and not to be barred by prescription, the court may in its discretion make an order for the service on the defendant of the summons above mentioned. The day to be inserted in the notice as the day for the defendant's appearance shall be as early a day as can be conveniently named, regard being had to the distance of the defendant's residence from the court.

Instrument to be produced with the plaint on affidavit.

706 The court shall, upon application by the defendant, give leave to appear and to defend the action upon the defendant paying into court the sum mentioned in the summons, or upon affidavits satisfactory to the court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the court may deem sufficient to support the application and on such terms as to security, framing, and recording issues, or otherwise, as the court thinks fit.

Summons to be of short date.

When leave to defend may be granted.

707 After decree the court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the action, if it seem reasonable to the court so to do, and on such terms as the court thinks fit.

When court may set aside decree, &c.

708 In any proceeding under this chapter the court may order the instrument on which the action is founded to be forthwith deposited with an officer of the court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Court may order deposit of instrument.

709 The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance, or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

Recovery of expenses incurred in noting.

710 Except as provided in this chapter, the procedure in actions under this chapter shall be the same as the procedure in actions instituted under chapter VII.

Saving clause.

Civil Procedure Code.

Special trial roll
to be kept.

711 In every court in which cases may be instituted under this chapter, a special trial roll shall be kept of such cases in which issue has been joined. And it shall be competent for the judge of such court to order such cases to be set down for hearing on such days, and on the day fixed for the hearing of any such case to direct the same to be called on for trial, in such order as to him shall appear best calculated to promote the ends of justice, any rule or practice of such court to the contrary notwithstanding; provided that the parties to such case shall have received reasonable notice of the day of hearing.

PART VII.

OF THE AIDING AND CONTROLLING OF EXECUTORS
AND ADMINISTRATORS, AND THE JUDICIAL
SETTLEMENT OF THEIR ACCOUNTS.

CHAPTER LIV.

*Of Aiding, Supervising, and Controlling Executors and
Administrators.*

Proceedings to
discover
property
withheld, &c.

712 An executor or administrator may present to the court from which grant of probate or administration issued to him, a petition entitled as of the action in which such grant issued, setting forth upon knowledge, or information and belief, any facts tending to show that money or other movable property which ought to be delivered to the petitioner, or which ought to be included in his inventory and valuation, is in the possession, under the control, or within the knowledge or information of a person who withholds the same from him, or who refuses to impart any knowledge or information he may have concerning the same, or to disclose any other fact which will in any way aid the petitioner in making discovery of such property, so that it cannot be inventoried and valued; and praying an inquiry respecting it, and that the person complained of may be cited to attend the inquiry and to be examined accordingly. The petition may be accompanied by affidavits or other evidence tending to support the allegations thereof. If the court is satisfied upon the materials so presented that there are reasonable grounds for inquiry, it shall issue a citation accordingly, which may be made returnable forthwith, or at such future time as the court shall direct.

Order to
accompany
citation.

Service of.

Failure to obey.

713 There shall be annexed to, or endorsed on, the citation an order signed by the judge, requiring the person cited to attend personally at the time and place therein specified. The citation and order must be personally served, and the service shall be ineffectual unless it is accompanied with payment or tender of the sum required by law to be paid or tendered to a witness subpoenaed to attend a trial in a civil court. Failure to attend as required by the citation and order may be punished as a contempt of court.

Civil Procedure Code.

714 Upon the attendance of a person in obedience to such citation and order, he shall be examined fully and at large, on oath or affirmation, respecting any money or other property of the testator or intestate, or of which the testator or intestate was in possession at the time of or within two years preceding his death. A refusal to be sworn or to answer any question allowed by the court is punishable in the same manner as a like refusal by a witness in a civil case. In case the person cited puts in an affidavit that he is the owner of any of the said property, or is entitled to the possession thereof by virtue of any lien thereon or special property therein, the proceedings as to such property so claimed shall be dismissed.

Examination of person cited.

Refusal to answer.

715 In the absence of the affidavit last mentioned, either party may on any such inquiry produce further evidence in like manner and with like effect as upon a trial.

Further evidence.

716 Where it appears to the court, from the examination and other testimony, if any, that there is reason to suspect that money or other property of the testator or intestate is withheld or concealed by the person cited, the court shall, unless the person cited gives security by a bond entered into with the petitioner as obligee, with such sureties and in such penalty as the court approves, for the payment of the money or delivery of the property, or in default of such delivery for the payment to the obligee of the full value thereof, and in either case of all damages which may be awarded against the obligor for withholding the same whenever it shall be determined in an action brought by the obligee that it belongs to the estate of the testator or intestate, make a decree reciting the grounds thereof, and requiring the person cited to deliver possession of the money or other property, specifying the sum or describing the property, to the petitioner. But in the event of such security being given, and after payment within a time to be fixed therefor of any costs which the court may award to the petitioner, the proceedings shall be dismissed.

Decree awarding possession to the petitioner.

unless security given to prevent.

717 Where the decree requires the person cited to deliver money, disobedience thereto may be punished as contempt of court.

Disobedience to decree contempt.

Where it requires him to deliver possession of other property, a warrant shall issue on the application of the petitioner directed to the fiscal, and commanding him to search for and seize the property, if it is found in the possession of the person cited, or his agent, or any person deriving title from him since the presentation of the petition, to deliver the same to the petitioner, and to return the warrant within sixty days.

Warrant to seize property.

The issue of such a warrant does not affect the power of the court to enforce the decree, or any part thereof, by punishing a disobedience thereto.

718 A creditor, or any person interested in the estate, may present to the court in the action in which grant of probate or administration issued, proof by affidavit that an executor or administrator has failed to file in court the inventory and

Executor, &c., how compelled to return inventory and accounts.

Civil Procedure Code.

valuation, and account (or a sufficient inventory and valuation, or sufficient accounts) required by law within the time prescribed therefor. Thereupon, or of its own motion, if the court is satisfied that the executor or administrator is in default, it shall make an order requiring the delinquent to file the inventory and valuation or accounts, or a further inventory and valuation or further accounts, as the case may be: or in default thereof to show cause at a time and place therein specified why he should not be attached. Upon the return of the order, if the delinquent has not filed a sufficient inventory and valuation or sufficient accounts, the court shall issue a warrant of attachment against him, and shall deal with him as for a contempt of court.

How executor or administrator may be discharged from commitment.

719 A person committed to jail under the provisions of the last preceding section may be discharged by the court upon his paying and delivering under oath all the money and other property of the testator or intestate, and all papers relating to the estate under his control, to the judge, or a person authorized by the judge to receive the same.

Petition by creditor or legatee to compel payment.

720 In either of the following cases a petition, entitled as of the action in which grant of probate or administration issued, may be presented to the court which issued the same, praying for a decree directing an executor or administrator to pay the petitioner's claim, and that he be cited to show cause why such decree should not be made:

- (a) By a creditor, for the payment of a debt, or of its just proportional part, at any time after twelve months have expired since grant of probate or administration;
- (b) By a person entitled to a legacy, or any other pecuniary provision under a will, or a distributive share, for the payment or satisfaction thereof, or of its just proportional part, at any time after twelve months have expired since such grant.

Citation to issue.

721 On the presentation of such petition the court shall issue a citation accordingly, and upon the return thereof shall make such decree in the premises as justice requires. But in any case where the executor or administrator files an affidavit setting forth facts which show that it is doubtful whether the petitioner's claim is valid and legal, and denying its validity or legality absolutely, or upon information and belief, or where the court is not satisfied that there is money or other movable property of the estate applicable to the payment or satisfaction of the petitioner's claim, and which may be so applied without injuriously affecting the rights of others entitled to priority or equality of payment or satisfaction, the decree shall dismiss the petition, but such dismissal shall not prejudice the right of the petitioner to an action or accounting.

Hearing and decree.

Appeal.

722 Every order or decree made under the provisions of this chapter shall be subject to an appeal to the Supreme Court.

Civil Procedure Code.

CHAPTER LV.

Of the Accounting and Settlement of the Estate.

723 An executor or administrator may at any time voluntarily file in the court from which grant of probate or administration issued to him an intermediate account, and the vouchers in support of the same.

Intermediate
accounting,
voluntary.

724 The court may in any case, at any time, and either upon the application of a creditor or party interested, or of its own motion, make an order requiring an executor or administrator to render an intermediate account.

Intermediate
accounting,
compulsory.

725 In any of the following cases, and either upon the application of a party mentioned in the next section or of its own motion, the court may from time to time compel a judicial settlement of the account of an executor or administrator—

Judicial
settlement of
account.

- (a) Where one year has expired since grant to him of probate or administration;
- (b) Where such grant has been revoked, or for any other reason his powers have ceased;
- (c) Where he has sold or otherwise disposed of any immovable property of the testator, or devisable interest therein, or the rents, profits, or proceeds thereof, pursuant to a power in the will, where one year has elapsed since the grant of probate to him.

726 The application for a judicial settlement in the last section mentioned shall be by petition, entitled as of the action in which grant of probate or administration issued, and may be presented by a creditor, or by any person interested in the estate or fund, including a child born after the making of a will; or by any person in behalf of an infant so interested; or by a surety in the official bond of the person required to account, or the legal representative of such surety. Upon the presentation thereof, citation shall issue accordingly; but in a case specified in sub-section (a) of the last preceding section the court may, if the petition is presented within less than eighteen months after the issue of probate or administration, entertain or refuse to entertain it in its discretion.

Who may apply
for accounting.

Citation.

727 Upon the return of such citation, if the executor or administrator fails either to appear, or to show good cause to the contrary, or to present, in a proper case, a petition as prescribed in section 729, an order shall be made directing him to account within such a time and in such a manner as the court prescribes, and to attend before the court from time to time for that purpose: And the executor or administrator shall be bound by such order without service thereof, and if he disobays it the court may issue a warrant of attachment against him, and the grant of probate or administration issued to him may be revoked. If it appears that there is a surplus, distributable to creditors or persons interested, the court may at any time issue a supplemental

Order to
account.

Supplemental
citation.

Civil Procedure Code.

citation, directed to such persons as must be cited upon the petition of an executor or administrator for a judicial settlement of his account, requiring them to attend the accounting.

Person cited may bring in other parties.

728 Upon the return of any citation issued under any of the foregoing sections of this chapter, the executor or administrator may, if one year has expired since grant of probate or administration issued to him, present a petition as in the next section prescribed. A citation issued upon such a petition need not be directed to the petitioner in the special proceeding pending against the executor or administrator; but the hearing of the special proceeding shall be adjourned until the return of the citation so issued, whereupon the two special proceedings shall be consolidated. Such consolidation shall not affect any power of the court which might be exercised in either special proceeding.

Proceedings.

Executor, &c., may petition for judicial settlement of his account.

729 At any time after the expiration of one year since grant of probate or administration to an executor or administrator, he may present to the court which issued the same a petition, entitled as of the action in which such grant issued to him, praying that his account may be judicially settled, and that the creditors or persons claiming to be creditors, husband or wife, heirs, next of kin, and legatees (if any) of the testator or intestate, or, if any of those persons has died, his executor or administrator (if any), may be cited to attend the settlement. If one or more co-executors or co-administrators presents such a petition for a settlement of his separate account, it must pray that his co-executors or co-administrators be also cited. And upon the presentation of any such petition a citation shall issue accordingly.

Citation.

Hearing.

730 Upon the return of such citation the court must take the account and hear the allegations and proofs of the parties respecting the same. Any party may contest the account with respect to a matter affecting his interest in the settlement and distribution of the estate; and any party may contest an intermediate account rendered under section 724 in case the same has not been consolidated under section 728.

Creditor not cited may appear.

731 Any creditor or person interested in the estate, although not cited, is entitled to appear upon the hearing, and thus make himself a party to the special proceeding.

Executor, &c., whose grant has been revoked may petition.

732 Any executor or administrator whose grant has been revoked or who is desirous of resigning his office may, in the same action, present to the court a petition praying that his account may be judicially settled, and that his successor (if any) and the other persons specified in section 729 may be cited to attend the settlement. The proceedings thereon shall be regulated according to the provisions of the last three sections.

Affidavit to be annexed to accounts.

733 To each account filed under this chapter shall be appended an affidavit of the accounting party, to the effect that the account contains, according to the best of his knowledge and belief, a full and true statement of all his receipts and disbursements on account of the estate of the testator or

Civil Procedure Code.

intestate, and of all money and other property belonging to the estate which has come to his hands, or which has been received by any other person by his order or authority for his use : and that he does not know of any error or omission in the account to the prejudice of any creditor of, or person interested in, the estate.

734 Upon every accounting by an executor or administrator, the accounting party must produce and file a voucher for every payment, except in one of the following cases :

Vouchers to be produced.

- (1) He may be allowed, without a voucher, any proper item of expenditure, not exceeding twenty rupees, if it is supported by his own uncontradicted oath or affirmation, stating positively the fact of payment, and specifying where and to whom the payment was made : provided that all the items so allowed against an estate, upon all the accountings of all the executors or administrators, shall not exceed two hundred rupees.
- (2) If he proves, by his own or another's sworn testimony, that he did not take a voucher when he made the payment, or that the voucher then taken by him has been lost or destroyed, he may be allowed any item of which he satisfactorily proves the payment by the testimony of the person to whom he made it, or, if that person is dead or cannot be found, by any competent evidence other than his own or his wife's oath or affirmation.

But no such item shall be allowed unless the court is satisfied that the charge is correct and just.

735 The court may at any time make an order requiring the accounting party to make and file his account, or to attend and be examined on oath or affirmation touching his receipts and disbursements, or touching any other matter relating to his administration, or any act done by him under colour of his grant or after the death of the testator or intestate, and before the issue of such grant, or touching any movable property of the testator or intestate owned or held by him at the time of his death.

Accounting party to be examined.

736 Upon a judicial settlement of the account of an executor or administrator, he may prove any debt owing to him by his testator or intestate, provided that a concise statement of such debt with an intimation of the petitioner's intention so to prove the same has been inserted in the petition. Where a contest arises between the accounting party and any of the other parties respecting any property alleged to belong to the estate, but to which the accounting party lays claim, or respecting a debt alleged to be due by the accounting party to the testator or intestate, or by the testator or intestate to the accounting party, the contest must be tried and determined in the same special proceeding and in the same manner as any issue arising on a civil trial.

Court to determine claims.

737 From the death of the testator or intestate until the first judicial settlement of an account by his executor or administrator, the running of the Ordinance relating to the

Prescription.

Civil Procedure Code.

prescription of actions against a debt due from the deceased to the accounting party, or any other cause of action in favour of the latter against the deceased, is suspended, unless the accounting party was appointed upon the revocation of a former grant to another person; in which case the running of the Ordinance is so suspended from the grant to him until the first judicial settlement of his account. After the first judicial settlement of the account of an executor or administrator, the Ordinance begins again to run against a debt due to him from the deceased, or any other cause of action in his favour against the deceased.

Court may allow for property lost, &c.

738 Upon a judicial settlement of the account of an executor or administrator, the court may allow the accounting party for property of the testator or intestate perished or lost without the fault of the accounting party.

Effect of judicial settlement.

739 A judicial settlement under this chapter, either by the decree of the district court or upon an appeal therefrom, is conclusive evidence against all parties who were duly cited or appeared, and all persons deriving title from any of them at any time, of the following facts, and no others:

- (1) That the items allowed to the accounting party for money paid to creditors, legatees, heirs, and next of kin, for necessary expenses, and for his services, are correct.
- (2) That the accounting party has been charged with all the interest for money received by him and embraced in the account, for which he was legally accountable.
- (3) That the money charged to the accounting party, as collected, is all that was collectible at the time of the settlement on the debts stated in the account.
- (4) That the allowances made to the accounting party for the decrease, and the charges against him for the increase, in the value of property were correctly made.

Decree for payment and distribution.

740 When an account is judicially settled under the provisions of this chapter, and any part of the estate remains and is ready to be distributed to the creditors, legatees, heirs, next of kin, husband, or wife of the testator or intestate, or their assigns, the decree must direct the payment and distribution thereof to the persons so entitled, according to their respective rights. If any person who is a necessary party for that purpose has not been cited, or has not appeared, a supplemental citation must be issued as prescribed in section 727. Where the validity of a debt, claim, or distributive share is not disputed, or has been established, the decree must determine to whom it is payable, the sum to be paid, and all other questions concerning the same. And such decree shall be conclusive with respect to the matters enumerated in this section upon each party to the special proceeding who was duly cited or appeared, and upon every person deriving title from such party.

Civil Procedure Code.

741 In either of the following cases the decree may direct the delivery of unsold property, movable or immovable, or the assignment of an uncollected demand, or any other movable property, to a party or parties entitled to payment or distribution in lieu of the money value of the property :

When specific property may be delivered.

- (1) Where all the parties interested, who have appeared, manifest their consent thereto by a writing filed in court.
- (2) Where it appears that a sale thereof, for the purpose of payment or distribution, would cause a loss to the parties entitled thereto. The value must be ascertained, if the consent does not fix it, by an appraisement under oath made by one or more persons appointed by the court for the purpose.

742 Where an admitted debt of the testator or intestate is not yet due, and the creditor will not accept present payment with a rebate of interest, or where an action is pending between the executor or administrator and a person claiming to be a creditor of the deceased, the decree must direct that a sum sufficient to satisfy the claim, or the proportion to which it is entitled, together with the probable amount of the interest and costs, be retained in the hands of the accounting party, or paid into court for the purpose of being applied to the payment of the claim when it is due, recovered, or settled ; and that so much thereof as is not needed for that purpose be afterwards distributed according to law.

When money may be retained.

743 Where a legacy or distributive share is payable to a lunatic or minor, the decree may, in the discretion of the court, direct it to be paid to the manager or curator, as the case may be, of the estate of such lunatic or minor ; and where a sum of less than one hundred rupees is so payable to a minor, the decree may direct that the same be applied to the maintenance or education of the minor. And such manager or curator shall apply and account for any sum received by him under this chapter in manner in chapters XXXIX. and XL. respectively provided with regard to sums coming to his hands as such manager or curator.

Share of lunatic or minor.

744 Every order or decree made under the provisions of this chapter shall be subject to an appeal to the Supreme Court.

Appeal.

CHAPTER LVI.

Of Accounting in case of Lunatics and Minors.

745 A petition praying for the judicial settlement of the account of—

- (a) The manager of the estate of a lunatic ;
- (b) The guardian of the person of a lunatic ;

Compulsory judicial settlement of accounts in cases of lunatics and minors.

Civil Procedure Code.

(c) The curator of the estate of a minor ;

(d) The guardian of the person of a minor ;

(e) The next friend of a minor plaintiff ;

(f) The guardian for the action of a minor defendant ;
and that such person may be cited to attend the settlement thereof, may in every case where any such person is required by law to file accounts, be presented to the court having jurisdiction in the manner in the last preceding chapter provided by any of the following persons, respectively, viz. :—

In cases falling under heads (a) and (b)—

By the lunatic after he has been found by adjudication to have ceased to be of unsound mind, or by any relative or friend of the lunatic, or by the executor or administrator of a deceased lunatic, or under (a) by the guardian of the person and under (b) by the manager of the estate of a lunatic, or by any public officer mentioned in section 556.

In cases falling under heads (c), (d), (e), and (f)—

By the minor after he has attained majority, or by the executor or administrator of a deceased minor, or under (c) by the guardian of the person, and under (d) by the curator of the estate of a minor.

And in any case by the successor of any such manager, curator, guardian, next friend, or guardian for the action. But in cases falling under heads (b), (d), (e), and (f) proof must be adduced to the satisfaction of the court that the person so required to account has received money or property of the minor for which he is liable to account and has not accounted.

Voluntary
judicial
settlement of
accounts in cases
of lunatics and
minors.

746 A petition praying for the judicial settlement of his account and a discharge from his duties and liabilities may be presented in like manner by any of the persons described under heads (a), (b), (c), (d), (e), and (f) of the last preceding section, in any case where a petition for a judicial settlement of his account may be presented by any other person as prescribed in the last section. The petition must pray that every person who might have so presented a petition may be cited to attend the settlement.

Procedure.

747 Upon the presentation of any petition as mentioned in the last two sections, the court shall issue a citation accordingly. Sections 724 to 740 both inclusive shall be taken to apply so far as is practicable, *mutatis mutandis*, to all proceedings under this chapter. And the accounting party must annex to every account produced and filed by him an affidavit verifying the account.

Appeal.

748 Every order or decree made under the provisions of this chapter shall be subject to an appeal to the Supreme Court.

Civil Procedure Code.

CHAPTER LVII.

General Clauses.

749 Every petition by which an application is made to a district court for the exercise of its powers over or in respect of lunatics, minors, or trustees shall state expressly that the petitioner does not know of any person interested in the subject of the petition or in the person sought to be affected by the order prayed for in the petition, who is likely to entertain any objection thereto, other than those who are named as respondents in the petition.

Requisites of petitions under chapters relating to lunatics, &c.

750 But the court shall have power nevertheless to direct that the order *nisi* be served on any person or persons other than a respondent, whom it may consider entitled to have notice of the application.

Citations.

751 All security bonds made under or in pursuance of the provisions of chapters XXXIX., XL., and XLI. shall, unless otherwise expressly or by implication directed, be expressed to be made with the secretary of the court for the time being. And in the case of bonds so made, upon each occurrence of a change of secretary the new secretary shall be deemed to take the place of, and to be substituted for, the secretary whom he succeeds, as party obligee to the contract on the bond, and shall become such party as fully and completely in all respects as if he were originally made such party on the occasion of the making of the bond.

Security bonds.

752 The district court shall have the like power to make the person appointed manager of a lunatic's estate, or the person appointed curator of a minor's estate, give security for the due administration of the estate as it has in the case of administrators of deceased persons' estates.

Security for due administration.

PART VIII.

OF APPEALS.

CHAPTER LVIII.

Of Appeals and Revision.

753 The Supreme Court may call for and examine the record of any case, whether already tried or pending trial, in any court, for the purpose of satisfying itself as to the legality or propriety of any judgment or order passed therein, or as to the regularity of the proceedings of such court, and may upon revision of the case so brought before it pass any judgment or make any order which it might have made had the case been brought before it in due course of appeal instead of by way of revision.

Powers of revision by Supreme Court.

754 Every appeal to the Supreme Court from any judgment, decree, or order of any original court, shall be made in the form of a written petition to the Supreme Court in the name of the appellant, and shall be preferred to the Supreme Court as hereinafter provided.

Form of appeal and transmission thereof.

Civil Procedure Code.

The petition of appeal shall be presented to the court of first instance for this purpose by the party appellant or his proctor within a period of ten days, or where such court is a court of requests, seven days, from the date when the 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 petition is so presented shall receive it and deal with it as hereinafter provided. If those conditions are not fulfilled it shall refuse to receive it.

To be drawn by
advocate or
proctor,

755 All petitions of appeal shall be drawn and signed by some advocate or proctor, or else the same shall not be received. Provided always that any party desirous to appeal may within the time limited for presenting a petition of appeal, and upon his producing the proper stamp required for a petition of appeal, be allowed to state *virâ voce* his wish to appeal together with the particular grounds of such appeal, and the same shall (so far as they are material) be concisely taken down in writing from the mouth of the party by the secretary or chief clerk of the court in the form of a petition of appeal, when it shall be signed by such party and attested by the secretary or chief clerk, and be received as the petition of appeal of such party without the signature of any advocate or proctor.

Security for
costs of appeal

756 When a petition of appeal has been received by the court of first instance under section 754, the petitioner shall forthwith give notice to the respondent that he will on a day to be specified in such notice, and within a period of twenty days, or where such court is a court of requests, fourteen days, from the date when the decree or order appealed against was pronounced, computed as in the same section is directed for the periods of ten days and seven days therein respectively mentioned, tender security as hereinafter directed for the respondent's costs of appeal, and will deposit a sufficient sum of money to cover the expenses of serving notice of the appeal on the respondent. And on such day the respondent shall be heard to show cause if any against such security being accepted. And in the event of such security being accepted and also the deposit made within such period, then the court shall immediately issue notice of the appeal together with a copy of the petition of appeal, to be furnished to the court for that purpose by the appellant, to the fiscal for service on the respondent who is named by the appellant in his petition of appeal, or on his proctor if he was represented by a proctor in the court of first instance, and shall forward to the Supreme Court the petition of appeal together with all the papers and proceedings of the case relevant to the decree or order appealed against; retaining, however, an office copy of the decree or order appealed against, for the purposes of execution if necessary. And such proceedings shall be accompanied by a certificate (form No. 128, schedule II.) from the secretary or clerk of the court stating the dates of the institution and decision of the case, in whose favour it was decided, the

Notice of appeal
to be served on
respondent by
fiscal.

Certificate of
secretary.

Civil Procedure Code.

respective days on which petition of appeal was filed and security given, and whether either the plaintiff sued or the defendant defended *in formâ pauperis*. But where an appeal is taken from the decision of a judge of the Supreme Court sitting alone as in section 40 of "The Courts Ordinance, 1889," provided, the registrar of such court shall, after doing all acts and things necessary to be done by such secretary or clerk as aforesaid preparatory to forwarding proceedings in appeal to the Supreme Court as in this section provided, proceed in manner in section 768 prescribed.

The fiscal's return to the process issued under this section shall immediately upon being received by the court of first instance be transmitted to the Supreme Court, but where the appeal is from the decision of a judge of the Supreme Court so sitting alone as in the last-mentioned Ordinance provided, such return shall be made to and filed by the registrar with the proceedings in appeal.

And when a petition of appeal has been so received, but the petitioner has failed to give the security and to make the deposit as in this section provided, then the petition of appeal shall be held to have abated, and the further proceedings in this section prescribed shall not be necessary.

757 The security to be required from a party appellant shall be by bond (form No. 129, schedule II.) with one or more good and sufficient surety or sureties, or shall be by way of mortgage of immovable property or deposit and hypothecation by bond of a sum of money sufficient to cover the costs of the appeal and to no greater amount.

Security to be by bond and with surety.

758 The petition of appeal shall be distinctly written in the English language upon good and suitable paper, and shall contain the following particulars :

Language and frame of appeal.

- (a) The name of the court in which the case is pending.
- (b) The names of the parties to the action.
- (c) The names of the appellant and of the respondent.
- (d) The address to the Supreme Court.
- (e) A plain and concise statement of the grounds of objection to the judgment, decree, or order appealed against—such statement to be set forth in duly numbered paragraphs.
- (f) A demand of the form of relief claimed.

The court in deciding any appeal shall not be confined to the grounds set forth by the appellant, but it shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of being heard on that ground.

Grounds of decision in appeal.

759 If the petition of appeal is not drawn up in the manner in the last preceding section prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended, within a time to be fixed by the court; or be amended then and there. When the court rejects under this section any petition of appeal, it shall record the reasons

Where petition to be rejected.

Civil Procedure Code.

of such rejection. And when any petition of appeal is amended under this section, the judge, or such officer as he shall appoint in that behalf, shall attest the amendment by his signature.

When one of several plaintiffs or defendants may appeal against whole decree.

760 Where there are more plaintiffs or more defendants than one in an action, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

CHAPTER LIX.

Of the Execution of Decrees under Appeal.

Execution pending appeal may be stayed before expiration of appeal time by the court which passed the decree. Proviso.

761 Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but, if any application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the court which passed the decree may for sufficient cause order the execution to be stayed;

Provided that no order shall be made under this section unless the court making it is satisfied—

- (a) That substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) That the application has been made without unreasonable delay; and
- (c) That security is given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

Application how to be made.

762 Every application to the court for stay of execution under the immediately preceding section must be made by petition, in which the judgment-creditor shall be named respondent.

Application for execution of decree pending appeal must be on notice to debtor; and execution will only be granted on security.

763 In the case of an application being made by the judgment-creditor for execution of a decree which is appealed against, the judgment-debtor shall be made respondent.

If, on any such application, an order is made for the execution of a decree against which an appeal is pending, the court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Supreme Court.

And when an order has been passed for the sale of immovable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall, on the application of the judgment-debtor, be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the court which passed the decree thinks fit.

Civil Procedure Code.

764 No such security in appeal shall be required from the Crown or (when Government has undertaken the defence of the action) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Exception in favour of Government.

CHAPTER LX.

Of Appeal notwithstanding Lapse of Time.

765 It shall be competent to the Supreme Court to admit and entertain a petition of appeal from a decree of any original court, although the provisions of sections 754 and 756 have not been observed; provided that the Supreme Court is satisfied that the petitioner was prevented by causes not within his control from complying with those provisions; and provided also that it appears to the Supreme Court that the petitioner has a good ground of appeal, and that nothing has occurred since the date when the decree or order which is appealed from was passed to render it inequitable to the judgment-creditor that the decree or order appealed from should be disturbed.

Appeal notwithstanding lapse of time.

Proviso.

766 In every such petition of appeal as is the subject of the last section the judgment-creditor shall be named respondent, and the petition shall be accompanied by a certified copy of the decree or order appealed from, and of the judgment on which it is based as well as by such affidavits of facts and other materials as may constitute *prima facie* evidence that the conditions precedent to the petition of appeal being entertained, which are prescribed in the last section, are fulfilled. Also, every such petition shall be presented immediately to the Supreme Court in its appellate jurisdiction, and in addition to the prayer for relief in respect to the subject of appeal it shall contain a prayer that the appeal may be admitted notwithstanding the lapse of time.

Petition therefor

to be presented immediately to the Supreme Court.

767 On any such petition being forwarded to the Supreme Court, the question whether or not it ought to be admitted shall be a preliminary question to be determined forthwith on summary procedure, according to the provisions of alternative (b), section 377, and for this purpose the jurisdiction of the court may be exercised by a single judge thereof. If upon the hearing of this question the Supreme Court is satisfied that the conditions prescribed in section 765 are fulfilled, it may order the petition of appeal to be admitted upon such conditions as to costs, security, or otherwise as to the court may seem just, and in the event of its doing so the registrar shall, where the court of first instance is the Supreme Court, proceed as in section 768 provided; but where such court is a district court or court of requests, the Supreme Court shall issue a mandate to such court, directing it to forward to the Supreme Court the record of the proceedings of the action in which the decree or order appealed from was passed; if however, on the contrary, the court is not satisfied that the said conditions are fulfilled, it shall dismiss the petition and make such order as to costs as may seem to the court just.

Order of Supreme Court thereon.

Civil Procedure Code.

CHAPTER LXI.

*Hearing of the Appeal.*Hearing of
appeal.

768 When the petition of appeal has been preferred to the Supreme Court in manner in section 756 prescribed, or in the event of the petition of appeal being presented immediately to the Supreme Court, when the order for its admission has been made, the registrar shall, unless the court otherwise orders, number the petition and enter it in the roll of causes for hearing, according to the standing orders of court for the time being relative to the course of business of the court; and the matter of the appeal shall come on for hearing before the court in the order of its position on that roll, and according to the said standing orders without further notice to the parties concerned; provided 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 doors of the court, and that no appeal shall come on for hearing until it has been in that list in the case of appeals from district courts for fourteen, or in the case of appeals from courts of requests for seven days; and 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.

Proviso 1.

Proviso 2.

Right of
appellant to be
heard and
respondent, if
required.

769 When the appeal comes on for hearing, the appellant shall be heard in support of the appeal. The court shall then, if it does not at once dismiss the appeal or affirm the decree appealed from, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply. If the appellant does not appear either by counsel or in person, and has not been allowed to appeal *in forma pauperis*, the appeal may in the discretion of the court be dismissed. Provided that on sufficient cause shown it shall be lawful for the Supreme Court to reinstate, upon such terms as the court shall think fit, any appeal that has been dismissed for non-appearance.

When party may
obtain re-hearing
of appeal.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 affidavits returned by the fiscal, or other evidence, that the notice of appeal was duly served upon him or his proctor, as prescribed in section 756, or if it appears to the court at such hearing that any person who was a party to the action in the court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the court may adjourn the hearing to a future day, to be fixed by the court, and direct that such person be made a respondent, and may issue the requisite notices of appeal to the fiscal for service.

Right of
respondent to
object to decree.

771 When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if he

Civil Procedure Code.

satisfies the court that the notice of appeal was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the court may re-hear the appeal, on such terms as to costs or otherwise as the court thinks fit to impose upon him.

772 Any respondent, though he may not have appealed against any part of the decree, may, upon the hearing, not only support the decree on any of the grounds decided against him in the court below, but take any objection to the decree which he could have taken by way of appeal, provided he has given to the appellant or his proctor seven days' notice in writing of such objection.

Such objection shall be in the form prescribed under head (c) of section 758.

773 Upon hearing the appeal it shall be competent to the Supreme Court to exercise any of the powers in that behalf conferred upon it by section 40 of "The Courts Ordinance, 1889," or to order a new or further trial on the ground of discovery of fresh evidence subsequent to the trial.

774 On the termination of the hearing of the appeal, the Supreme Court shall either at once or on some future day, which shall either then be appointed for the purpose, or of which notice shall subsequently be given to the parties or their counsel, pronounce judgment in open court; and if the bench hearing the appeal is composed of more than one judge, each judge may, if he desires it, pronounce a separate judgment.

The judgment, which shall be given or taken down in writing, and shall be signed and dated by the registrar, shall, unless the decree or order appealed from is simply affirmed, or the petition of appeal is dismissed, state—

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

775 When the bench hearing the appeal is composed of two judges, and the judges composing the bench do not agree as to the decree which should be passed by the court on the appeal, then the appeal shall be re-heard by the full court of three judges on a day specially appointed for the purpose, of which notice shall be given to the parties or their counsel. And after such re-hearing any judge dissenting from the decree which the majority consider ought to be passed on appeal, shall state in writing the decree which he thinks ought to be made, and shall state his reasons for the same. Provided that in the case of appeals from the decision of a judge of the Supreme Court sitting alone as in "The Courts Ordinance, 1889," provided, when the two judges hearing the appeal do not agree, the original judgment shall stand affirmed.

Rights of respondent at hearing.

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

Judgment of the court.

When appeal may be re-heard.

Civil Procedure Code.

When all the judges, of which the bench hearing the appeal is composed, are unanimous in regard to the decree which ought to be passed, the judges shall pronounce the judgments in order of seniority, commencing with the judge who is senior in rank, but, if otherwise, they shall pronounce their judgments in the reverse order.

Decree of the
Supreme Court :

776 The decree of the Supreme Court shall be passed in accordance with the judgments of the judges of which the bench hearing the appeal is composed, if they are unanimous in regard to it, but, if otherwise, in accordance with the judgments of the majority of them. It shall bear date the day on which the judgment was pronounced, and shall contain the following particulars :

how framed ;

- (a) The heading "In the Supreme Court ;"
- (b) The court number and title of the appeal ;
- (c) The names of the parties ;
- (d) The names of the appellant and of the respondents cited ;
- (e) The parties present and heard ;
- (f) A clear specification of the order made and relief granted or other determination of the appeal.

The decree shall also state by what parties, and in what proportions the costs of the action are to be paid.

to be sealed ;

The decree shall be sealed with the seal of the court.

and returned to
court of first
instance.

As soon as the decree is sealed all the proceedings in the case sent up to the Supreme Court on appeal (together with the petition of appeal and order thereon, if any, a copy of the judgment or judgments pronounced on appeal, and the decree of the Supreme Court) shall be forthwith returned to the court of first instance ; which shall conform to and execute such decree in all particulars.

Execution of
the decree
passed in appeal.

777 When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the court which passed the decree against which the appeal was preferred ; and such court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in an action.

CHAPTER LXII.

Of Pauper Appeals.

Pauper appeals.

778 Any person entitled under this Ordinance or any other law to prefer an appeal, who is unable to pay for the stamps required for the petition of appeal, may, on an application for that purpose made to the Supreme Court in accordance with the rules hereinbefore prescribed for applications for the admission of an appeal notwithstanding lapse of time, so far as the same are applicable, be allowed

Civil Procedure Code.

to appeal as a pauper; provided that the court shall reject the application unless upon a perusal thereof, and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed from is erroneous or unjust; and provided further, that the question as to the pauperism of the applicant shall be inquired into and determined by the Supreme Court in the same manner as is prescribed for the case of an application in the court of first instance to be allowed to sue as a pauper; and provided lastly, that if the applicant was allowed to sue as a pauper in the court against whose decree the appeal is made, no further inquiry into his pauperism shall be necessary unless the Supreme Court sees special cause to direct such inquiry.

CHAPTER LXIII.

Appeals to the Queen in Council.

779 Subject to such rules as may from time to time be made by Her Majesty in Council regarding appeals from the courts of this colony, and to the provisions hereinafter and in "The Courts Ordinance, 1889," contained, it shall be lawful for any person or persons, being a party or parties to any civil suit or action pending in the Supreme Court, to appeal to Her Majesty in Council against any final judgment, decree, or sentence, or against any rule or order made in any such civil suit or action, and having the effect of a final or definitive judgment, decree, or sentence.

Appeal to Queen in Council subject to rules.

780 Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Supreme Court to have the judgment, decree, sentence, rule, or order against which he is desirous so to appeal, brought before the Supreme Court collectively by way of review; and shall also give security for the payment of all costs of such hearing in review, which may be awarded to the respondent.

Application to be made to Supreme Court.

Such application must be made within two calendar months from the date of the judgment, decree, sentence, rule, or order complained of.

781 Every petition must state the grounds of appeal, and pray for a certificate, either that, as regards amount, or value, and nature, the case fulfils the requirements of section 42 of "The Courts Ordinance, 1889," or that it is otherwise a fit one for appeal to Her Majesty in Council.

Petition for leave to appeal.

Upon receipt of such petition the court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

The power of the court under this section in regard to issuing notice and hearing cause shown against the certificate may be exercised by a single judge sitting at Colombo.

Civil Procedure Code.

When certificate granted court to hold hearing in review.

782 If such certificate is refused, the petition shall be dismissed.

If the certificate is granted, then the court shall fix a day for hearing the case in review before all the judges of the court collectively holding general sessions at Colombo; and seven days' notice of such day shall be given by the registrar to all parties.

The judgment, decree, order, or sentence of the Supreme Court after such hearing in review shall be pronounced, made, or passed, in accordance with the rules hereinbefore prescribed for the judgment and decree on appeal.

When party aggrieved may appeal from judgment in review, and to whom.

783 The person feeling aggrieved by such judgment, decree, order, or sentence in review, shall, if he desires to appeal therefrom, apply by petition to the Supreme Court within fourteen days after the same shall have been pronounced, for leave to appeal therefrom to Her Majesty in Council, and with this petition he shall present his petition of appeal to Her Majesty in Council; and shall within three months from the date of such judgment, decree, order, or sentence—

- (a) Give security for the prosecution of the appeal and for the payment of all such costs as may be awarded by Her Majesty in Council to the party respondent; and
- (b) Deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy of the whole record of the action; except
 - (1) Formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;
 - (2) Papers which the parties agree to exclude;
 - (3) Accounts or portions of accounts which the officer empowered by the court for that purpose considers unnecessary, and the parties have not specifically asked to be included; and
 - (4) Such other documents as the Supreme Court may direct to be excluded;

and when the appellant prefers to print in Ceylon the copy of the record, except as aforesaid, he shall also, within such time as is in the first clause of this section mentioned, deposit the amount required to defray the expense of printing such copy.

Of the security to be given by appellant.

The nature, amount, and sufficiency of the security to be given by the appellant under section 780 and this section shall be determined by the Supreme Court upon the motion of the appellant made by petition, of which notice shall be duly served on the respondent; provided that such security shall in no case exceed the sum of three thousand rupees, and shall be given either by a surety or sureties or by a mortgage of immovable property situate and being within this colony, or by deposit and hypothecation by bond of a sum of money.

Proviso.

Civil Procedure Code.

784 When such security has been completed and deposit made within the time in the last preceding section limited, then, and not otherwise, the Supreme Court shall make an order allowing the appeal, and the appellant shall be at liberty to prefer and prosecute his appeal to Her Majesty in Council, in such manner and under such rules as are observed in appeals made to the Queen in Council from the plantations or colonies.

Order on completion of security.

Provided, nevertheless, that any person feeling aggrieved by any order which may be made by, or by any proceedings of, the Supreme Court respecting the security to be taken upon any such appeal as aforesaid, shall be and is authorized by petition to Her Majesty in Council to apply for redress.

Proviso.

785 At any time before allowing the appeal, the Supreme Court may upon cause shown revoke the acceptance of any such security, and make further directions thereon.

Revocation of acceptance of security.

786 If at any time after the appeal is allowed, but before the transmission of the copy of the record to Her Majesty in Council, such security appears inadequate or further payment is required for any of the purposes mentioned in section 783, sub-section (b), the Supreme Court may order the appellant to furnish, within a time to be fixed by the court, other and sufficient security, or to make, within like time, the required payment.

Power to order further security or payment.

787 If the appellant fails to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order in that behalf of Her Majesty in Council, and in the meantime execution of the decree appealed against shall not be stayed.

Failure to comply with order.

788 In all cases of appeal allowed by the Supreme Court or by Her Majesty, such court shall, on the application of the party or parties appellant, certify and transmit to Her Majesty in her Privy Council a true and exact copy of all proceedings, evidence, judgments, decrees, and orders, save as hereinbefore excepted, had or made in such causes so appealed, so far as the same have relation to the matter of appeal, such copies to be certified under the seal of the said court.

Court to transmit copy of proceedings.

789 When the copy of the record has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount deposited under section 783.

Refund of balance of deposit.

CHAPTER LXIV.

Enforcement of Judgments and Orders of Her Majesty in Council.

790 Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Supreme Court.

Judgment of Privy Council how enforced.

Civil Procedure Code.

Such court shall, when the court which made the first decree appealed from is the Supreme Court, enforce and execute such order in the manner and according to the rules applicable to the enforcement and execution of its original decrees; but when the court which made the first decree appealed from is a court other than the Supreme Court, shall transmit the order of Her Majesty to the court which made such decree, or to such other court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the court to which the said order is so transmitted shall enforce and execute it accordingly, in the manner and according to the rules applicable to the enforcement and execution of its original decrees.

Order enforcing Privy Council order, how far appealable.

791 The orders made by the court which enforces or executes the order of Her Majesty in Council relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such court relating to the enforcement or execution of its own decrees.

PART IX.

OF SUMMARY PROCEDURE IN RESPECT OF CONTEMPTS OF COURT.

CHAPTER LXV.

Summary procedure in case of contempt

792 In all courts the summary procedure to be followed for the exercise of the special jurisdiction to take cognizance of and to punish summarily offences of contempt of court, and offences declared by this Ordinance to be punishable as contempts of court, shall be that which is prescribed in the sections next immediately following.

to be as follows :

Summons to accused.

793 The court shall issue a summons to the accused person in the form 132 in schedule II. hereto or to the like effect, which summons shall state shortly the nature of the alleged offence and the information or grounds upon which the summons is issued, and shall require the accused person to appear before the court on a day named in the summons to answer the charge.

At time of issue of summons court may issue warrant of arrest.

794 It shall be competent to the court simultaneously with issuing such summons, or at any time after such summons has been issued, if it has reason to believe that the attendance of the accused person at the time appointed in the summons to answer the charge cannot otherwise be secured, to issue a warrant for his arrest in the form 133 in schedule II. hereto or to the like effect, which warrant shall recite the issuing of the summons, and the day appointed therein for the hearing of the charge, and shall command that the accused person after arrest be kept in custody until that day, and be then brought before the court to answer the charge

Civil Procedure Code.

in the summons; provided that the person arrested shall at any time after arrest be enlarged upon sufficient security, to an amount endorsed on the warrant by the court, either of the accused person's own bond or that of another person, for his appearance in court on the day named in the summons, being furnished to the officer in whose custody he is.

Proviso.

795 When the information upon which the charge is based is furnished to the court, either wholly or in part, by the personal observation of the judge of the accused person's behaviour and language in his presence, the judge shall at the time record a minute of the facts so observed by him, which shall be admissible as evidence at the hearing of the charge, and in such case no such summons as in section 793 is mentioned shall be necessary, but the accused person may be forthwith committed to jail or admitted to bail as in the last preceding section provided, and all further steps shall be taken in manner herein provided, as though such summons or summons and warrant as aforesaid had been issued.

Judicial officer to record minute of facts observed by him.

796 On the day appointed by the court for the hearing of the charge, or on any subsequent day to which the hearing may have been adjourned in consequence of the previous non-attendance of the accused person, the court shall commence the hearing by asking the accused person whether or not he admits the truth of the charge; and if he does not admit the truth of the charge, the court shall proceed to take evidence (if any) which may be necessary in addition to the court minute under section 795 to establish the charge; and also to take the accused person's statement, and any evidence which he may offer in answer to the charge.

On day of hearing court may ask accused if he admits truth of charge.

797 If the accused person admits the charge, or if after taking the evidence on both sides, and considering the court minute and hearing the accused person's explanation the court finds the accused person guilty of the charge, it shall make out a conviction in the form 134 in the second schedule hereto or to the like effect, which shall recite the materials on which the conviction is founded, and adjudicate upon the material facts of the accused person's behaviour and language with so much of the surrounding circumstances as caused these to constitute the offence of contempt of court. And the sentence passed by the court shall be recorded on this conviction. If the court finds the accused person not guilty of the charge laid, it shall dismiss the charge, and shall make and record an order to that effect.

Form of the conviction and sentence thereon.

Court may dismiss charge.

798 An appeal shall lie to the Supreme Court from every order, sentence, or conviction made by any court in the exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of contempt of court, and of offences by this Ordinance made punishable as contempt of court; and the procedure on any such appeal shall follow the procedure laid down in the Criminal Procedure Code regulating appeals from orders made in the ordinary criminal jurisdiction of district and police courts.

Appeal to Supreme Court.

Civil Procedure Code.

Procedure for carrying out sentence of court in case of conviction for contempt.

799 Every sentence of fine or imprisonment passed by a court in exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of contempt of court, and offences by this Ordinance made punishable as contempt of court, shall be carried into effect in the same manner and according to the same procedure as is provided in the Criminal Procedure Code for carrying into effect sentences of fine or imprisonment passed by any court in the exercise of its ordinary criminal jurisdiction.

Sentences to be imposed under this chapter.

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, viz. :

By the Supreme Court.—Imprisonment, either simple or rigorous, until the contempt is purged, or for such period as the court directs, and fine not exceeding five thousand rupees in addition thereto or in lieu thereof.

By a district court.—Fine not exceeding one thousand rupees, or imprisonment, either simple or rigorous, for a period not exceeding six months.

By a court of requests.—Fine not exceeding one hundred rupees, or imprisonment, either simple or rigorous, for a period not exceeding three months.

PART X.**SPECIAL PROCEDURE FOR COURTS OF REQUESTS.****CHAPTER LXVI.****COURTS OF REQUESTS.***General.*

Rules for courts of requests.

801 The following special rules as to procedure in courts of requests shall be taken as limiting and controlling the general provisions hereinbefore contained, but so far only as any such provisions are either expressly or impliedly applicable to such courts. Such general provisions shall apply to courts of requests in all respects whenever they are not inconsistent with the special rules in this chapter contained; but where there is any such inconsistency, the special rules herein contained shall apply.

Pleadings.

Pleadings.

802 The pleadings in courts of requests shall be limited to the following:

- (a) The plaint of the plaintiff;
- (b) The answer and claim in reconvention (if any) of the defendant;
- (c) The plaintiff's reply to the defendant's claim in reconvention.

But where there is no claim in reconvention there shall be no further pleadings beyond the answer.

Civil Procedure Code.

803 The plaint, or statement by way of plaint, shall bear the serial number of the court in the order in which, and the date of the day and year on which, it was filed, and shall state the names and residences of the parties.

Plaint to be numbered.

804 The plaint must state in a plain and direct manner the facts constituting the cause of action.

Plaint to state cause of action.

805 The plaintiff may unite in the same plaint two or more causes of action when they all arise—

What causes of action may be joined.

- (1) Out of the same transaction or transactions connected with the same subject of action; or
- (2) Out of contract express or implied.

But it must appear on the face of the plaint that all the causes of action so united are consistent with each other, that they entitle the plaintiff to the same kind of relief, and that they affect all the parties.

806 Upon such plaint or statement being filed as aforesaid the chief clerk shall, by a note thereon, appoint a day for the appearance of the defendant, and shall inform the plaintiff or his proctor or advocate thereof; and shall also issue a summons for the appearance of the defendant, stating therein the names and residences of the parties, the substance of the claim, and the number of the case. Every such summons shall be in the form No. 16 in the second schedule hereto.

Summons to issue.

Summons.

807 All summonses, orders, and other process issuing from any court of requests shall be signed by the chief clerk of the court, and shall be transmitted to any fiscal or deputy fiscal throughout the island for service or execution: Provided that where it shall be made to appear to the commissioner that service of any summons, order, or process (excepting writs of execution and of possession) may be more conveniently or speedily effected otherwise than by transmitting the same to a fiscal or deputy fiscal, it shall be lawful for the commissioner, by endorsement on any such summons, order, or process, to direct that the same may be served by any person named therein.

Of the transmission of the summons.

808 Sections 53 to 71, both inclusive, and chapter XXIII. of this Ordinance shall apply to the service, return, and proof of service of summons of the courts of requests, so far as they are not inconsistent with the provision in the last preceding section contained.

Of the service of summons.

Proceedings on Appearance.

809 At the place and on the day specified in the summons, the defendant shall be called upon to admit or deny the plaintiff's claim:

The defendant to appear and admit or deny the claim.
If the defendant admits the claim.

- (a) If the defendant shall admit the claim, the commissioner shall enter such admission on the record in the form 135 in schedule II. hereto, and shall require

Civil Procedure Code.

the defendant to sign the same, provided that it shall be lawful for a defendant, who cannot conveniently attend the court, to forward his admission to the chief clerk, signed by himself in the presence and under the attestation of a justice of the peace or notary public; and upon the entry or receipt of such admission the commissioner shall enter judgment for the plaintiff accordingly.

If the defendant denies the claim.

(b) If the defendant shall deny the claim, he shall be called upon to plead to the same forthwith, or within such time as the court on cause shown may allow; and he shall either state his defence orally to the commissioner as in section 73 provided, who shall enter the substance thereof by way of answer on a separate sheet of paper in the record upon a proper stamp being supplied by the defendant, or he shall deliver to the chief clerk an answer in writing duly stamped, setting out his defence and any claim in reconvention which he may have against the plaintiff. Such answer shall be signed by the defendant, his proctor, or advocate, and shall be dated and forthwith filed of record by the chief clerk.

Of the answer.

810 The answer shall contain a specific denial of each material allegation of the plaint, which the defendant does not admit, and any such allegation not so denied shall be taken to be admitted. It may also set forth in a plain and direct manner new matter constituting one or more defences or claims in reconvention.

Of the claim in reconvention.

811 If the defendant pleads a claim in reconvention with his answer, the plaintiff shall be called upon to admit or deny the same. If he denies the claim in reconvention, the plaintiff shall be required forthwith, or at such further time as the commissioner shall fix, to plead thereto, and the provisions of sub-section (b) of section 809 and of section 810 shall, so far as applicable, apply, *mutatis mutandis*, to the plaintiff's reply to the defendant's claim in reconvention. Provided, however, that in no case shall the plaintiff set out in his reply new matter amounting to a new cause of action, if he could have pleaded the same in his original plaint.

Of the reply thereto.

Of entering admission.

812 If the plaintiff admits the claim in reconvention, the commissioner shall enter such admission of record, and shall require the plaintiff to sign the same.

Joinder of Issue.

Of the joinder of issue.

813 As soon as the answer, or the reply to the claim in reconvention, if any, has been filed, the chief clerk shall enter a joinder of issue between the parties on the record.

Where new matter is set up by way of defence either in the answer or in the reply to the claim in reconvention, every material allegation of facts shall be deemed to have been denied by the opposite party.

*Civil Procedure Code.**Miscellaneous Provisions relating to Pleadings.*

814 For the purpose of setting forth a cause of action, or claim in reconvention founded upon an account or upon an instrument for the payment of money only, it is sufficient for the party to deliver the instrument, or a copy of the account, to the court, and to state that there is due to him thereupon from the adverse party a specified sum which he claims to recover or set off.

Account or instrument for payment of money.

815 A variance between an allegation in a pleading and the proof shall be disregarded as immaterial, unless such proof discloses a new cause of action, or the court is satisfied that the adverse party has been misled thereby to his prejudice.

Immaterial variance to be disregarded.

816 The court shall, upon application, allow a pleading to be amended at any time before trial, or during the trial, if substantial justice will be promoted thereby. Where a party amends his pleading after joinder of issue, and it is made to appear to the satisfaction of the court that an adjournment is necessary to the adverse party in consequence of the amendment, an adjournment shall be granted. The court may also in its discretion, as a condition of allowing an amendment, require the payment of costs to the adverse party.

Amendment of pleadings.

817 Where the defendant in an action for breach of a contract neglects to interpose a claim in reconvention consisting of a cause of action in his favour for a like cause, which might have been allowed to him at the trial of the action, he and every person deriving title thereto through or from him are for ever thereafter precluded from maintaining an action to recover the same.

Consequence of neglect to plead claim in reconvention.

818 The prohibition in the last section contained does not extend to the following cases :

The last section qualified.

- (a) Where the amount of the claim in reconvention is over one hundred rupees ;
- (b) Where the claim in reconvention consists of a judgment rendered before the commencement of the action in which it might have been interposed ;
- (c) Where the claim in reconvention is for unliquidated damages ;
- (d) Where the claim in reconvention consists of a claim upon which another action was pending at the time the action was commenced ;
- (e) Where judgment is taken against the defendant without personal service of the summons upon him, or an appearance by him.

819 Where a claim in reconvention is established which equals the plaintiff's claim, the judgment must be in favour of the defendant ; where it is less than the plaintiff's claim, plaintiff must have judgment for the residue only ; where it exceeds the plaintiff's claim, the defendant must have judgment for the excess, or so much thereof as is due from the plaintiff.

Judgment upon claim in reconvention.

Civil Procedure Code.

Fixing Day of Trial.

Fixing the cause for trial.

820 Immediately after the parties have furnished the chief clerk with their list of witnesses, the chief clerk shall fix a day for the trial of the action, and apprise the parties or their proctors, or advocates, thereof, and shall enter a minute thereof on the record; and all actions fixed for trial shall be entered in their proper order in the trial roll to be for that purpose kept by the chief clerk, and shall be taken up for trial in the order in which they are so entered. Provided, however, that it shall be competent for the commissioner, upon cause shown, to take up any action and try the same out of its turn.

Adjournments.

Of adjournments at the instance of the parties.

821 Whenever the commissioner shall be satisfied by affidavit or otherwise that either party is not ready to proceed to trial by reason of the absence of any material witness (such witness not being kept away by collusion), or for other sufficient cause, it shall be lawful for the commissioner to adjourn the trial of the action to a time fixed by the commissioner, once or oftener, upon such terms as the circumstances of the case may render necessary.

Provided that no adjournment shall be allowed for a longer period than six weeks, except with the consent of both the parties; but the mere consent of the parties or of their proctors or advocates shall not be deemed sufficient ground for granting an adjournment unless good cause for such adjournment to the satisfaction of the court be likewise shown.

The court may, upon adjournment, order examination of witnesses.

822 Upon granting an application for adjournment the commissioner may in his discretion, or upon the application of either party, direct that any witness who is in attendance be then examined, and the testimony of a witness so examined shall be recorded, and may be read at the trial as the evidence of such witness.

Of Default of Appearance.

Of proceedings on default.

823 Where default in appearing or pleading is made by the parties plaintiff or defendant respectively in an action in the court of requests, the provisions of chapter XII. of this Ordinance shall apply, so far as they are not inconsistent with the procedure in this chapter prescribed.

Interrogatories.

Provision as to interrogatories not to apply.

824 Sections 94 to 100, both inclusive, shall not apply to courts of requests.

Of the Attendance of Witnesses.

The attendance of witnesses.

825 The process of courts of requests for compelling the attendance of witnesses shall be by summons, with or without a clause requiring the production of documents in their possession or control; and every such summons shall be as near as is material in the form 32 in schedule II. hereto.

Civil Procedure Code.

826 The provisions of chapter XVII. of this Ordinance shall apply to courts of requests. The attendance of witnesses continued.

Of the Trial.

827 On the day of trial the commissioner shall hear and determine the action according to law. The trial.

828. A full and complete record shall be kept of the examination of the parties, the evidence of the witnesses, and of all other proceedings had in the action. Record of the proceedings.

829 The provisions of chapter XIX. of this Ordinance shall, so far as they are not inconsistent with the provisions in this chapter contained, apply to courts of requests. Of the trial.

Of the Judgment.

830 Judgments in courts of requests cases shall be pronounced in open court, be reduced into writing on the record, and be signed by the commissioner; and the provisions of chapter XX. of this Ordinance shall, so far as they are not inconsistent with the provisions in this chapter contained, apply to courts of requests. Judgments and decrees.

831 The provisions of chapters LVIII., LIX., LX., LXI., and LXII., with reference to appeals and the stay of execution pending appeal, shall, so far as they are not inconsistent with the provisions of this chapter, apply to courts of requests. Appeal and stay of execution pending appeal.

Executions.

832 The provisions of chapter XXII. of this Ordinance shall apply to all executions from courts of requests, so far as they are not inconsistent with the provisions in this chapter contained. Executions.

Taxation of Costs.

833 Before any writ of execution shall be issued as aforesaid, the chief clerk shall, at the request of the party applying for the writ, forthwith tax the costs and expenses of the action as against the adverse party, and shall enter a note of such taxation and of the amount thereby allowed on the record of the case; and such costs and expenses shall in all cases be taxed and payable according to the rates specified in schedule III. hereto. Taxation of costs.

CHAPTER LXVII.

Miscellaneous.

834 No judge, magistrate, or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his court. And where any matter is pending before a court having jurisdiction therein, or believing in good faith that it has such jurisdiction, the Privilege from arrest of judges, parties, proctor, and advocates.

Civil Procedure Code.

parties thereto and their proctors and advocates shall be exempt from arrest under civil process while going to or attending such court for the purpose of such matter, and while returning from such court.

Civil court may send cases for investigation to police court, when.

835 When in a case pending before any court there appears to the court sufficient ground for sending for investigation to a police magistrate a charge of any such offence as is described in sections 190, 193, 196, 197, 202, 203, 204, 205, 206, 207, 452, 459, 462, 463, 464, or 466 of the Ceylon Penal Code, which may be made in the course of any other action or proceeding or with respect to any document offered in evidence in the case, the court may cause the person accused to be detained till the rising of the court, and may then or sooner send him in custody to the magistrate or take sufficient bail for his appearance before the magistrate. The court shall send to the magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such magistrate.

The magistrate shall receive such charge and proceed with it according to law.

Warrant of arrest may be cancelled on ground of illness of party.

836 At any time after a warrant of arrest has been issued under this Ordinance, the court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

Judgment-debtor under arrest may be released on ground of illness :

837 When a judgment-debtor has been arrested under this Ordinance, the court may release him, if in its opinion he is not in a fit state of health to undergo imprisonment.

When a judgment-debtor has been committed to jail, he may be released therefrom—

- (a) By the Inspector-General of Prisons or by any two visitors of the jail, on the ground of his suffering from any infectious or contagious disease ; or
- (b) By the committing court or any court having jurisdiction in the place at which such jail may be situate, on the ground of his suffering from any serious illness.

but may be re-arrested.

838 A judgment-debtor released under the last preceding section may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed six months.

*Civil Procedure Code.***SCHEDULE I.****Laws, Ordinances, Sections of Ordinances, and Rules of Court repealed.**

Laws, Ordinances, &c.	Title.	Extent of Repeal.
The Law whereby a plaintiff is entitled in certain cases to an interlocutory or provisional decree adjudging the defendant to pay the amount of the plaintiff's claim under proper security that the plaintiff shall repay the same with interest in case by the final judgment on the merits such sum shall not be found to be due, or judgment shall be given for the defendant	The Law of Nuncupation or Provisional Sentence.	The whole
Laws, Ordinances, &c.	Title.	Extent of Repeal.
<i>Ordinances, &c.</i>		
Reg. 18 of 1823 ...	Interest ...	The whole
Ordl. 7 of 1835 ...	Edictile Citation	The whole
8 of 1846 ...	Evidence ...	Sections 7, 8, 9, 10, 11, 12
4 of 1847 ...	Administration of Justice	The whole
5 of 1852 ...	Kandyan Law	Section 3, proviso as to provisional sentence, and section 6
9 of 1852 ...	Evidence ...	Sections 7, 15
7 of 1853 ...	Insolvency ...	Section 185
8 of 1854 ...	Recovery of Judgments	The whole
15 of 1856 ...	Rules of District Courts	The whole
9 of 1859 ...	Do. Courts of Requests	The whole
18 of 1864 ...	Do. District Courts	The whole
15 of 1866 ...	Arbitration ...	Sections 10-10 and 30-33 inclusive, and so much of sections 20-29 as regards voluntary references
4 of 1867 ...	Fiscals ...	Sections 18-25 and 29-30 inclusive, so far as they are now in force
7 of 1871 ...	Trustees ...	Sections 7, 8, 10, 11, 12
22 of 1871 ...	Prescription ...	Section 5
1 of 1873 ...	Lunacy ...	Section 7
16 of 1876 ...	Matrimonial Rights	Sections 15, 20, 21
24 of 1884 ...	Insolvency (amendment)	Section 5
18 of 1885 ...	Salaries of Public Officers	So much as relates to salaries in execution of the salaries of public officers
5 of 1887 ...	Claims in Execution	The whole

Civil Procedure Code.

Law, Ordinance, &c.	Title	Extent of Repeal
<i>Rules and Orders.</i>		
Oct. 1, 1833 ...	Proceedings in appeal before the Supreme Court (pp. 65-67)	The whole, so far as the same are now in force
Oct. 1, 1833 ...	Miscellaneous Rules and Orders (p. 59)	The whole
Oct. 1, 1833 ...	For regulating the form of proceeding in District Courts (section I., pp. 60-71)	The whole, so far as the same are now in force
Oct. 1, 1833 ...	Idiots and Lunatics (section III., p. 76)	The whole
Oct. 1, 1833 ...	Testamentary Jurisdiction (section IV., pp. 76-80)	The whole, so far as the same are now in force
Oct. 1, 1833 ...	Matrimonial Jurisdiction (section V., p. 80)	do.
Oct. 1, 1833 ...	Assessors (section VII., pp. 81-82)	do.
Oct. 1, 1833 ...	Appeal (section VIII., pp. 83-85)	do.
Oct. 1, 1833 ...	Forms (pp. 86-93, 98-104)	do.
Oct. 1, 1833 ...	Fees (pp. 105-107)	The whole
Oct. 4, 1833 ...	Service of process (p. 107)	The whole
Nov. 20, 1833 ...	Appeal (No. 2, p. 108)	The whole
April 25, 1834 ...	Appeal Stamps (p. 108)	The whole
June 4, 1834 ...	Taxation of costs (No. 4, p. 110)	The whole
Aug. 4, 1834 ...	Costs in pauper cases (No. 6, p. 110)	The whole
Oct. 9, 1834 ...	Taxation of costs (p. 112)	The whole
Dec. 3, 1834 ...	Batta to prisoners for debt (No. 10, p. 113)	The whole
Nov. 26, 1835 ...	Stamps on Pleadings (No. 12, p. 141)	The whole
May 24, 1837 ...	Costs in Appeal (No. 7, p. 116)	The whole
June 28, 1837 ...	Collective Cases from Circuit (No. 8, p. 118)	The whole
March 5, 1838 ...	Summary process in urgent cases (pp. 117-118)	The whole
June 20, 1838 ...	Extension of above (p. 118)	The whole
July 5, 1842 ...	District Court Procedure (pp. 128-130)	The whole
Dec. 16, 1842* ...	Appeals of Privy Council (p. 132)	
June 29, 1843 ...	Plea of prescription (p. 133)	The whole
Dec. 12, 1843 ...	Appeals (pp. 133-134)	The whole
June 17, 1844 ...	Ordinary Civil Jurisdiction (pp. 134, 135)	The whole
June 17, 1844 ...	Appeal Sittings (p. 135)	The whole
Dec. 30, 1845 ...	Notice of Taxation (p. 156)	The whole
Dec. 30, 1845 ...	Advocates' Fees (p. 155)	The whole
Dec. 6, 1845 ...	Withdrawal (p. 156)	The whole
Dec. 18, 1845 ...	Barren of proof (p. 156)	The whole
Jan. 6, 1846 ...	Procture' Fees (pp. 157-159)	The whole

* It seems doubtful whether the Code intended to retain any portion of these rules.

*Civil Procedure Code.***SCHEDULE II.****No. 1.—Form of Notice of Motion for Transfer of an Action or Matter.**

(See Section 10 and Section 46 of "The Courts Ordinance.")

In the Supreme Court of the Island of Ceylon.

(*Title of the Action, &c., showing in what Court it is pending.*)

Take notice that the accompanying affidavit will be read and a motion made before the Honourable the Supreme Court at Colombo (or as the case may be) on the _____ day of _____, 18____, at _____ o'clock of the forenoon, or so soon thereafter as counsel may be heard, on the part of the defendant (or as the case may be) that this action (or prosecution or matter) may be withdrawn from (name the court or place in which the action, &c., is pending) and may be transferred to (name the court or place to which transfer is desired); and that the plaintiff (or as before) may be ordered to pay to the applicant his costs of, and occasioned by, this application.

This _____ day of _____, 18 ____.

Signed _____,

Name and address of Proctor
(or Party giving notice).

To (name and address of Proctor or Party to be served).

(Annex to this notice copy of the affidavit on which motion is to be made.)

No. 2.—Form of Affidavit in support of Motion for Transfer.

(See Section 10 and Section 46 of "The Courts Ordinance.")

(For formal parts see No. 76.)

1.—(State proceedings in court of institution.)

2.—(Where the motion is for transfer to a court of inferior jurisdiction.) The plaintiff's claim is for (state nature and particulars of claim as furnished to defendant and show that the action is within the jurisdiction of the court to which transfer is desired).

3.—(In the like case.) The plaintiff has no visible means of paying my costs should judgment not be given for the said plaintiff.

4.—(Show means of knowledge.)

5.—(Where the motion is for transfer to a court of superior jurisdiction.) I am advised, and verily believe, that upon the trial of the said action several difficult questions of law are likely to arise, and amongst others the following: (here state the questions likely to arise, and verify the facts raising them).

6.—(State special reasons, if any, for transfer.)

7.—(Show means of knowledge.)

8.—(Where defendant moves.) I have a good defence to this action upon the merits, and this application is not made for the purpose of embarrassing or delaying the plaintiff, but bona fide and for the purpose of obtaining a proper trial of the said action.

*Civil Procedure Code.***No. 3.—Form of Notice to a Person who the Court considers should be joined as a Co-plaintiff.**

(See Section 18.)

(Title.)

To _____, of _____.

Whereas the above-named (*plaintiff*) has instituted the above-named action against the above-named (*defendant*) for _____ :

And whereas it appears to this court necessary that you should be added as a plaintiff in the said action, in order to enable this court effectually and completely to adjudicate thereon :

Take notice that you should on or before the _____ day of _____, 18 __, signify to this court whether you consent to be so added.

This _____ day of _____, 18 __.

Signed _____,
District Judge.**No. 4.—Form of Authority for the Appearance of one or more of several Plaintiffs or Defendants on behalf of the other or others of them.**

(See Section 23.)

(Title.)

I, _____, of _____ (or, we, _____, of _____), plaintiff (or defendant or plaintiffs or defendants) in the above-named action, do hereby appoint _____, of _____ (and _____, of _____), who is (are) also (plaintiff or defendant) in the said action, to appear, plead, and act for me (us) therein.

Witness my (our) hand (hands) this _____ day of _____, 18 __.

Signed _____,
Address _____.**No. 5.—Form of General Power of Attorney.**

(See Section 25.)

I, _____, of _____, do hereby constitute and appoint _____, of _____, my true and lawful attorney for me and in my name and on my behalf to appear, sue, or answer, and to receive all process in any action, appeal, or other judicial proceeding whatsoever in any court, and generally to act in all such proceedings in any way in which I might, if present, be permitted or called on to act.

Witness my hand this _____ day of _____, 18 __.

Signed _____,
Address _____.**No. 6.—Form of Appointment of a Proctor by the Attorney-General.**

(See Section 27.)

I, the undersigned, _____, Attorney-General for the Island of Ceylon, do hereby authorize and appoint _____, gentleman, one of the Proctors of the Supreme Court of the said Island (or of the

Civil Procedure Code.

District Court of _____), to appear for me before the District Court of _____ in a certain action to be instituted in the said court in my name at the instance of the Crown against one _____ (or in a certain action instituted in the said court by one _____ against me as representing the Crown), wherein (*state what the action is*) to (sue or defend, as the case may be) and to represent the Crown therein, and generally to do and perform all such acts, matters, and things as may be necessary to be done and performed in and about the premises, and, if need be, to appeal from any judgment or order of the said District Court in the said action; hereby promising to ratify and confirm whatsoever the said proctor may lawfully do herein.

Given under my hand at _____ this _____ day of _____, 18 _____.

The address for service of the said proctor is at _____.

Signature _____.

No. 7.—Form of Appointment of a Proctor.

(See Section 27.)

Know all men by these presents that I, *A. B.*, of _____ (or we, *A. B.*, of _____, and *C. D.*, of _____), have nominated, constituted, and appointed, and do hereby nominate, constitute, and appoint _____, Proctor of the Honourable the Supreme Court of the Island of Ceylon (or of the District Court of _____, as the case may be), to be _____ Proctor, and for _____ and in _____ name and behalf before the _____ to appear and therein to (sue or defend, as the case may be, *stating what the action is*).

And to receive and to take all moneys that may be paid to him by the said _____ in the said action, and to move for and obtain in his name any order or orders from the said court for any payments of any sum or sums of money that may be deposited therein in respect of _____, and to give all necessary receipts, releases, and discharges therefor. And, if need be, to refer the case to the award and decision of arbitrators and to name an arbitrator for _____, and for that purpose to sign any motion, submission, or bond; or, if necessary, to allow and consent to a judgment being entered against _____ as to _____ said proctor shall appear fit and proper; and against any judgment, order, sentence, or decree interlocutory or final of the said _____ Court to appeal; and every bond or recognizance whatsoever necessary in the course of proceedings for the prosecution of such appeal for and in _____ name and as _____ act to sign, and upon any judgment or order of the said _____ Court to proceed to execution against the person and property of the said _____.

And _____ do further authorize and empower _____ said proctor to take and use all lawful ways and means, and to do and perform all such acts, matters, and things as may be necessary in and about the premises which _____ being personally present might or could lawfully do, and, if necessary, one or more proctor or proctors, or an advocate or advocates, to appoint, and again at pleasure such appointment to revoke. And _____ further promise and agree to release all kinds of irregularities, and to ratify, confirm, and allow all and whatsoever the said proctor or his substitute or substitutes, or the said advocate or advocates, shall do herein.

Witness _____ hand at _____ this _____ day of _____, One thousand Eight hundred and _____.

The address for service of the said proctor is at _____.

Signature _____.

Civil Procedure Code.

No. 8.—Form of Revocation of such Appointment.

(See Section 27.)

(Title.)

Know all men by these presents that I, *A. B.*, of _____ (or we, *A. B.*, of _____, and *C. D.*, of _____), having received the leave of the above-named court in that behalf, do (and each of us doth) hereby revoke and cancel the paper writing filed in the above-named action, and dated (*etc.*), whereby I (we) have nominated and appointed _____, of _____, to be my (our) proctor (proctors) in the said action; and that the said _____ has (have) from this date ceased to be my (our) proctor (proctors) in the said action; and the said paper writing shall be henceforth of no force or effect.

The _____ day of _____, 18—, Signed as the Proxy.

No. 9.—Form of Notice to Appoint a new Proctor in place of one ceasing to act.

(See Section 28.)

*(Title.)*To *Y. Z.*, the defendant (or plaintiff) above named.

Take notice that you are hereby required to appoint another proctor in place of *A. B.*, your former proctor of record, who (died or was removed, or suspended, or) became incapable to act by reason of (*state reason as the case may be*) on or about the _____ day of _____, 18—; and cause notice of such new appointment to be given to the undersigned at the under-written address.

The _____ day of _____, 18—, Signed _____,
Party (or Proctor).
Address _____.

No. 10.—Form of Notice of Substitution of new Proctor in place of one ceasing to act.

(See Section 28.)

*(Title.)*To (*party or proctor issuing the last preceding notice*).

Take notice that the undersigned has been substituted (*or, where the party himself gives the notice, that I, the said Y. Z., have substituted name and address of new proctor*) in the place of *A. B.*, formerly proctor of record for (defendant or plaintiff) in the above-named action.

The _____ day of _____, 18—, Signed _____,
Party (or Proctor).
Address _____.

*Civil Procedure Code.***No. 11.—Form of Appointment of Agent to accept Service of Summons and other Process (General and Special).**

(See Section 30.)

(Where the appointment is special, head with title of the Action.)

I, _____, of _____, do hereby constitute and appoint _____, of _____, my agent to receive on my behalf the service of all summonses and other processes in (any action, appeal, or other civil proceeding whatsoever in any court, or where the appointment is special substitute in the above-named action).

Witness my hand this _____ day of _____, 18 —.

The address for service of the said _____ is at _____.

Signed _____

Address _____

No. 12.—Warrant of Attorney to confess Judgment: and Defeasance thereon.

(See Sections 31, 32.)

To X. Y., Proctor of the Supreme Court (or, of the District Court of _____) or to any other proctor of the same court.

These are to desire and authorize you, the proctor above-named, or any other proctor of the said court, to appear for me, C. D., of _____, (or, for us, C. D., of _____, and E. F., of _____, or either of us), at any time in the _____ court of _____ (or as the case may be) and to receive summons for me (or us, or either of us, as the case is) in an action for _____ rupees for money found to be due and payable from me (or us before) to A. B. on an account stated between us (or, on a bond made by me, the said C. D. to A. B. in the penal sum of _____ rupees, or as the case is) at the suit of the said A. B., his heirs, executors, or administrators, and thereupon to confess the same action or else to suffer judgment by default or otherwise to pass against me (or us before) therein and to be thereupon forthwith entered up against me (or us before) of record in the said court for the said sum, together with costs of action. And I (or us before), the said C. D. (and E. F., and each of us), do hereby further authorize and empower you, the said proctor, after the said judgment shall be entered up as aforesaid for me and in my name (or as before, for us and in our or either of our names), to sign and execute a good and sufficient release or releases in the law to the said A. B., his heirs, executors, and administrators of all and all manner of appeals or proceedings by way of appeal, and all benefit and advantage thereof, and defects and imperfections whatsoever had, made, committed, done, or suffered in, about, touching, or concerning the said judgment or any proceedings whatsoever in any way concerning the same. And for what you, the said proctor, shall do or cause to be done in the premises or any of them, this shall be to you a sufficient warrant and authority.

In witness whereof I (or we) have hereto set my hand (or our hands) the _____ day of _____, 18 —.

(Signed) C. D.

Signed by the above-named C. D. in my presence. And I hereby declare myself to be proctor for the said C. D., and that I subscribe my name as such his proctor; and that I have read and explained the contents of the above-written warrant of attorney to the said C. D., and that he, the said C. D., appeared to understand the nature and effect thereof.

(Signed) G. H.,
Proctor, _____ Court.
Printed by _____

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**No. 13.—Form of Defeasance to be written thereon
(when required).**

MEMORANDUM. The within warrant of attorney is given to secure the payment from the within-named *C. D.* to the within-named *A. B.* of _____ rupees, with interest at _____ per cent. per annum, on the _____ day of _____, 18— (or, if by instalments: on the days and in manner following; that is to say, _____ rupees, part thereof, with interest for the same, on _____; _____ rupees, other part thereof, with interest for the same, on _____; and _____ rupees, residue thereof, with interest for the same as aforesaid, on _____; and if a bond was given, add: according to the condition of a bond made by the said *C. D.* to the said *A. B.*, and bearing date _____, or even date with these presents). And it is hereby agreed that no action, execution, or other process or proceeding shall be commenced, sued out, or prosecuted against the said *C. D.*, his heirs, executors, or administrators, or against his or their lands, goods, or chattels, upon the judgment to be entered up in pursuance of the within warrant, until default shall be made in the payment of the sum above mentioned (or of some or any one of the instalments above mentioned) and interest for the same as aforesaid (and then only for the amount of the instalment or instalments which shall then be due and unpaid, together with interest for the same, and so from time to time as each instalment becomes in arrear, or, if all the instalments are to become due on one default, and then for the whole of the said _____ rupees, with interest, or such part thereof as shall not have been paid, notwithstanding the periods for the payment of the residue of the said instalments shall not have arrived). And it is hereby agreed that the said *A. B.* shall be at liberty, under any writ of execution to be issued on the said judgment, to levy the costs of registering the said judgment, suing out the execution thereon, fiscal's fees, and all other expenses of execution, and further that no appeal or other proceedings or any advantage be taken or attempted to be taken by the said *C. D.*, his heirs, executors, or administrators for or on account of the premises or any other matter, cause, or thing whatsoever relating to, touching, or in any wise concerning the issuing or executing of any such execution aforesaid, or any other proceedings which may be had or taken on the said judgment, or to enforce the execution thereof according to the true intent and meaning of these presents.

As witness our hands the _____ day of _____, 18—,

Witness: *G. H.*

C. D.

A. B.

No. 14.—Formal Parts of Pleadings.

Formal Parts of the Pleint.

(Common form.)

(See Sections 40-46.)

In the { District Court } of Colombo (or as the case may be).
 { Court of Requests }

A. B., of _____ (names, descriptions, and addresses of all the plaintiffs, and if they or any of them sue in any representative capacity, state the capacity—e. g., "an executor of *C. D.*" or "administrator of the estate of *E. F.*"—or if the plaintiff is a minor or lunatic appearing by his next friend or manager, say "a minor, by *C. D.* of _____ "his next friend") Plaintiff.

Against

Y. Z., of _____ (names, descriptions, and addresses of all the defendants as above, stating the capacity, if any, as above, in which any of them are sued)..... Defendant.

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The ——— day of ———, 18 —.

The plaintiff of the above-named plaintiff (or plaintiffs) (and if the case is *eo. acti*: appearing by G. H. his proctor) states as follows:

(Here set forth the cause of action, and if there are more than one, thus:)

First: For a first cause of action—1. That, &c., &c., according to forms following.

Second: And for a second cause of action—1. That, &c., &c.

Wherefore the plaintiff (or plaintiffs) prays for judgment against the defendant (or defendants) for the sum of ——— rupees, together with interest thereon at the rate of ——— per cent. per annum from the ——— day of ———, 18 — (or, when the action is for the recovery of sums which become payable at different times or at varying rates of interest, with interest at the rate of ——— per cent. per annum on ——— rupees from the ——— day of ———, 18 —, and at the rate of ——— on ——— rupees from the ——— day of ———, 18 —, until payment in full; or, if the action is brought to recover specific goods, and the plaintiff prays for a return of the said goods or their value, and ——— rupees as damages for their detention; or, if the action is brought to recover lands or houses or the like, and the plaintiff prays judgment for the said premises and for possession thereof, and ——— rupees as damages, or ——— rupees per month as mesne profits, as the case may be); together with the costs of this action; and for such further or other relief as to the court shall seem meet.

Signature ———

(of plaintiff's proctor where he appears by one; if otherwise, plaintiff must sign, and an officer authorized by the court in that behalf must verify the signature).

No. 13.—Formal Parts of the Answer and Replication.

(Common form.)

(See Sections 75 and 79.)

(Title and number of action, names, descriptions, and addresses of parties, as in the plaint.)

The ——— day ———, 18 —.

The answer of the above-named defendant (or defendants, and if the case is *eo. acti*: appearing by G. H. his proctor) states as follows:

(Here set forth the defence or defences and claims in reconvention, if any, separately stating and numbering them; and where defendant prays for a declaration of title to land, conclude) And the defendant prays for judgment for the said premises.

Signature ———

(as in plaint).

For Replication, follow this form as near as may be.

No. 16.—Form of Summons.

(See Sections 55-58.)

(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 summoned to appear in this court either in person or by proctor (or, in person) on the ——— day of ———, 18 —, at ten o'clock of the forenoon, to answer the above-named plaintiff. And you are

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hereby required to take notice that in default of your so appearing the action will be proceeded with and heard and determined in your absence. And you will bring with you or send by your proctor (*describe document required*) which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

By order of court,

Signed _____
Secretary.

The _____ day of _____, 18 --.

NOTE 1.—Should you apprehend that your witnesses will not attend of their own accord, you can have a summons from this court to compel the attendance of any witness, and the production of any document you have a right to call on any witness to produce, by applying to the court at any reasonable time before trial, and depositing the necessary subsistence money.

NOTE 2.—If you admit the demand, you should pay the money into court, with the costs of the action, to avoid the summary execution of the decree which may be made against your person or property, or both, if necessary.

No. 17.—Form of Precept to Fiscal to serve Summons.

(See Section 55.)

(Title.)

To the Fiscal of the _____ Province.

Serve forthwith the summons in the above-named action, which, with duplicates, is herewith transmitted to you, upon each of the persons to whom it is directed, and leave with or tender to each such person a duplicate summons and one of the copies of (*or concise statements presented with*) the plaint, which accompany the summons. And certify to this court on or before the _____ day of _____, 18 --, in what manner you have executed this precept, returning the summons attached to your certificate as an exhibit.

By order of court,

Signed _____
Secretary.

The _____ day of _____, 18 --.

No. 18.—Form of Summons for Service out of the Colony.

(See Sections 69-71.)

(Title.)

To the above-named defendant (*or defendants*).

Whereas (*follow ordinary form of summons, substituting for the day of appearance "within _____ days," being the number of days directed by the court, or insert any other direction the court may have issued*).

No. 19.—Summons in an action of Summary Procedure on a Liquid Claim.

(See Section 703.)

(Title.)

To the above-named defendant (*or defendants*).

Whereas the above-named plaintiff has instituted an action against you in this court under chapter LIII. of the Civil Procedure Code for _____ rupees principal and interest (*or _____ rupees, balance of principal and interest*) due to him as payee (*or indorsee*) of a bill of

Civil Procedure Code.

exchange (or as the case may be: state the instrument on which the claim is made) of which a copy is hereto annexed: You are hereby summoned to obtain leave from the court within _____ days from the service hereof, inclusive of the day of such service, to appear and defend the action, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after expiration of such _____ days to obtain a decree for any sum not exceeding _____ rupees (*insert the sum claimed*), together with interest thereon at the rate specified in the said (*instrument*) to the date of payment in full, and the sum of _____ rupees for costs.

Leave to appear may be obtained on an application to the court supported by affidavit showing that there is a defence to the action on the merits, or that it is reasonable that you should be allowed to appear in the action.

(Here copy the instrument sued on, and where it is a negotiable instrument and carries endorsements, with the endorsements.)

By order of court,

Signed _____,

Secretary.

The _____ day of _____, 18 ____.

No. 20.—Forms of Concise Statements to be presented with Plaint.

(See Section 49)

The claim of the plaintiff (*and where the plaintiff sues in a representative capacity, add: suing as administrator of the estate and effects of A. B., deceased, or as the case may be*) is _____ rupees for money lent (and interest, or as the case may be, showing the nature of the claim). (*Where defendant is sued in a representative capacity, state it, as*) The defendant, C. D., is sued as the administrator of the estate and effects of X. Y., deceased (and the defendants E. F. and G. H., as his co-heirs-at law, or as the case may be).

(*Add where the claim is for a debt or liquidated demand*) And _____ rupees for costs; and if the amount claimed be paid to the plaintiff or his proctor within _____ days (or if the summons is to be served out of the jurisdiction, insert the time for appearance limited in the order) from the service hereof, further proceedings will be stayed.

Add, when necessary—

And for an injunction.

And for mesne profits.

And for an account of rent or arrears of rent.

And for breach of covenant for repairs (or as the case may be).

The following may be used in appropriate cases:—

Partnership.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant (under articles of partnership dated the _____ day of _____), and to have the affairs of the partnership wound up.

By Mortgagee.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the _____ day of _____, made between (*parties*), or by deposit of title-deeds, and that the property mortgaged may be realized by sale.

By Mortgagor.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated _____, and made between (*parties*), and to redeem the property comprised therein.

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Raising Portions.

The plaintiff's claim is that the sum of _____ rupees, which by a deed of settlement dated _____, was provided for the portions of the younger children of _____, may be raised.

Execution of Trust.

The plaintiff's claim is to have the trusts of an indenture dated _____, and made between (parties), carried into execution.

Cancellation or Rectification.

The plaintiff's claim is to have a deed dated _____, and made between (parties), set aside or rectified.

Specific Performance.

The plaintiff's claim is for specific performance of an agreement dated the _____ day of _____, for the sale by the plaintiff to the defendant of certain hereditaments at _____.

No. 21.—Form of Decree *Nisi* Dismissing the Action in default of Appearance of Plaintiff.

(See Section 84.)

(Title.)

This action coming on for disposal before (name and office of judge) on the _____ day of _____, 18 —, being the day appointed in the summons for the defendant to appear and answer (or for the filing of the answer or replication, or being the day fixed for the hearing of the action, as the case may be), and the defendant appearing (in person or by proctor or counsel), and the plaintiff not appearing either in person or by proctor or counsel, it is decreed that the action be dismissed, and that the plaintiff do pay to the defendant his costs thereof, unless sufficient cause be shown to the contrary within fourteen days from the date hereof.

The _____ day of _____, 18 —.

Signed _____,
District Judge.

No. 22.—Form of Decree *Nisi* in default of Appearance of Defendant.

(See Section 85.)

(Title.)

This action coming on for disposal before (name and office of judge) on the _____ day of _____, 18 —, being the day appointed in the summons for the defendant to appear and answer (or being the day appointed for the defendant to file answer, or for the filing of the replication, or being the day fixed for the hearing of the action, as the case may be), and the plaintiff appearing (in person, &c., as above), and the defendant not appearing either in person or by proctor or counsel, although he was duly served with the summons, together with a copy of the plaint (or, if the case is so, a concise statement of the nature of the claim as provided by section 49 of the Civil Procedure Code), as by the affidavit of _____, filed the _____ day of _____, appears: It is decreed that the defendant do pay to the plaintiff the sum of _____ rupees and his costs of this action, unless sufficient cause be shown to the contrary on the _____ day of _____, 18 —.

The _____ day of _____, 18 —.

Signed _____,
District Judge.

*Civil Procedure Code.***No. 23.—Form of Decree discharging Decree *Nisi* and directing Action to proceed (to be endorsed on Decree *Nisi*).**

(See Sections 84-86.)

The above decree *nisi* coming on for final order before (name and office of judge) on this _____ day of _____, 18 —, being the day appointed in the said decree for showing cause against it, and plaintiff and defendant appearing (in person, or as the case is), and the affidavit of _____ dated _____ having been read, and the evidence of _____ having been taken and both parties heard :

It is ordered that the above decree be discharged, and that the action do proceed in due course, and that the _____ day of _____, 18 —, be fixed for the defendant to appear and answer the plaintiff's claim (or as the case may be). And it is further ordered (state order as to costs of the application).

The _____ day of _____, 18 —.

Signed _____,
District Judge.**No. 24.—Form of Decree Absolute for default of showing cause, or sufficient cause not being shown (to be endorsed on Decree *Nisi*).**

(See Sections 84-86.)

The above decree *nisi* coming on for final order before (name and office of judge) on this _____ day of _____, 18 —, being the day appointed in the said decree for showing cause against it (when defendant is in default—say of which decree defendant received notice, as appears by the affidavit of _____ dated _____), and plaintiff and defendant appearing by counsel (or as the case is, and if defendant does not appear when plaintiff is applying to discharge rule—say defendant not appearing although due notice of the day for showing cause against the said decree was served upon him, as appears by the affidavit of _____ dated _____). And no cause being shown to the contrary (or where no sufficient cause is shown, the affidavit of _____ dated _____ having been read and the evidence of _____ having been taken, and both parties (or counsel on both sides, or as the case may be) having been heard, and no sufficient cause to the contrary appearing to this court :)

The above decree is made absolute.

The _____ day of _____, 18 —.

Signed _____,
District Judge.**No. 25.—Form of Interrogatories.**

(See Sections 84 et seq.)

(Title.)

Interrogatories on behalf of the above-named plaintiff (or as the case may be) for the examination of the above-named defendant (or as the case may be):

- 1.—Did not, &c.
- 2.—Has not, &c.

The defendant *A. B.* is required to answer the interrogatories numbered _____.

The defendant *C. D.* is required to answer the interrogatories numbered _____.

Signed _____,
Proctor for Plaintiff.

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No. 26.—Form of Answer to Interrogatories.

(See Section 99.)

(Title.)

The answer of the above-named defendant, *A. B.* (or as the case may be), to the interrogatories for his examination delivered on behalf of the above-named plaintiff (or as the case may be):

In answer to the said interrogatories, I, the above-named defendant, *A. B.*, make oath (or affirmation) and say as follows:

1, 2, 3, 4.—(Set forth answers to the interrogatories in paragraphs numbered consecutively.)

b.—I object to answer the interrogatories numbered _____, on the ground that (state ground of objection, verifying the same).

Sworn (or affirmed) this _____ day of _____, 18—, before me, &c.

No. 27.—Form of Notice to admit Genuineness of Documents.

(See Section 101.)

(Title.)

To (set out names and places of residence of persons to be served with the notice).

Take notice that the above-named plaintiff (or as the case may be) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (or as the case may be) or his proctor at _____, on _____, between the hours of _____ and _____; and the defendant (or as before) is hereby required, within forty-eight hours from the hour last mentioned, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been, and that such as are specified as copies are true copies.

By order of court,

The _____ day of _____, 18—. Signed _____,
Secretary (or as the case may be).

(Here annex Schedule of Documents.)

No. 28.—Form of Admission of Genuineness of Documents.

(See Section 101.)

(Title.)

To (names, &c., of persons to be served).

I (or we, if the case is so), having all just exceptions as to the admissibility thereof in evidence, hereby admit that the documents mentioned in the notice of the _____ day of _____, 18—, issued from this court at the instance of (or as the case may be, or, if any are not admitted, that such of the documents mentioned, (as above) as are included in the schedule hereto annexed) were respectively written (&c., as in notice).

Signed _____,
By Party (or Proctor).

The _____ day of _____, 18—.

*Civil Procedure Code.***No. 29.—Form of Notice to produce Documents for Inspection.**

(See Section 104.)

(Title.)

To (*set out name and place of residence of party to be served*).

Take notice that the above-named plaintiff (*or as the case may be*) requires you to produce for inspection by him or his proctor the following documents referred to in (*state as the case is*); that is to say (*describe documents*), and to permit such party or proctor to take copies thereof.

By order of court,

The _____ day of _____, 18 —, Signed _____,
Secretary (*or as the case is*).

No. 30.—Forms of Appointment, and of Refusal, to Inspect Documents.

(See Sections 104, 105.)

(Title.)

To (*name, &c., of person to be served*).

Take notice that the plaintiff (*or as the case may be*) can inspect the documents mentioned in the notice of the _____ day of _____, 18 —, issued from this court at his instance, except (*mention any document of which inspection is refused*), at my office (*or as the case may be*) on the _____ day of _____, 18 —, at _____ o'clock of the _____ noon. The defendant (*or as the case may be*) objects to produce the documents hereinbefore excepted, on the ground (*state the ground*).

Signed _____,

The _____ day of _____, 18 —, By Party (*or Proctor*).

No. 31.

(Title.)

To (*as in last form*).

Take notice that the defendant (*or as may be*) objects to give the plaintiff (*or as may be*) inspection of the documents mentioned in the notice (*as in last form*) on the ground (*state the ground*).

(Signed *as before*.)

The _____ day of _____, 18 —.

No. 32.—Form of Summons to Witness.

(See Sections 121–126.)

(Title.)

To (*name, description, and address of witness*).

You are hereby summoned to appear in this court in person on the _____ day of _____, at _____ o'clock in the forenoon, to give evidence on behalf of the plaintiff (*or defendant*) in the above-mentioned action, and to produce (*here describe with convenient certainty*

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any document the production of which is required; if the summons is only to give evidence, or only to produce a document, it must be so expressed). And you are not to depart thence until you have been examined (or have produced the document) and the court has risen, or unless you have obtained the leave of the court.

By order of court,

Signed _____,

The _____ day of _____, 18—.

Secretary.

NOTE 1.—If you are summoned only to produce a document and not to give evidence you shall be deemed to have complied with the summons if you cause the document to be produced in this court on the day and at the hour within-named.

NOTE 2.—If you are detained beyond the day within-named, a sum of _____ rupees will be tendered to you for each day's attendance beyond the day specified.

(NOTE 3.—No money having been paid to the court to cover the costs of your attendance, and no security having been given for the payment thereof, your attendance on this summons is not obligatory.)

(NOTE 4.—Money has been paid into court (or security has been given, as the case may be) for the costs of your attendance.)

No. 33.—FORMS OF PLAINTS.

*Plaints in Ordinary Cases.**

(1) For Money Lent.

1.—That on the _____ day of _____, 18—, at _____, plaintiff lent the defendant _____ rupees, repayable on demand (or on the _____ day of _____).

2.—That the defendant has not paid the same, except _____ rupees paid on the _____ day of _____, 18—.

(If the plaintiff claims exemption from any law of limitation, say:—

3.—The plaintiff was a minor (or insane) from the _____ day of _____ till the _____ day of _____.)

4.—The plaintiff prays judgment for _____ rupees, with interest at _____ per cent. from the _____ day of _____, 18—.

(2) For Money Received to Plaintiff's use.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the defendant received _____ rupees (or a cheque on the _____ Bank for _____ rupees) from one E. F. for the use of the plaintiff.

2.—That the defendant has not paid (or delivered) the same accordingly.

3.—The plaintiff prays judgment for _____ rupees, with interest at _____ per cent. from the _____ day of _____, 18—.

* In every plaint a statement must be inserted of the facts by reason of which the court has jurisdiction to try and determine the claim; where the claim is prescribed on the face of it, the ground on which exemption from the law of prescription is claimed must be shown; if a set-off is allowed, or any portion of the claim abandoned, it must be so stated. (See sections 40-45.)

Civil Procedure Code.

(3) For Price of Goods Sold by a Factor.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, he and E. F., since deceased, delivered to the defendant (*one thousand barrels of flour, five hundred bushels of rice, or as the case may be*) for sale upon commission.

2.—That on the _____ day of _____, 18 — (*or, on some day unknown to the plaintiff, before the _____ day of _____, 18 —*), the defendant sold the said merchandise for _____ rupees.

3.—That the commission and expenses of the defendant thereon amount to _____ rupees.

4.—That on the _____ day of _____, 18 —, the plaintiff demanded from the defendant the proceeds of the said merchandise,

5.—That he has not paid the same.

(Demand of judgment.)

(4) For Money Received by Defendant through the Plaintiff's Mistake of Fact.

(Title.)

1.—That on the _____ day _____, 18 —, at _____, the plaintiff agreed to buy and the defendant agreed to sell _____ bars of silver at _____ cents per ounce of fine silver.

2.—That the plaintiff procured the said bars to be assayed by one E. F., who was paid by the defendant for such assay, and that the said E. F. declared each of the said bars to contain 1,500 ounces of fine silver, and that the plaintiff accordingly paid the defendant _____ rupees therefor.

3.—That each of the said bars did contain only 1,200 ounces of fine silver.

4.—That the defendant has not repaid the sum so overpaid.

(Demand of judgment.)

(5) For Money Paid to a Third Party at the Defendant's Request.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, at the request (*or by the authority*) of the defendant, the plaintiff paid to one E. F. _____ rupees.

2.—That, in consideration thereof, the defendant promised (*or became bound*) to pay the same to the plaintiff on demand (*or as the case may be*).

3.—That (on the _____ day of _____, 18 —, the plaintiff demanded payment of the same from the defendant, but) he has not paid the same.

(Demand of judgment.)

(6) For Goods Sold at a Fixed Price and Delivered.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, E. F., of _____, deceased, sold and delivered to the defendant (*one hundred barrels of flour, or, the goods mentioned in the schedule hereto annexed, or, sundry goods*).

Civil Procedure Code.

2.—That the defendant promised to pay ——— rupees for the said goods on delivery (or, on the ——— day of ———, *some day before the plaint was filed*).

3.—That he has not paid the same.

4.—That the said *E. F.* in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5.—That on the ——— day of ———, 18 —, the said *E. F.* died.

6.—That on the ——— day of ———, probate of the said will was granted to the plaintiff by the District Court of ———.

7.—The plaintiff as executor as aforesaid (demand of judgment).

(NOTE.—If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest.)

(7) For Goods Sold at a Reasonable Price and Delivered.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, plaintiff sold and delivered to the defendant (*sundry articles of house furniture*), but no express agreement was made as to the price.

2.—That the same were reasonably worth ——— rupees.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(NOTE.—The law implies a promise to pay so much as the goods are reasonably worth.)

(8) For Goods delivered to a Third Party at Defendant's Request at a Fixed Price.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, plaintiff sold to the defendant (*one hundred barrels of flour*), and, at the request of the defendant, delivered the same to one *E. F.*

2.—That the defendant promised to pay to the plaintiff ——— rupees therefor.

3.—That he has not paid the same.

(Demand of judgment.)

(9) For Necessaries furnished to the Family of Defendant's Testator, without his express request, at a Reasonable Price.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, plaintiff furnished to (*Mary Jones*), the wife of (*James Jones*), deceased, at her request, sundry articles of (*food and clothing*), but no express agreement was made as to the price.

2.—That the same were necessary for her.

3.—That the same were reasonably worth ——— rupees.

4.—That the said (*James Jones*) refused to pay the same.

5.—That the defendant is the executor of the last will of the said (*James Jones*).

(Demand of judgment.)

Civil Procedure Code.

(10) For Goods Sold at a Fixed Price.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the plaintiff sold to E. F. of _____, deceased (*all the crops then growing on his farms in _____*).

2.—That the said E. F. promised to pay the plaintiff _____ rupees for the same.

3.—That he did not pay the same.

4.—That the defendant is administrator of the estate of the said E. F.

(Demand of judgment.)

(11) For Goods Sold at a Reasonable Price.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, E. F., of _____, sold to the defendant (*all the fruit growing in his orchard in _____*), but no express agreement was made as to the price.

2.—That the same was reasonably worth _____ rupees.

3.—That the defendant has not paid the same.

4.—That on the _____ day of _____, the District Court of _____ duly adjudged the said E. F. to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff manager of his estate.

5.—The plaintiff as manager as aforesaid (demand of judgment).

(12) For Goods made at Defendant's Request, and not Accepted.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, E. F., of _____, agreed with the plaintiff that the plaintiff should make for him (*six tables and fifty chairs*), and that the said E. F. should pay for the same upon delivery thereof —_____ rupees.

2.—That the plaintiff made the said goods, and on the _____ day of _____, 18—, offered to deliver the same to the said E. F., and has ever since been ready and willing so to do.

3.—That the said E. F. has not accepted the said goods or paid for the same.

4.—That on the _____ day of _____, 18—, the District Court of _____ duly adjudged the said E. F. to be of unsound mind and incapable of managing his affairs, and appointed the defendant manager of his estate.

5.—The plaintiff prays judgment for _____ rupees, with interest from the _____ day of _____, at the rate of _____ per cent. per annum, to be paid out of the estate of the said E. F. in the hands of the defendant.

(13) For Deficiency upon a Re-sale (Goods Sold at Auction).

(Title.)

1.—That on the _____ day of _____, 18—, at _____, plaintiff put up at auction sundry (*articles of merchandise*), subject to the condition that all goods not paid for and removed by the purchaser thereof within (*ten days*) after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

Civil Procedure Code.

2.—That the defendant purchased (*one crate of crockery*) at the said auction at the price of _____ rupees.

3.—That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for (*ten days*) thereafter, of which the defendant had notice.

4.—That the defendant did not take away the said goods purchased by him, nor pay therefor, within (*ten days*) after the sale, nor afterwards.

5.—That on the _____ day of _____, 18—, at _____, the plaintiff re-sold the said (*crate of crockery*), on account of the defendant, by public auction for _____ rupees.

6.—That the expenses attendant upon such re-sale amounted to _____ rupees.

7.—That the defendant has not paid the deficiency thus arising, amounting to _____ rupees.

(Demand of judgment.)

(14) For the Purchase-money of Lands Conveyed.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the plaintiff sold (and conveyed) to the defendant (the house and compound No. —, in the city of _____, or, a farm known as _____, in _____, or, a piece of land lying, &c.).

2.—That the defendant promised to pay the plaintiff _____ rupees for the said (house and compound, or farm, or land).

3.—That he has not paid the same.

(NOTE.—Where there has been no actual conveyance, say, in section 1: "sold to the defendant the house, &c., and placed him in possession of the same.")

(Demand of judgment.)

(15) For the Purchase-money of Immovable Property contracted to be Sold, but not Conveyed.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the plaintiff and defendant entered into a notarial agreement, a copy of which is hereto annexed, by which they mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff (the house No. —, in the town of _____, or, _____ acres of land in _____, bounded _____) for _____ rupees.

2.—That on the _____ day of _____, 18—, at _____, the plaintiff tendered (or, was ready and willing, and offered to execute) a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3.—That the defendant has not paid the said sum.

(Demand of judgment.)

Civil Procedure Code.

(16) For Services at a Fixed Price.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant (*hired plaintiff as a clerk, at the salary of _____ rupees per year.*)

2.—That from the (said day) until the _____ day of _____, 18 —, the plaintiff served the defendant as his (*clerk*).

3.—That the defendant has not paid the said salary.

(Demand of judgment.)

(17) For Services at a Reasonable Price.

(Title.)

1.—That between the _____ day of _____, 18 —, and the _____ day of _____, 18 —, at _____, plaintiff (*executed sundry drawings, designs, and diagrams*) for the defendant at his request; but no express agreement was made as to the sum to be paid for such services.

2.—That the said services were reasonably worth _____ rupees.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(18) For Services and Materials at a Fixed Price.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, plaintiff (*furnished the paper for and printed one thousand copies of a book called _____*) for the defendant at his request (and delivered the same to him).

2.—That the defendant promised to pay _____ rupees therefor.

3.—That he has not paid the same.

(Demand of judgment.)

(19) For Services and Materials at a Reasonable Price.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, plaintiff built a house (known as No. _____, in _____), and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the price to be paid for such work and materials.

2.—That the said work and materials were reasonably worth _____ rupees.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(20) For Rent Reserved in a Lease.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed (*or state the substance of the contract*).

2.—That the defendant has not paid the rent of the (*month*) ending on the _____ day of _____, 18 —, amounting to _____ rupees.

(Demand of judgment.)

Civil Procedure Code.

Another Form.

1.—That the plaintiff let to the defendant a house, No. —, for *scena* years, to hold from the — day of —, 18 —, at — rupees a year, payable quarterly.

2.—That of such rent — quarters are due and unpaid.

(Demand of judgment.)

(21) For Use and Occupation at a Fixed Rent.

(Title.)

1.—That on the — day of —, 18 —, at —, the defendant hired from the plaintiff (the house No. —, — street), at the rent of — rupees, payable — on the first day of —.

2.—That the defendant occupied the said premises from the — day of —, 18 —, to the — day of —, 18 —.

3.—That the defendant has not paid — rupees, being the part of the said rent due on the first day of —, 18 —.

(Demand of judgment.)

(22) For Use and Occupation at a Reasonable Rent.

(Title.)

1.—That the defendant occupied (the house No. —, — street), by permission of the said X. Y., deceased, from the — day of —, 18 —, until the — day of —, 18 —, and no agreement was made as to payment for the use of the said premises.

2.—That the use of the said premises for the said period was reasonably worth — rupees.

3.—That the defendant has not paid the same.

4.—That the said X. Y., in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5.—That on the — day of —, 18 —, the said X. Y. died.

6.—That on the — day of —, probate of the said will was granted to the plaintiff by the District Court of —.

7.—The plaintiff as such executor as aforesaid prays judgment for — rupees.

(23) For Board and Lodging.

(Title.)

1.—That from the — day of —, 18 —, until the — day of —, 18 —, the defendant occupied certain rooms in the house (No. —, — street), by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance, and other necessaries.

2.—That, in consideration thereof, the defendant promised to pay (or that no agreement was made as to payment for such meat, drink, attendance, or necessaries, but the same were reasonably worth) the sum of — rupees.

3.—That the defendant has not paid the same.

(Demand of judgment.)

Civil Procedure Code.

(24) For Freight of Goods.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, plaintiff transported in (his barge, or otherwise) (one thousand barrels of flour, or sundry goods), from _____ to _____, at the request of the defendant.

2.—That the defendant promised to pay the plaintiff the sum of (one rupee per barrel) as freight thereon (or, that no agreement was made as to payment for such transportation, but such transportation was reasonably worth _____ rupees).

3.—That the defendant has not paid the same.

(Demand of judgment.)

(25) For Passage-money.

(Title.)

1.—That on the _____ day of _____, 18—, plaintiff conveyed the defendant (in his ship, called the _____), from _____ to _____, at his request.

2.—That the defendant promised to pay the plaintiff _____ rupees therefor (or, that no agreement was made as to the said passage, but the said passage was reasonably worth _____ rupees).

3.—That the defendant has not paid the same.

(Demand of judgment.)

(26) On an Award.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the plaintiff and defendant having a controversy between them concerning (a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay), agreed to submit the same to the award of E. F. and G. H., as arbitrators (or, entered into an agreement, a copy of which is hereto annexed).

2.—That on the _____ day of _____, 18—, at _____, the said arbitrators awarded that the defendant should (pay the plaintiff _____ rupees).

3.—That the defendant has not paid the same.

*(Demand of judgment.)**(NOTE.—This will apply where the agreement to refer is not filed in court.)*

(27) On a Foreign Judgment.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, in the State (or Kingdom) of _____, the _____ Court of that State (or Kingdom), in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff _____ rupees, with interest from the said date.

2.—That the defendant has not paid the same.

(Demand of judgment.)

Civil Procedure Code.

Plaints upon Instruments for the Payment of Money only.

(28) On an Annuity Bond.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant by his bond became bound to the plaintiff in the sum of _____ rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff _____ rupees half-yearly on the _____ day of _____, and the _____ day of _____, in every year during the life of the plaintiff, the said bond should be void.

2.—That afterwards, on the _____ day of _____, 18 —, the sum of _____ rupees for _____ of the said half-yearly payments of the said annuity became due to the plaintiff, and is still unpaid.

(Demand of judgment.)

(29) Payee against Maker.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant, by his promissory note, now overdue, promised to pay to the plaintiff _____ rupees _____ (days) after date.

2.—That he has not paid the same (except _____ rupees, paid on the _____ day of _____, 18 —).

(Demand of judgment.)

(NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute—)

1.—That on the _____ day of _____, 18 —, at _____, the defendant, by his promissory note, promised to pay to the plaintiff _____ rupees _____ months after notice.

2.—That notice was afterwards given on the _____ day of _____ by the plaintiff to the defendant to pay the same _____ months after the said notice.

3.—That the said time for payment has elapsed, but the defendant has not paid the same.

(Where the note is payable at a particular place, say—)

1.—That on the _____ day of _____, 18 —, at _____, the defendant, by his promissory note, now overdue, promised to pay to the plaintiff (*at Messrs. A. & Co.'s, Calcutta*) _____ rupees _____ months after date.

2.—That the said note was duly presented for payment (*at Messrs. A. & Co.'s*) aforesaid, but has not been paid.

(30) First Indorsee against Maker.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant, by his promissory note, now overdue, promised to pay to the order of *E. F.* (or to *E. F.*, or order) rupees _____ (_____ days after date).

2.—That the said *E. F.* indorsed the same to the plaintiff.

3.—That the defendant has not paid the same.

(Demand of judgment.)

Civil Procedure Code.

(31) Subsequent Indorsee against Maker.

(Title.)

- 1.—(As in the last preceding form.)
- 2.—(That the same was, by the indorsement of the said E. F. and of G. H. and I. J. (or and others), transferred to the plaintiff.
- 3.—That the defendant has not paid the same.

(Demand of judgment.)

(32) First Indorsee against first Indorser.

(Title.)

- 1.—That E. F., on the ——— day of ———, 18—, at ———, by his promissory note, now overdue, promised to pay to the defendant or order ——— rupees ——— months after date.
- 2.—That the defendant indorsed the same to the plaintiff.
- 3.—That on the ——— day of ———, 18—, the same was duly presented for payment, but was not paid (or state facts excusing want of presentment).
- 4.—That the defendant had notice thereof.
- 5.—That he has not paid the same.

(Demand of judgment.)

(33) Subsequent Indorsee against first Indorser, the Indorsement being Special.

(Title.)

- 1.—That the defendant indorsed to one E. F. a promissory note, now overdue, made (or purporting to have been made) by one G. H., on the ——— day of ———, 18—, at ———, to the order of the defendant, for the sum of ——— rupees (payable ——— days after date).
- 2.—That the same was, by the indorsement of the said E. F. (and others), transferred to the plaintiff (or, that the said ——— indorsed the same to the plaintiff).
- 3, 4, and 5.—(Same as 3, 4, and 5 of the last preceding form.)

(Demand of judgment.)

(34) Subsequent Indorsee against his Immediate Indorser.

(Title.)

- 1.—That the defendant indorsed to the plaintiff a promissory note, now overdue, made (or purporting to have been made) by one E. F., on the ——— day of ———, 18—, at ———, to the order of one G. H., for the sum of ——— rupees (payable ——— days after date), and indorsed by the said G. H. to the defendant.
- 2, 3, and 4.—(Same as in 3, 4, and 5 in form No. 32.)

(Demand of judgment.)

*Civil Procedure Code.***(35) Subsequent Indorsee against Intermediate Indorser.***(Title.)*

1.—That a promissory note, now overdue, made (or purporting to have been made) by one *E. F.*, on the _____ day of _____, 18—, at _____, to the order of one *G. H.*, for the sum of _____ rupees (payable _____ days after date), and indorsed by the said *G. H.* to the defendant, was by the indorsement of the defendant (and others) transferred to the plaintiff.

2, 3, and 4.—*(As in No. 33.)*

*(Demand of judgment.)***(36) Subsequent Indorsee against Maker and First and Second Indorser.**

1.—That on the _____ day of _____, 18—, at _____, the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*, _____ rupees (_____ months after date).

2.—That the said *E. F.* indorsed the same to the defendant, *G. H.*, who indorsed it to the plaintiff.

3.—That on the _____ day of _____, 18—, the same was presented (or state facts excusing want of presentment) to the said *C. D.* for payment, but was not paid.

4.—That the said *E. F.* and *G. H.* had notice thereof.

5.—That they have not paid the same.

*(Demand of judgment.)***(37) Drawer against Acceptor.***(Title.)*

1.—That on the _____ day of _____, 18—, at _____, by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him _____ rupees (_____ days after date, or sight, thereof).

2.—That the defendant accepted the said bill. *(If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.)*

3.—That he has not paid the same.

4.—That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

(Demand of judgment.)

(NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say—)

1.—That on, &c., at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to *E. F.* or order _____ rupees _____ months after date.

2.—That the plaintiff delivered the said bill to the said *E. F.*

3.—That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

Civil Procedure Code.

(38) Payee against Acceptor.

(Title.)

1.—That on the _____ day of _____, 18 —, the defendant accepted a bill of exchange, now overdue, made (or purporting to have been made) by one *E. F.*, on the _____ day of _____, 18 —, at _____, requiring the defendant to pay to the plaintiff _____ rupees _____ after sight thereof.

2.—That he has not paid the same.

(Demand of judgment.)

(39) First Indorsee against Acceptor.

(Title.)

1.—That on the _____ day of _____, 18 —, the defendant accepted a bill of exchange, now overdue, made (or purporting to have been made) by one *E. F.*, on the _____ day of _____, 18 —, at _____, requiring the defendant to pay to the order of one *G. H.* _____ rupees _____ after sight thereof.

2.—That the said *G. H.* indorsed the same to the plaintiff.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(40) Subsequent Indorsee against Acceptor.

(Title.)

1.—*(As in the last preceding form to the end of paragraph 1.)*

2.—That by the indorsement of the said *G. H.* (and others) the same was transferred to the plaintiff.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(41) Payee against Drawer for Non-acceptance.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff _____ rupees (_____ days after sight).

2.—That on the _____ day of _____, 18 —, the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(Demand of judgment.)

(42) First Indorsee against First Indorser.

(Title.)

1.—That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made (or purporting to have been made) by one *E. F.*, on the _____ day of _____, 18 —, at _____, requiring one *G. H.* to pay to the order of the defendant _____ rupees (_____

Civil Procedure Code.

days) after sight (or after date, or at sight) thereof (and accepted by the said *G. H.* on the _____ day of _____, 18 —).

2.—That on the _____ day of _____, 18 —, the same was presented to the said *G. H.* for payment, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(Demand of judgment.)

(43) Subsequent Indorsee against First Indorser, the Indorsement being Special.

(Title.)

1.—That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made (or purporting to have been made) by one *G. H.*, on the _____ day of _____, 18 —, at _____, requiring one *I. J.* to pay to the order of the defendant _____ rupees _____ days after sight thereof (or otherwise), and accepted by the said *I. J.* on the _____ day of _____, 18 —. (This paragraph may be omitted if not according to the fact.)

2.—That the same was, by the indorsement of the said *E. F.* (and others), transferred to the plaintiff.

3.—That on the _____ day of _____, 18 —, the same was presented to the said *I. J.* for payment, and was dishonoured.

4.—That the defendant had due notice thereof.

5.—That he has not paid the same.

(Demand of judgment.)

(44) Subsequent Indorsee against his Immediate Indorser.

(Title.)

1.—That the defendant indorsed to plaintiff a bill of exchange, now overdue, made (or purporting to have been made) by one *E. F.*, on the _____ day of _____, 18 —, at _____, requiring one *G. H.* to pay to the order of *I. J.* _____ rupees _____ days after sight thereof (or otherwise), (accepted by the said *G. H.*) and indorsed by the said *I. J.* to the defendant.

2.—That on the _____ day of _____, 18 —, the same was presented to the said *G. H.* for payment, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(Demand of judgment.)

(45) Subsequent Indorsee against Intermediate Indorser.

(Title.)

1.—That a bill of exchange, now overdue, made (or purporting to have been made) by one *E. F.*, on the _____ day of _____, 18 —, at _____, requiring one *G. H.* to pay to the order of one *I. J.* _____ rupees _____ days after sight thereof (or otherwise), accepted by the said *G. H.* and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant (and others), transferred to the plaintiff.

2.—That on the _____ day of _____, 18 —, the same was presented to the said *G. H.* for payment, and was dishonoured.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

(Demand of judgment.)

Civil Procedure Code.

(46) Indorsee against Drawer, Acceptor, and Indorser.

1.—That on the _____ day of _____, 18—, at _____, the defendant, *G. D.*, by his bill of exchange, now overdue, directed to the defendant *E. F.*, required the said *E. F.* to pay to the order of the defendant *G. H.* _____ rupees (_____ days after sight thereof).

2.—That on the _____ day of _____, 18—, the said *E. F.* accepted the same.

3.—That the said *G. H.* indorsed the same to the plaintiff.

4.—That on the _____ day of _____, 18—, the same was presented to the said *E. F.* for payment, and was dishonoured.

5.—That the other defendants had due notice thereof.

6.—That they have not paid the same.

(Demand of judgment.)

(47) Payee against Drawer for Non-acceptance of a Foreign Bill.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the defendant by his bill of exchange, drawn in (*Columbo*), required the said *E. F.* to pay to the plaintiff in (*London*) _____ pounds sterling (*sixty days*) after sight thereof.

2.—That on the _____ day of _____, 18—, the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3.—That the defendant had due notice thereof.

4.—That he has not paid the same.

5.—That the value of _____ pounds sterling, at the time of the service of notice of protest on the defendant, was _____ rupees and _____ cents.)

Wherefor the plaintiff demands judgment against the defendant for _____ rupees, with (*ten per centum*) compensation and interest from the _____ day of _____, 18—.

(48) Payee against Acceptor.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, one *E. F.*, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff _____ rupees after date (*or* _____ days after sight) thereof.

2.—That on the _____ day of _____, 18—, the defendant accepted the said bill.

3.—That he has not paid the same.

(Demand of judgment.)

(49) On a Marine (open) Policy, on Vessel lost by Perils of the Sea, &c.

(Title.)

1.—The plaintiff was the owner of (*or* had an interest in) the ship _____ at the time of her loss, as hereinafter mentioned.

2.—That on the _____ day of _____, 18—, at _____, the defendants, in consideration of _____ rupees to them paid (*or* which the plaintiff then promised to pay), executed to him a policy of,

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insurance upon the said ship, a copy of which is hereto annexed (*or*, whereby they promised to pay to the plaintiff, within ——— days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from ——— to ———, whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding ——— rupees).

3.—That the said ship, while proceeding on the voyage mentioned in the said policy, was on the ——— day of ———, 18—, totally lost by the perils of the sea (*or otherwise*).

4.—That the plaintiff's loss thereby was ——— rupees.

5.—That on the ——— day of ———, 18—, he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6.—That the defendants have not paid the said loss.

(Demand of judgment.)

(30) On Cargo lost by Fire (valued Policy).

(Title.)

1.—That plaintiff was the owner of (*or had an interest in*) (*one hundred bales of cotton*) on board the ship ——— at the time of her loss as hereinafter mentioned.

2.—That on the ——— day of ———, 18—, at ———, the defendants, in consideration of ——— rupees which the plaintiff then paid (*or promised to pay*), executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed (*or*, whereby they promised to pay to the plaintiff ——— rupees in case of the total loss, by fire or other causes mentioned, of the said goods, before their landing at ———; *or*, in case of partial loss, such damages as the plaintiff might sustain thereby, provided the same should not exceed ——— per centum of the whole value of the goods).

3.—That on the ——— day of ———, 18—, at ———, while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (*or as the case may be*).

4, 5, and 6.—(*As in paragraphs 4, 5, and 6 of the last preceding form.*)

(Demand of judgment.)

(51) On Freight (valued Policy).

(Title.)

1.—That the plaintiff had an interest in the freight to be earned by the ship ——— on her voyage from ——— to ——— at the time of her loss as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2.—That on the ——— day of ———, 18—, at ———, the defendant, in consideration of ——— rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereunto annexed (*or state its tenor as before*).

3.—That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the ——— day of ———, 18—, totally lost by (the perils of the sea).

4.—That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6.—(*As in form No. 49.*)

(Demand of judgment.)

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(52) For a Loss by General Average.

(Title.)

1.—That plaintiff was the owner of (or had an interest in) (one hundred bales of cotton) shipped on board a vessel called the Y. Z., _____ to _____, at the time of the loss hereafter mentioned.

2.—That on the _____ day of _____, 18 —, at _____, in consideration of _____ rupees (which the plaintiff then promised to pay), the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed (or state its tenor as before).

3.—That on the _____ day of _____, 18 —, while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4.—That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of _____ rupees.

5.—That on the _____ day of _____, 18 —, he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6.—The defendant has not paid the said loss.

(Demand of judgment.)

(53) For a Particular Average Loss.

(Title.)

1 and 2.—(As in the last preceding form.)

3.—That on the _____ day of _____, 18 —, while on the high seas, the sea-water broke into the said ship, and damaged the said (cotton) to the amount of _____ rupees.

4 and 5.—(As in paragraphs 5 and 6 of the last preceding form.)

(Demand of judgment.)

(54) On a Fire-insurance Policy.

(Title.)

1.—That plaintiff (was the owner of, or) had an interest in a (dwelling house, known as Nu. _____, _____ street, in the city of _____), at the time of its destruction (or injury) by fire as hereinafter mentioned.

2.—That on the _____ day of _____, 18 —, at _____, in consideration of _____ rupees (to them paid), the defendants executed to the plaintiff a policy of insurance on the said (premises), a copy of which is hereunto annexed (or state its tenor).

3.—That on the _____ day of _____, 18 —, the said (dwelling house) was totally destroyed (or greatly damaged) by fire.

4.—That the plaintiff's loss thereby was _____ rupees.

5.—That on the _____ day of _____, 18 —, he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6.—That the defendants have not paid the said loss.

(Demand of judgment.)

Civil Procedure Code.

(55) Against Surety for Payment of Rent.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, one E. F. hired from the plaintiff, for the term of ——— years, the (house No. —, ——— street, ———) at the annual rent of ——— rupees, payable (*monthly*).

2.—That (at the same time and place) the defendant agreed, in consideration of the letting of the said premises to the said E. F., to guarantee the punctual payment of the said rent.

3.—That the rent aforesaid for the month of ———, 18 —, amounting to ——— rupees, has not been paid.

(If by the terms of the agreement notice is required to be given to the surety, add—)

4.—That on the ——— day of ———, 18 —, the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5.—That he has not paid the same.

(Demand of judgment.)

Plaints for Compensation for Breach of Contract.

(56) For Breach of Agreement to Convey Land.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, the plaintiff and defendant entered into a notarial agreement, of which a copy is hereto annexed, by which the defendant agreed with the plaintiff that, in consideration of a deposit of ——— rupees then paid, and of the further sum of (*ten thousand*) rupees payable as hereinafter mentioned, he would, on the ——— day of ———, 18 —, at ———, execute to the plaintiff a sufficient conveyance of (the house No. —, ——— street, in the city of ———) free from all incumbrances; and the plaintiff agreed to pay (*ten thousand*) rupees for the same on delivery thereof.

2.—That on the ——— day of ———, 18 —, the plaintiff demanded the conveyance of the said property from the defendant and tendered ——— rupees to the defendant (*or, that all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part*).

3.—That the defendant has not executed any conveyance of the said property to the plaintiff (*or, that there is a mortgage upon the said property, made by ——— to ———, for ——— rupees, registered in the office of ———, on the ——— day of ———, 18 —, and still unsatisfied, or any other defect of title*).

4.—That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid, and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5.—The plaintiff prays judgment for ——— rupees compensation.

Civil Procedure Code.

(57) For Breach of Agreement to Purchase Land.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, the plaintiff and defendant entered into a notarial agreement, of which a copy is hereto annexed, by which they mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff (*forty acres of land in the village of ——— for ——— rupees*).

2.—That on the ——— day of ———, 18 —, at ———, the plaintiff, being then the absolute owner of the said property (and the same being free from all incumbrances, as was made to appear to the defendant), tendered to the defendant a sufficient instrument of conveyance of the same (*or, was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument*), on the payment by the defendant of the said sum.

3.—That the defendant has not paid the same.

(Demand of judgment.)

(58) Another Form.

(Title.)

1.—That by a notarial agreement dated the ——— day of ———, 18 —, of which a copy is hereto annexed, it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant, and the defendant should purchase from the plaintiff (*a house and land at the price of ——— rupees*), upon the terms and conditions following (that is to say):

(a) That the defendant should pay the plaintiff a deposit of ——— rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the ——— day of ———, 18 —, on which day the said purchase should be completed.

(b) That the plaintiff should deduce and make a good title to the said premises on or before the ——— day of ———, 18 —, and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2.—That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3.—That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

(Demand of judgment.)

(59) For not delivering Goods Sold.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, the plaintiff and defendant mutually agreed that the defendant should deliver (*one hundred barrels of flour*) to the plaintiff (on the ——— day of ———, 18—), and the plaintiff should pay therefor ——— rupees on delivery.

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2.—That on the (said) day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3.—That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

(Demand of judgment.)

(60) For Breach of Contract to Employ.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as (*an accountant, or in the capacity of foreman, or as the case may be*), and that the defendant should employ the plaintiff as such, for the term of (*one year*), and pay him for his services ——— rupees (*monthly*).

2.—That on the ——— day of ———, 18 —, the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3.—That on the ——— day of ———, 18 —, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

(Demand of judgment.)

(61) For Breach of Contract to Employ, where the employment never took effect.

(Title.)

1.—(*As in last preceding form.*)

2.—That on the ——— day of ———, 18 —, at ———, the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3.—That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

(Demand of judgment.)

(62) For Breach of Contract to Serve.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an (*annual*) compensation of ——— rupees, and that the defendant should serve the plaintiff as (*an artist*) for the term of (*one year*).

2.—That the plaintiff has always been ready and willing to perform his part of the said agreement (and on the ——— day of ———, 18 —, offered so to do).

3.—That the defendant (entered upon) the service of the plaintiff on the above-mentioned day, but afterwards, on the ——— day of ———, 18 —, he refused to serve the plaintiff as aforesaid.

(Demand of judgment.)

Civil Procedure Code.

(63) Against a Builder for Defective Workmanship.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed (or state the tenor of the contract).

2.—That the plaintiff duly performed all the conditions of the said agreement on his part.

3.—That the defendant (built the house referred to in the said agreement, in a bad and uncorkmanlike manner).

(Demand of judgment.)

(64) By the Master against the Father or Guardian of an Apprentice.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the defendant entered into an agreement, under his hand, a copy of which is hereto annexed (or state the tenor of the contract).

2.—That after the making of the said agreement the plaintiff received the said (apprentice) into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3.—That on the _____ day of _____, 18—, the said (apprentice) wilfully absented himself from the service of the plaintiff, and continues so to do.

(Demand of judgment.)

(65) By the Apprentice against the Master.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the defendant entered into an agreement with the plaintiff and his (father), E. F., under their hands, a copy of which is hereto annexed.

2.—That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice, to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3.—That the defendant has not (instructed the plaintiff in the business of _____, or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment).

(Demand of judgment.)

(66) On a Bond for the Fidelity of a Clerk.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, plaintiff employed one E. F. as a clerk.

2.—That on the _____ day of _____, 18—, at _____, the defendant agreed with the plaintiff that if the said E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding _____ rupees.

Civil Procedure Code.

(Or, 2.—That at the same time and place the defendant bound himself to the plaintiff by a writing under his hand, in the penal sum of _____ rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void, but not otherwise.)

(Or, 2.—That at the same time and place the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.)

3.—That between the _____ day of _____, 18—, and the _____ day of _____, 18—, the said *E. F.* received money and other property, amounting to the value of _____ rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

(Demand of judgment.)

(67) By Tenant against Landlord, with special Damage.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the defendant, by an instrument in writing, let to the plaintiff (the house No. —, — street), for the term of _____ years, contracting with the plaintiff that he, the plaintiff, and his legal representatives, should quietly enjoy possession thereof for the said term.

2.—That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3.—That on the _____ day of _____, during the said term, one *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4.—That the plaintiff was thereby (prevented from continuing the business of a tailor at the said place, was compelled to expend _____ rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal).

(Demand of judgment.)

(68) For Breach of Warranty of Movables.

(Title.)

1.—That on the _____ day of _____, 18—, _____, the defendant, warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him _____ rupees therefor.

2.—That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which would otherwise have accrued to him while the engine was under repair.

(Demand of judgment.)

(69) On an Agreement of Indemnity.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the plaintiff and defendant being partners in trade under the firm of *A. B. & C. D.*, dissolved the said partnership and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

Civil Procedure Code.

2.—That the plaintiff duly performed all the conditions of the said agreement on his part.

3.—That on the _____ day of _____, 18— (a judgment was recovered against the plaintiff and defendant by one E. F. in the District Court of _____, upon a debt due from the said firm to the said E. F., and on the _____ day of _____, 18—) the plaintiff paid _____ rupees (in satisfaction of the same).

4.—That the defendant has not paid the same to plaintiff.

(Demand of judgment.)

(70) By Shipowner against Freighter for not Loading.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

(Or, 1.—That on the _____ day of _____, at _____, the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship _____, at _____, on the _____ day of _____, 18—, five hundred tons of merchandise, which she should carry to _____, and there deliver, on payment of _____ freight; and that the defendant should have _____ days for loading, _____ days for discharge, and _____ days for demurrage if required, at _____ rupees per day.)

2.—That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive (the said merchandise, or, the merchandise mentioned in the said agreement) from the defendant.

3.—That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore the plaintiff demands judgment for _____ rupees for demurrage and _____ rupees additional for compensation.

Plaints for Compensation upon Wrongs.

(71) For Trespass on Land.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the defendant entered upon certain land of the plaintiff, known as _____ (and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same).

(Demand of judgment.)

(72) For Trespass in entering a Dwelling House.

(Title.)

1.—That the defendant entered a dwelling house of the plaintiff called _____, and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling house, and removed, took, and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling house, and kept them so expelled for a long time.

2.—That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling house for himself and family.

(Demand of judgment.)

Civil Procedure Code.

(73) For Trespass on Movables.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street (or, seized and took the plaintiff's goods, that is to say, iron, rice, and household furniture, or as the case may be, and carried away the same and disposed of them to his own use):

(Or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.)

2.—That the plaintiff was thereby deprived of the use of the (cows and bullocks during that time, and incurred expenses in feeding them and in getting them restored to him; and was also prevented from selling them at ———, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff) (otherwise, state the injury according to the facts).

(Demand of judgment.)

(74) For the Conversion of Movable Property.

(Title.)

1.—That on the ——— day of ———, 18 —, plaintiff was in possession of certain goods described in the schedule hereto annexed (or of one thousand barrels of flour).

2.—That on that day, at ———, the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

(Demand of judgment.)

The Schedule.

(75) Against a Warehouseman for Refusal to Deliver Goods.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, the defendant, in consideration of the payment to him of ——— rupees (or ——— rupees per barrel, per month, &c.), agreed to keep in his godown (one hundred barrels of flour), and to deliver the same to the plaintiff on payment of the said sum.

2.—That thereupon the plaintiff deposited with the defendant the said (one hundred barrels of flour).

3.—That on the ——— day of ———, 18 —, the plaintiff requested the defendant to deliver the said goods, and tendered him ——— rupees (or the full amount of storage due thereon), but the defendant refused to deliver the same.

4.—That the plaintiff was thereby prevented from selling the said goods to E. F., and the same are lost to the plaintiff.

(Demand of judgment.)

Civil Procedure Code.

(76) For procuring Property by Fraud.

(Title.)

1.—That on the ——— day of ———, 18—, at ———, the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that (he, the defendant, was solvent, and worth ——— rupees over all his liabilities).

2.—That the plaintiff was thereby induced to sell (and deliver) to the defendant (dry goods) of the value of ——— rupees.

3.—That the said representations were false (or state the particular falsehoods), and were then known by the defendant to be so.

4.—That the defendant has not paid for the said goods. (Or, if the goods were not delivered, that the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended ——— rupees.)

(Demand of judgment.)

(77) For Fraudulently procuring Credit to be given to another Person.

(Title.)

1.—That on the ——— day of ———, 18—, at ———, the defendant represented to the plaintiff that one E. F. was solvent and in good credit, and worth ——— rupees over all his liabilities (or, that E. F. then held a responsible situation, and was in good circumstances, and might safely be trusted with goods on credit).

2.—That the plaintiff was thereby induced to sell to the said E. F. (rice) of the value of ——— rupees (on ——— month's credit).

3.—That the said representations were false, and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff (or, to deceive and injure plaintiff).

4.—That the said E. F. did not pay for the said goods at the expiration of the credit aforesaid (or has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises).

(Demand of judgment.)

(78) For Polluting the Water under the Plaintiff's Land.

(Title.)

1.—That he is, and at all the times hereinafter mentioned was, possessed of certain land called ———, and situate in ———, and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2.—That on the ——— day of ———, 18—, the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3.—That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

(Demand of judgment.)

Civil Procedure Code.

(79) For carrying on a Noxious Manufacture.

(Title.)

1.—That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called ———, situate in ———.

2.—That ever since the ——— day of ———, 18 —, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3.—That thereby the trees, hedges, herbage, and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and livestock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4.—That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep, and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

(Demand of judgment.)

(80) For Obstructing a Way.

(Title.)

1.—That the plaintiff is, and at the time hereinafter mentioned was, possessed of (a house in the village of ———).

2.—That he was entitled to a right of way from the said (house) over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants (with vehicles, or, on foot), at all times of the year.

3.—That on the ——— day of ———, 18 —, defendant wrongfully obstructed the said way, so that the plaintiff could not pass (with vehicles, or, on foot, or, in any manner) along the said way (and has ever since wrongfully obstructed the same).

4.—(State special damage, if any.)

(Demand of judgment.)

Another Form.

1.—That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from ——— to ——— so as to obstruct it.

2.—That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones (or, into the said trench) and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

(Demand of judgment.)

Civil Procedure Code.

(81) For Diverting a Water-course.

(Title.)

1.—That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a (stream) known as the ———, in the village of ———, district of ———.

2.—That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3.—That on the ——— day of ———, 18 —, the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4.—That by reason thereof, the plaintiff has been unable to grind more than ——— sacks per day, whereas, before the said diversion of water, he was able to grind ——— sacks per day.

(Demand of judgment.)

(82) For Obstructing a Right to use Water for Irrigation.

(Title.)

1.—That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2.—That on the ——— day of ———, the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

(Demand of judgment.)

(83) For Waste by a Lessee.

(Title.)

1.—That on the ——— day of ———, 18 —, the defendant hired from plaintiff (the house No. ———, ——— street) for the term of ———.

2.—That the defendant occupied the same under such hiring.

3.—That during the period of such occupation, the defendant greatly injured the premises (defaced the walls, tore up the floors, and broke down the doors; or otherwise specify the injuries as far as possible).

The plaintiff prays judgment for ——— rupees compensation.

(84) For Assault and Battery.

(Title.)

That on the ——— day of ———, 18 —, at ———, the defendant assaulted and beat plaintiff.

The plaintiff prays judgment for ——— rupees compensation.

(85) For Assault and Battery, with Special Damage.

(Title.)

1.—That on the ——— day of ———, 18 —, at ———, the defendant assaulted and beat him until he became insensible.

2.—That the plaintiff was thereby disabled from attending to his business for (*six weeks thereafter*), and was compelled to pay ——— rupees for medical attendance, and has been ever since disabled (*from using his right arm, or otherwise state the damage as the case may be*).

(Demand of judgment.)

Civil Procedure Code

(86) For Assault and False Imprisonment.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant assaulted the plaintiff and imprisoned him for _____ days (or hours); (*state special damage, if any, thus—*)

2.—That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment (*or otherwise as the case may be*).

(Demand of judgment.)

(87) For Injuries caused by Negligence on a Railroad.

(Title.)

1.—That on the _____ day of _____, 18 —, the defendants were common carriers of passengers by railway between _____ and _____.

2.—That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3.—That while he was such passenger, at _____ (*or, near the station of _____; or, between the stations of _____ and _____*), a collision occurred on the said railway caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured (*having his leg broken, his head cut, &c., and state the special damage, if any, as _____*) and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as (*a salesman*).

(Demand of judgment.)

(Or thus: 2.—That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, &c., as in section 3.)

(88) For Injuries caused by Negligent Driving.

(Title.)

1.—The plaintiff is a shoemaker, carrying on business at _____, the defendant is a merchant of _____.

2.—On the (*23rd May, 1885*) the plaintiff was walking eastward along _____ street, in Colombo, at about 9 o'clock in the afternoon. He was obliged to cross _____ street, which is a street running into _____ street at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of _____ street into _____ street. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3.—By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims _____ rupees damages.

Civil Procedure Code.

(88) For Libel, the Words being Libellous in themselves.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant published in a newspaper, called the _____ (or, in a letter addressed to *E. F.*), the following words concerning the plaintiff :

(Set forth the words used.)

2.—That the said publication was false and malicious.

(Demand of judgment.)

NOTE.—If the libel was in a language not the language of the court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—“Which said words, being translated into the _____ language, have the meaning and effect following, and were so understood by the persons to whom they were so published; that is to say (*here set out a literal translation of the libel in the language of the court*).

(90) For Libel, the Words not being Libellous in themselves.

(Title.)

1.—That the plaintiff (is, and) was on and before the _____ day of _____, 18 —, a merchant doing business in the city of _____.

2.—That on the _____ day of _____, 18 —, at _____, the defendant published in a newspaper, called the _____ (or, in a letter addressed *E. F.*, or otherwise *how published*), the following words concerning the plaintiff :

“*A. B.* of this city has modestly retired to foreign lands. It is said that creditors to the amount of _____ rupees are anxiously seeking his address.”

3.—That the defendant meant thereby that (the plaintiff had absconded to avoid his creditors, and with intent to defraud them).

That the said publication was false and malicious.

(Demand of judgment.)

(91) For Slander, the Words being Actionable in themselves.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant falsely and maliciously spoke, in the hearing of *E. F.* (or, sundry persons) the following words concerning the plaintiff: (“He is a thief.”)

2.—That, in consequence of the said words, the plaintiff lost his situation as _____ in the employ of _____.

(Demand of judgment.)

(92) For Slander, the Words not being Actionable in themselves.

(Title.)

1.—That on the _____ day of _____, 18 —, at _____, the defendant falsely and maliciously said to one *E. F.* concerning the plaintiff: (“He is a young man of remarkably easy conscience”).

2.—That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3.—That in consequence of the said words (the said *E. F.* refused to employ the plaintiff as a clerk).

(Demand of judgment.)

Civil Procedure Code.

(93) For Malicious Prosecution.

(Title.)

1.—That on the _____ day of _____, 18—, at _____, the defendant obtained a warrant of arrest from _____, a (magistrate of the said city, or, *as the case may be*), on a charge of _____, and the plaintiff was arrested thereon, and imprisoned for _____ (days or hours, and gave bail in the sum of _____ rupees to obtain his release).

2.—That in so doing the defendant acted maliciously and without reasonable or probable cause.

3.—That on the _____ day of _____, 18—, the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4.—That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; (or that, in consequence of the said arrest, the plaintiff lost his situation as a clerk to one E. F., or that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint).

(Demand of judgment.)

Plaints in Actions for Specific Property.

(94) By the Absolute Owner for the Possession of Immovable Property.

(Title.)

1.—That X. Y. was the absolute owner (of the estate, or, the share of the estate, called _____, situate in the district of _____, of the estimated value of _____ rupees, or, of the house No. _____, _____ street, in the town of Colombo, the estimated value of which is _____ rupees).

2.—That on the _____ day of _____, 18—, Z. illegally dispossessed the said X. Y. of the estate (or share or house).

3.—That the said X. Y. has since died intestate, leaving the plaintiff, the said A. B., his heir him surviving.

4.—That the defendant withholds the possession of the estate (or share or house) from the plaintiff.

The plaintiff prays judgment :

- (1) For the possession of the said premises ;
- (2) For _____ rupees compensation for withholding the same.

 Another Form.

1.—(On the _____ day of _____, the plaintiff, by an instrument in writing, let to the defendant a house and premises (No. 52, _____, in the _____) for a term of five years from the _____ day of _____, at the monthly rent of *three hundred rupees*.

2.—By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3.—The said instrument contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

Civil Procedure Code.

4.—On the ——— day of ———, 18 —, a month's rent became due, and on the ——— day of ———, 18 —, another month's rent became due; on the ——— day of ———, 18 —, both had been in arrear for twenty-one days, and both are still due.

5.—On the same ——— day of ———, 18 —, the house and premises were not and are not now in good or tenable repair, and it would require the expenditure of a large sum of money to re-instate the same in good and tenable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims:

- (1) Possession of the said house and premises;
- (2) ——— rupees for arrears of rent;
- (3) ——— rupees compensation for the defendant's breach of his covenant to repair;
- (4) ——— rupees for the occupation of the house and premises from the ——— day of ———, 18 —, to the day of recovering possession.

(95) By the Tenant.

(Title.)

1.—That one *E. F.* is the absolute owner of (a piece of land in the town of ———, bounded as follows: ———), the estimated value of which is ——— rupees.

2.—That on the ——— day of ———, 18 —, the said *E. F.* let the said premises to the plaintiff for ——— years, from ———.

3.—That the defendant withholds the possession thereof from the plaintiff.

(Demand of judgment.)

(96) For Movable Property wrongfully taken.

(Title.)

1.—That on the ——— day of ———, 18 —, plaintiff owned (or was possessed of) one hundred barrels of flour, the estimated value of which is ——— rupees.

2.—That on that day, at ———, the defendant took the same.

The plaintiff prays judgment:

- (1) For the possession of the said goods, or for ——— rupees in case such possession cannot be had;
- (2) For ——— rupees compensation for the detention thereof.

(97) For Movable wrongfully detained.

(Title.)

1.—That on the ——— day of ———, 18 —, plaintiff owned (or, state facts showing a right to the possession) the goods mentioned in the schedule hereto annexed (or describe the goods), the estimated value of which is ——— rupees.

2.—That from that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3.—That before the commencement of this suit, to wit, on the ——— day of ———, 18 —, the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment:

- (1) For the possession of the said goods, or for ——— rupees in case such possession cannot be had;
- (2) For ——— rupees compensation for the detention thereof.

The Schedule.

*Civil Procedure Code.***(98) Against a Fraudulent Purchaser and his Transferee,
with Notice.***(Title.)*

1.—That on the _____ day of _____, 18 __, at _____, the defendant *C. D.*, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that (he was solvent, and worth _____ rupees over all his liabilities).

2.—That the plaintiff was thereby induced to sell and deliver to the said *C. D.* (*one hundred boxes of tea*), the estimated value of which is _____ rupees.

3.—That the said representations were false, and were then known by the said *C. D.* to be so. (*Or, That at the time of making the said representations the said C. D. was insolvent, and knew himself to be so.*)

4.—That the said *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration (*or who had notice of the falsity of the representation*).

The plaintiff prays judgment :

- (1) For the possession of the said goods, or for _____ rupees in case such possession cannot be had ;
- (2) For _____ rupees compensation for the detention thereof.

*Plaints in Actions for Special Relief.***(99) For Rescission of a Contract on the Ground of Mistake.***(Title.)*

1.—That on the _____ day of _____, 18 __, the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at _____, contained (*ten acres*).

2.—That the plaintiff was thereby induced to purchase the same at the price of _____ rupees, in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3.—That on the _____ day of _____, 18 __, the plaintiff paid the defendant _____ rupees as part of such purchase-money.

4.—That the said piece of ground contained in fact only (*five acres*).

The plaintiff prays judgment :

- (1) For _____ rupees, with interest from the _____ day of _____, 18 __ ;
- (2) That the said agreement of purchase be delivered up and cancelled.

(100) For an Injunction restraining Waste.

1.—That plaintiff is the absolute owner of (*describe the property*).

2.—That the defendant is in possession of the same under a lease from the plaintiff.

3.—That the defendant has (*cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale*) without the consent of the plaintiff.

The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

(*Provisionary compensation might also be prayed.*)

Civil Procedure Code.

(101) For Abatement of a Nuisance.

(Title.)

1.—That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of (the house No. —, — street).

2.—That the defendant is, and at all the said times was, the absolute owner of a (plot of ground in the same street —).

3.—That on the — day of —, 18 —, the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there (and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff).

4.—That (the plaintiff has been compelled, by reason of the premissa, to abandon the said house, and has been unable to rent the same).

The plaintiff prays judgment that the said nuisance be abated.

(102) For an Injunction against the Diversion of a Water-course.

(Title.)

(As in form No. 51.)

The plaintiff prays judgment that the defendant be restrained by injunction from diverting the water as aforesaid,

(103) For Restoration of Movable Property, threatened with Destruction, and for an Injunction.

(Title.)

1.—That plaintiff is, and at all the times hereinafter mentioned was, the owner of (a portrait of his grandfather, which was executed by an eminent painter), and of which no duplicate exists (or, state any facts showing that the property is of a kind that cannot be replaced by money).

2.—That on the — day of —, 18 —, he deposited the same for safe keeping with the defendant.

3.—That on the — day of —, 18 —, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4.—That the defendant refuses to deliver the same to the plaintiff, and threatens to conceal, dispose of, cut, or injure the same if required to deliver it up.

5.—That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the (painting).

The plaintiff prays judgment:

- (1) That the defendant be restrained by injunction from disposing of, injuring, or concealing the said (painting);
- (2) That he return the same to the plaintiff.

(104) Interpleader.

(Title.)

1.—That before the date of the claims hereinafter mentioned, one G. H. deposited with the plaintiff (describe the property) for (safe keeping).

2.—That the defendant, C. D., claims the same (under an alleged assignment thereof to him from the said G. H.).

Civil Procedure Code.

3.—That the defendant, *E. F.*, also claims the same (under an order of the said *G. H.* transferring the same to him).

4.—That the plaintiff is ignorant of the respective rights of the defendants.

5.—That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the court shall direct.

6.—That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment :

- (1) That the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;
- (2) That they be required to interplead together concerning their claims to the said property ;
- (3) That some person be authorized to receive the said property pending such litigation ;
- (4) That upon delivering the same to such (person), the plaintiff be discharged from all liability to either of the defendants in relation thereto,

(105) Execution of Trusts.

(Title.)

1.—That plaintiff is one of the trustees under an instrument of settlement bearing date on or about the _____ day of _____, made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant (or, an instrument of assignment of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and other the creditors of *E. F.*).

2.—The plaintiff has taken upon himself the burden of the said trust, and is in possession of (or, of the proceeds of) the movable and immovable property conveyed (or assigned) by the before-mentioned deed.

3.—The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4.—The plaintiff is desirous to account for all the rents and profits of the said immovable property (and the proceeds of the sale of the said, or of part of the said, immovable property, or movable, or the proceeds of the sale of, or part of, the said movable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust) ; and he prays that the court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the court for the benefit of the said *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the court may direct, or that the said *C. D.* may show good cause to the contrary.

(106) Realization of Mortgage.

(Title.)

1.—By a writing obligatory dated the _____ day of _____, 18 —, the defendant bound himself to pay to the plaintiff (his heirs, &c.) the principal sum of _____ rupees, together with interest thereon at the rate of _____ per cent. per annum (on demand, or as the case may be).

2.—For securing the payment of the said principal and interest the defendant mortgaged with the plaintiff, his heirs, &c., the following property (describe).

3.—(Where the bond is not payable on demand, allege notice).

Civil Procedure Code.

4.—There is now due from the defendant to the plaintiff the sum of ——— rupees for principal and interest on the said writing.

5.—The plaintiff prays that the court will order the defendant to pay him the said sum of ——— rupees, with such further interest as may accrue between the filing of the libel and the day of payment, and also the costs of this action, on some day to be named by the court, and in default that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest, and costs; and that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of ——— per cent. per annum until realization; and that for that purpose all proper directions may be given, and accounts taken by the court.

(107) Redemption.

(Title.)

*After form No. 106 thus :**Transpose parties and also the facts in paragraphs 1 and 2.**For paragraph 4, substitute—*

4.—There is now due from the plaintiff to the defendant, for principal and interest on the said writing, the sum of ——— rupees, which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before the filing of this libel, had notice.

For paragraph 5, substitute—

5.—The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to release the same to him upon payment of the said sum of ——— rupees and interest, with such costs (if any) as the court may order, upon a day to be named by the court, and that the court will give all proper directions for the preparation and execution of such release and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

(108) Specific Performance (No. 1).

(Title.)

1.—By an agreement dated the ——— day of ———, and signed by the above-named defendant, *C. D.*, he, the said *C. D.*, contracted to buy of (or sell to) plaintiff certain immovable property therein described and referred to, for the sum of ——— rupees.

2.—Plaintiff has applied to the said *C. D.* specifically to perform the said agreement on his part, but he has not done so.

3.—Plaintiff has been and still is ready and willing specifically to perform the agreement on his part, of which the said *C. D.* has had notice.

4.—The plaintiff prays that the court will order the said *C. D.* specifically to perform the said agreement, and to do all acts necessary to put plaintiff in full possession of the said property (or to accept a conveyance and possession of the said property) and to pay the costs of the action.

[*N.B.—In action for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as, that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.*]

Civil Procedure Code.

(109) Specific Performance (No. 2).

(Title.)

1.—That on the ——— day of ———, 18 —, the defendant was absolutely entitled to certain immovable property described in the agreement hereto annexed.

2.—That on the same day the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3.—That on the ——— day of ———, 18 —, the plaintiff tendered ——— rupees to the defendant, and demanded a conveyance of the said property.

4.—That on the ——— day of ———, 18 —, the plaintiff again demanded such conveyance.

5.—That the defendant has not executed such conveyance. (*Or, That the defendant refused to convey the same to the plaintiff.*)

6.—That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment:

- (1) That the defendant execute to the plaintiff a sufficient conveyance of the said property (*following the terms of the agreement*);
- (2) For ——— rupees compensation for withholding the same.

(110) Partnership.

(Title.)

1.—He, the plaintiff, and the said C. D., the defendant, have been for the space of ——— years (*or months*) last past carrying on business together at ——— within the jurisdiction of this court, under certain articles of partnership in writing, signed by them respectively (*or, under a certain deed sealed and executed by them respectively, or, under a verbal agreement between them, the said plaintiff and defendant*).

2.—Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3.—The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles (*or deed or agreement*).

4.—The plaintiff prays the court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the court, and the assets thereof realized, and that each party may be ordered to pay into court any balance due from him upon such partnership account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the action may be paid out of the partnership assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles (*or deed or agreement*), or that, if the said assets shall prove insufficient, he, the plaintiff, and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities, and costs. And to give such other relief as the court shall think fit.

[*N.B.—In actions for winding-up of any partnership, omit the prayer for dissolution; but insert a paragraph stating the fact of the partnership having been dissolved.*]

Civil Procedure Code.

No. 34.—Form of Order for the Personal Appearance of a Plaintiff, or of the Director or Secretary or other Principal Officer of a Corporation or Company.

(See Sections 57 and 471.)

(Title.)

To _____, of _____, plaintiff in the above-named action (or director or secretary or other principal officer of the _____ company or corporation).

You are hereby summoned to attend in person in this court in the action above specified, at _____ o'clock of the forenoon on the _____ day of _____, 18—.

Signed _____
(Name and office of Judge.)

The _____ day of _____, 18—.

No. 35.—Form of List of Documents produced by Parties at the Hearing.

(See Section 113.)

(Title.)

No.	Description of Document.	Date (if any) which it bears.	Signature of Party or Tutor.

No. 36.—Form of Receipt Book for Returned Exhibits.

(See Section 116.)

Description of Exhibit.	By whom presented.	No. of Action in which presented.	Date on which taken for appeal or appeal disposed of.	Cost of copy paid.	Signature of person to whom Exhibit returned.	Date of return.	Signature of Officer by whom Exhibit returned.
Enter description merely, and not substance of exhibit.							(Should be signed by officer in charge of this register.)

Civil Procedure Code.

No. 37.—Form of Proclamation to be issued when Summons cannot be served.

(See Section 131.)

In the District Court of _____ (or as the case may be).

PROCLAMATION.

(Title.)

To all to whom these presents shall come, greeting.

Whereas it appears by the return made by the Fiscal of _____ to a certain summons issued in the above-named action at the instance of the above-named (plaintiff or defendant), whereby one (name of witness) was required to appear and testify on behalf of the (plaintiff or defendant) in the said action (or to produce any document required, describing it), that the said Fiscal has not been able to serve a copy of the said summons on the said (witness); And whereas it appears to the satisfaction of this court that the said (witness) has absconded (or is keeping out of the way for the purpose of avoiding such service as aforesaid), and that he is a necessary and material witness on behalf of the said (plaintiff or defendant) at the trial of the above-named action (or that the production of the said (document) is necessary and material, &c.), without whose testimony (or without which) the said (plaintiff or defendant) cannot safely proceed to trial: It is hereby proclaimed that the said (witness) is required to attend at this court on the _____ day of _____, 18 —, at _____ o'clock of the forenoon, to give evidence (or to produce, as before) on behalf of the said (plaintiff or defendant) under pain of sequestration of the movable and immovable property of the said _____ in case of his default, and of such further proceedings as may be found necessary.

By order of court.

The _____ day of _____, 18 —. Signed _____
Secretary (or as the case may be).

No. 38.—Form of Mandate of Sequestration after Proclamation.

(See Section 131.)

(Title.)

To the Fiscal of _____.

Whereas it appears by the return made by you (or by the Fiscal of _____, as the case may be) to a certain summons issued in the above-named action at the instance of the above-named (plaintiff or defendant), whereby one (name of witness) was required to appear and testify on behalf of the (plaintiff or defendant) in the said action (or to produce any document, describing it) that you (or the said, &c., as the case may be) have (has) not been able to serve a copy of the said summons on the said (witness): And whereas it has been proved to the satisfaction of this court that the said (witness) has absconded (or is keeping out of the way for the purpose of avoiding such service as aforesaid), and that he is a necessary and material witness on behalf of the said (plaintiff or defendant) at the trial of the above-named action (or that the production of the said (document) is necessary and material, &c.), without whose testimony (or without which) the said (plaintiff or defendant) cannot safely proceed to trial: And whereas in consideration of the premises a proclamation was on the _____ day of _____, 18 —, issued by this court requiring the attendance of the said (witness) at this court for the purpose aforesaid on the _____

Civil Procedure Code.

day of _____, 18 —, at _____ o'clock of the forenoon, and the said (*witness*) has not attended at such time and place in accordance with the terms of such proclamation: You are therefore commanded to seize and sequester the houses, lands, goods, moneys, securities for money and debts of the said (*witness*) to the value of (*insert value not exceeding the amount of cost of sequestration and of the fine imposed under section 133*), wheresoever and in whose custody or possession soever the same may be within this district, and to retain and secure the same until the said (*witness*) shall appear and abide by the order of this court or until you receive further directions from this court herein: and to give due notice in writing to all persons in whose possession or power such property of the said (*witness*), whether movable or immovable, shall be, of this sequestration, and requiring them to reserve and retain the same, and all issues, rents, profits, and interest accruing therefrom, to abide the order of this court. And you are further commanded on the _____ day of _____ next to inform this court what property you shall have so seized and sequestered, with the true value of the same and in whose possession the same respectively was at the time of such seizure: and have you there this mandate.

By order of court,

The _____ day of _____, 18 —. Signed _____,
Secretary (or as the case may be).

Endorsement on the above for further Sequestration.

To the Fiscal of _____.

Seize and sequester property of the within-named defendant to the further amount of _____ rupees, in manner and form as you were hereby before directed.

Signed _____,
District Judge.

**No. 39.—Form of Warrant of Arrest against a Witness
for Disobedience to a Summons.**

(See Section 137.)

(Title.)

To the Fiscal of _____.

Whereas it appears by your return to a certain summons issued in the above-named action at the instance of (plaintiff or defendant), whereby one (*name of witness*) was required to appear and testify on behalf of the (plaintiff or defendant) in the said action (or to produce any document required, describing it), that the said (*witness*) named therein was duly served with a copy thereof, but the said (*witness*) has failed to appear in obedience thereto (or, having appeared has departed in contravention of the provisions of section 136 of the Code of Civil Procedure); You are therefore to seize and arrest the said (*witness*) and bring him before this court forthwith, in order that he may undergo the penalties legally awarded against him for such contempt and disobedience, and further perform and abide by such order as the court shall make in this behalf: and have you there this warrant.

Signed _____,
District Judge (or as the case may be).

The _____ day of _____, 18 —.

Civil Procedure Code.

No. 40.—Form of Notice to Parties of the day fixed
for the Examination of a Witness about to
leave the Jurisdiction.

(See Section 178).

(Title.)

To (plaintiff or defendant).

Whereas application has been made to this court by the (defendant or plaintiff) in the above-named action that the examination of _____, of _____, a witness required by him in the said action, may be taken immediately; and it has been shown to the satisfaction of this court that the said witness is about to leave the court's jurisdiction (or state any other good and sufficient cause): Take notice that the examination of the said (witness) will be taken by the court on the _____ day of _____, 18 —, at _____ o'clock.

By order of court.

Signed _____,

The _____ day of _____, 18 —.

Secretary.

No. 41.—Form of Decree.

(See Sections 188-204.)

(Title.)

This action coming on for final disposal before (name and office of judge) on the _____ day of _____, 18 — (in the presence of _____ on the part of the plaintiff and _____ on the part of the defendant), it is ordered and decreed (specify in precise terms the order made in the judgment).

(And it is further ordered that the said _____ do pay to the said _____ his costs of this action (in Courts of Requests stating the amount) as taxed by the officer of the court, with interest thereon at the rate of _____ from the date of taxation to the date of realization.)

(Where the decree is for delivery of immovable property, describe the property in accordance with the requirements of section 190.)

Where the decree is for delivery of movable property, specify the amount to be paid as an alternative if delivery cannot be had.

In case of specific performance state the amount of damages to be paid if the contract is not performed.

Where defendant is allowed a set-off, state what is due to plaintiff and defendant, and decree recovery of the balance.

Where mesne profits pending or prior to action are claimed, vary decree according to sections 195, 196.

Where the action is to enforce a right of pre-emption, or to realize a mortgage, carry out the directions of sections 200, 201.

In any case where a decree or order has the effect of postponing the final determination of a case, specify therein the date of further hearing).

Signed _____

(Name and office of Judge.)

The _____ day of _____, 18 —.

Civil Procedure Code.

No. 42.—Form of Application for execution of a Decree by Seizure and Sale of Movable Property.

(See Sections 224 and 225.)

In the District Court of _____.

I, *A. B.*, plaintiff, hereby apply for execution of the decrees herein-below set forth :

1	2	3	4	5	6	7	8	9	10
Number of Actions.	Names of Parties.	Date of Decree.	Whether any Appeal preferred.	Adjustment made, if any.	Provisional Application, if any, and its date.	Amount of the Decree, Compound-interest, Interest, or other Relief granted by Decree.	Amount of costs, if any, awarded.	Appoint whom to be returned.	Mode in which the Court's assistance is required.
No. 175, D. C. Colombo	<i>A. B.</i> , plaintiff, against <i>C. D.</i> , defendant	21st January, 1888	No	—	—	Rs. 250 principal (interest at — per cent. from date of decree to payment)	Rs. 25-75. The costs awarded in the decree. Rs. 10-50 when-quantly incurred Rs. 30-25	<i>Th</i>	<i>I pray that the total amount of (together with interest on the principal sum up to date of payment), and the costs of taking int his execution be realized by (indicate manner of relief required)</i>

I, *A. B.*, hereby declares that what is stated herein is true to the best of my information and belief.

(Signed) *A. B.*

This _____ day of _____, 18 —.

No. 43.—Form of Writ of Execution against Property.

(See Section 225.)

(Title.)

To the Fiscal of the _____ Province.

Levy and make of the houses, lands, goods, debts, and credits of the above-named _____, by seizure, and, if necessary, by sale thereof, the sum of _____ rupees, which the said _____ has recovered against the said _____ by a judgment of the court hearing date the _____ day of _____, 18 —, and have that money before this court on the _____ day of _____, 18 —, to render to the said _____, and inform this court for what sum or sums, and to what person or persons, you have sold the property respectively : and have you there this mandate.

By order of court,

Signed _____,
Secretary.

The _____ day of _____, 18 —.

*Civil Procedure Code.***No. 44.—Forms of Prohibitory Notices.**

(Under Section 229.)

*(In the case of a debt not secured by a negotiable instrument.)*To *(defendant)* and to *(defendant's debtor)*.

Whereas *(defendant)* has failed to satisfy a decree passed against him on the _____ day of _____, 18 __, in *(title, &c., of case)*, in favour of _____ for _____ rupees: I hereby give you notice that you, the said defendant, are hereby prohibited and restrained until the further order of the court from which execution in the said action issued from receiving from the said *(debtor)* a certain debt alleged to be now due from him to you, namely *(particularize it)*: and that you the said _____ are hereby prohibited and restrained until such further order from making payment of the said debt or any part thereof to any person whomsoever.

The _____ day of _____, 18 __.

Signed _____,
Fiscal.**No. 45.***(In case of a share in a Public Company, &c.)*To *(defendant)* and to Manager *(&c.)*, _____ company.

Whereas _____ has failed to satisfy a decree *(recital as in No. 44)*: I hereby give you notice that you, the defendant, are hereby prohibited and restrained until the further order of the court *(as before)* from making any transfer of _____ shares in the afore-said company, namely, _____, or from receiving payment of any dividends thereof: and that you, the said _____, manager of the said company, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

Signed _____,
Fiscal.**No. 46.***(In case of moveable property not in the possession of the judgment-debtor.)*To *(defendant)* and to *(person in possession)*.

Whereas *(recital as in No. 44)*: I hereby give you notice that you, the said defendant, are hereby prohibited and restrained until the further order *(as before)* from receiving from the said _____ the following property now in his possession; that is to say *(name it)*, to which you the said defendant are entitled subject to any claim of the said _____, and that you, the said _____, are hereby prohibited and restrained until *(as before)* from delivering such property to any person whomsoever.

Signed _____,
Fiscal.

*Civil Procedure Code.***No. 47.—Form of Notice where Property is in custody of a Court or Public Officer.**

(See Section 232.)

(Title.)

To _____.

Sir,—The plaintiff in the above-named action having applied under section _____ of the Civil Procedure Code for seizure of certain moneys (or as the case is) now in your hands (state how the moneys, &c., are in the hands of the person addressed, and on what account, &c.), I request that you will hold the said (moneys) and any interest or dividend becoming payable thereon, subject to the further order of the court from which writ of execution in the said action issued.

I have, &c.,

The _____ day of _____, 18 —.

Fiscal.

No. 48.—Form of Notice to a Court requesting stay of execution of its Decree.

(See Section 234.)

(Title.)

To (name and office of judge).

Whereas A. B., plaintiff in the above-named action, obtained a decree against C. D., defendant in the said action, in this court on the _____ day of _____, 18 —, for the payment of _____ rupees; and whereas application has been made to this court for the seizure in execution of the said decree of a decree obtained in your court by the said defendant against _____ in (title of action): you are hereby requested to stay the execution of your said decree (until this notice shall be cancelled by this court, or as the case may be).

By order of court,

Signed _____.

The _____ day of _____, 18 —.

Secretary.

No. 49.—Form of Prohibitory Notice to Holder of a Decree sought to be seized.

(See Section 235.)

(Title.)

To (defendant).

Whereas in execution of the decree passed against you in the above-named action application has been made for the seizure of the decree passed against _____ in (title, &c., of action) of which you are the holder: you are hereby prohibited from transferring or charging the said decree in any way.

By order of court,

Signed _____.

Secretary.

*Civil Procedure Code.***No. 50.—Form of Prohibitory Notice in case of Immovable Property.**

(See Section 237.)

To *(defendant)*,

Whereas you have failed to satisfy a decree passed against you on the _____ day of _____, 18 —, in *(title, &c., of case)*, in favour of _____, for _____ rupees *(here set out the particulars required by the section)*, I hereby give you notice that you, the said defendant, are hereby prohibited and restrained until the further order of the court from which execution in the said action issued from in any way transferring, alienating, or charging the property specified in the schedule hereto annexed, and that all persons are prohibited from receiving the same or any part thereof by purchase, gift, or otherwise.

The _____ day of _____, 18 —, *Signed* _____,
Fiscal.
(The Schedule.)

No. 51.—Form of Certificate to Judgment-Debtor authorizing him to Mortgage, Lease, or sell Property.

(See Section 259.)

(Title.)

Whereas in execution of the decree passed in the above-named action notice of the sale of certain immovable property of the judgment-debtor, _____, has been given, and the court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise the amount of the decree by *(mortgage, lease, or private sale, as the case may be)* of the under-mentioned property or part thereof: This is to certify that the court doth hereby authorize the said judgment-debtor to make the proposed *(mortgage, lease, or sale)* within a period of _____ from the date of this certificate: Provided that all moneys payable under such *(mortgage, lease, or sale)* shall be paid into this court and not to the said judgment-debtor; and provided, further, that no such *(mortgage, lease, or sale)* shall become absolute until the same shall have been confirmed by this court.

The _____ day of _____, 18 —, *Signed* _____,
Judge.
(Details of property referred to.)

No. 52.—Form of Fiscal's Certificate where there has been a Resale at a Loss: or a Failure to pay the Deposit.

(See Sections 260-267.)

(Title.)

I, *A. B.*, Fiscal of the _____ Province, hereby certify that the under-mentioned property was, on the _____ day of _____, 18 —, duly put up for sale under writ No. _____ of this court in execution of the decree in the above-named action.

One _____ was duly declared to be the purchaser of the said property at the said sale at the price of _____ rupees.

(The said _____, on being so declared to be such purchaser, failed to pay down the deposit of 25 per cent. on the amount of his purchase-money to the officer conducting the sale, and to give good and sufficient security to the satisfaction of such officer for the payment of the residue, in manner by law required; and one _____, being the next highest bidder at the said sale, was thereupon duly declared to be the purchaser of the said property at the price of _____ rupees.

Civil Procedure Code.

The said _____ thereupon became liable to pay the difference between the said several sums of _____ rupees and _____ rupees, amounting to _____ rupees.)

Or,

(The said _____ duly paid the deposit of 25 per cent. on the amount of his said purchase-money to the officer conducting the sale, and entered into good and sufficient security to the satisfaction of such officer for payment of the residue, in manner by law required, but the said _____ has failed to pay such residue, although thirty full days have elapsed since the day of sale.

In consequence of the failure aforesaid the said property was, on the _____ day of _____, 18 __, again put up for sale under the said writ, and resold, and one _____ was duly declared to be the purchaser at such resale at the price of _____ rupees.

The said _____ thereupon became liable to pay the difference between the said several sums of _____ rupees and _____ rupees, amounting to the sum of _____ rupees.)

(*Conclusion:*) Demand in writing was duly made upon the said _____ for payment of the said sum of _____ rupees, on the _____ day of _____, 18 __, but although one week has elapsed since the date of such demand the said _____ has not paid the said sum of _____ rupees.

Signed _____,
Fiscal. _____ Province.

The _____ day of _____, 18 __.
(Schedule of property.)

No. 53.—Form of Notice to Person in Possession of
Movables sold in Execution.

(See Section 278.)

(Title.)

To (*person in possession*).

Whereas _____ has become the purchaser at a sale by auction in execution of the decree in the above-named action of (*property*) now in your possession, I hereby give you notice that you are prohibited and restrained from delivering possession thereof to any person except the said _____.

The _____ day of _____, 18 __. Signed _____,
Fiscal.

No. 54.—Form of Notice Prohibiting Payment of Debts sold
in Execution to any Person but the Purchaser.

(See Section 279.)

To (*judgment-debtor*) and to (*judgment-debtor's debtor*).

Whereas _____ has become the purchaser at a sale (*etc.*) of a certain debt due from you, _____, to you, _____, that is to say (*state particulars*): I hereby give you notice that you, the said _____, are hereby prohibited from receiving payment of the said debt, and you the said _____ from making payment of the same to any person except the said (*purchaser*).

The _____ day of _____, 18 __. Signed _____,
Fiscal.

(Where the property sold in execution consists of shares, this form must be followed, but the notice will be directed to the person in whose name the shares are standing, and to the manager of the company, and will be prohibitory of transferring the shares or receiving or making payment of dividends thereon.)

*Civil Procedure Code.***No. 55.—Form of Order Confirming Sale of Land.**

(See Section 283.)

(Title.)

Whereas the under-mentioned property was on the _____ day of _____, 18 —, sold by the Fiscal, _____, in execution of the decree in the above-named action: and whereas thirty days have elapsed since the receipt of the said Fiscal's report of the said sale, and no application has been made to set aside the same (or that objections made have been dismissed): It is ordered that the said sale be and the same is hereby confirmed. (*Mutatis mutandis*, where the sale is set aside.)

The _____ day of _____, 18 —. *Signed* _____
(Name and office of Judge.)
(Schedule.)

No. 56.—Form of Fiscal's Conveyance to Purchaser after Confirmation of Sale by Court.

(See Section 285.)

To all to whom these presents shall come, greeting.

Whereas by virtue of a writ of execution issued from the _____ court of _____, bearing date the _____ day of _____, 18 —, directed to the Fiscal (or Deputy Fiscal as the case may be) of the _____ Province, whereby he was directed (*insert directions of the writ*), A. B., Esquire (Fiscal) of the said Province, did cause to be seized and taken the property hereinafter described, which, after due notice and publication in manner by law prescribed, was exposed to public sale on the _____ day of _____, 18 —, by _____, acting under the authority of the said Fiscal, and was sold to _____ as the highest bidder at the said sale for the sum of _____ rupees:

And whereas the said (purchaser) has duly paid to the said (Fiscal) the whole of the said purchase-money, and thus became entitled to a conveyance of the said property (or where the plaintiff is purchaser: And whereas the said (purchaser) has been allowed the amount of purchase (or as the case may be) in reduction of his claim, and has produced the order of court, copy whereof is hereunto annexed, and has thus become entitled, &c.): And whereas the said court by an order dated the _____ day of _____, 18 —, copy of which is hereunto annexed, has duly confirmed the said sale:

Now these presents witness that the said A. B., Fiscal of the _____ Province, in consideration of the said sum of _____ rupees, so paid by (or credited to) the said (purchaser) as aforesaid, the receipt whereof the said A. B. doth hereby acknowledge, hath sold and assigned, and by these presents doth sell and assign, unto the said (purchaser), his heirs, executors, administrators, and assigns, all that (*name and description of the land by metes and bounds*), containing _____, and described in the diagram or map annexed to (*some title deed delivered to the purchaser, or if there is none then*) these presents, and marked _____, to have and to hold the same with their and every of their appurtenances to him the said (purchaser), his heirs, executors, administrators, and assigns for ever.

In witness whereof the said (Fiscal) hath hereunto subscribed his name at _____, this _____ day of _____, 18 —.

Witnesses:

Annexuren.

Fiscal.

(In cases where the sale has been effected in execution of a decree specifically directing a sale, the conveyance will be in accordance with the terms of the decree.)

Civil Procedure Code.

No. 57.—Form of Order of Delivery of Possession to a Purchaser where Property in Occupancy of Judgment-Debtor.

(See Section 287.)

(Title.)

To the Fiscal, _____ Province.

Whereas _____ has become the purchaser of (*land*) at a sale in execution of the decree in the above-named action, and whereas the said (*land*) is in the possession of _____, you are hereby ordered to put the said (*purchaser*) into possession of the said (*land*), and, if need be, to remove any person bound by the decree who may refuse to vacate the same,

Signed _____
(Name and office of Judge.)

The _____ day of _____, 18 ____.

Payments to Fiscals, &c.

No. 58.—Form of Note from Fiscal to Government Agent.

(See Section 296.)

No. of note : _____.
No. of action : _____.
Name of payee : _____.
Rs. _____.
Date of payment : _____.
Signature of Government Agent
or Assistant Government Agent.

No. of note : _____.
No. of action : _____.
To the Government Agent of
_____. Please to receive
from _____ Rs. _____.
Fiscal's Office.

No. 59.—Form of Register of such Notes.

(See Section 296.)

No.	No. of Action.	District Court.	Plaintiff.	Defendant.	Payee.	On what Account.	Amount.	Date of Issue.	Date when Receipt sent back.

*Civil Procedure Code.*No. 60.—Form of Warrant for Arrest of a Judgment-Debtor.
(See Section 305.)

(Title.)

To ———, Fiscal of ——— Province.

Whereas ——— was adjudged by a decree in the above-named action, dated the ——— day of ———, 18 —, to pay to the plaintiff above-named the sum of ——— rupees, as noted in the margin; And whereas the said sum of ——— rupees has not been paid to the said plaintiff in satisfaction of the said decree: And whereas (state any other of the requisites required by section 308, as the case is): These are to command you to arrest the said defendant, and unless the said defendant shall pay to you the said sum of ——— rupees, together with ——— rupees for the cost of executing this process, to bring the said defendant before this court with all convenient speed.

You are further commanded to return this warrant on or before the ——— day of ———, 18 —, with an endorsement showing the day on and the manner in which it has been executed, or the reason why it has not been executed.

Signed ———
(Name and office of Judge.)

The ——— day of ———, 18 —.

No. 61.—Form of Warrant of Commitment.

(See Section 305.)

(Title.)

To the Fiscal of ——— Province.

Receive into your custody the body of ———, taken under a warrant of arrest in execution dated ———, at the suit of ———, to satisfy a decree of this court dated the ——— for the sum of ——— rupees, together with this warrant, and him safely keep in prison for the period of six months unless he shall in the meantime be discharged by order of this court.

Signed ———
(Name and office of Judge.)

The ——— day of ———, 18 —.

No. 62.—Form of Writ for Delivery of a Specific Movable.
(See Section 320.)

(Title.)

To the Fiscal of ——— Province.

Whereas by a judgment of this court dated the ——— day of ———, 18 —, in the above-named action, the said (plaintiff) recovered against the said (defendant) (or the said defendant was ordered to deliver to the said plaintiff) the following (specify movable property): These are to command you that without delay you cause the said (articles) to be delivered to the said (plaintiff), or to such person as he shall authorize to receive the same. And in what manner you shall have executed this writ make appear to this court immediately after the execution thereof, and have you there, &c.

Signed ———.

The ——— day of ———, 18 —.

*Civil Procedure Code.***No. 63.—Form of Writ for Delivery of Immovable Property.**

(See Section 323.)

(Title.)

To the Fiscal, ———.

Whereas (*recite mutatis mutandis as in last form*): These are to command you that without delay you enter the same and cause the said ——— to have possession of the said land and premises, &c. And in what manner (*conclude as in last form*).

No. 64.—Form of Notice where a Sum of Money in Court is claimed.

(See Section 350.)

(Title.)

To (*names of parties and claimants*).

Take notice: That whereas the sum of ——— rupees (recovered under a writ of execution issued from this court on the ——— day of ———, 18—, has been carried to the separate account of the plaintiff in the above-named action, *or as the case may be*) and is now in court standing to the credit of the said plaintiff, and whereas the said (*name or names of claimants*) has (*have*) given notice to this court of a claim on their behalf to the said sum of ——— rupees (or to ——— rupees, part of the said sum of ——— rupees) on the ground (*state ground*).

This court will on the ——— day of ———, 18—, at ——— o'clock of the forenoon, proceed to hear and entertain the said claim, and determine the respective rights of the parties in the said sum.

By order of court,

Signed ———.

The ——— day of ———, 18—.

Secretary.

No. 65.—Form of Petition in an Action or Application of Summary Procedure.

(See Chapter XXIV.)

In the District Court of ———, ———, 18—.

(*Where the application is not incidental to a pending action, set out, at in a plaint, name and description, &c., of parties, thus:*)

Between A. B., &c., petitioner, and C. D., &c., respondent.

(*Where the application is incidental to a pending action say—*)

In the matter of an action between (*set out the title*) and (*in the matter of A. B., deceased, or as the case may be*).

The humble petition of the above-named (*plaintiffs, or as the case may be*) sheweth as follows:

(*Set out a plain and concise statement of the facts constituting the ground of application and its circumstances, and of the petitioner's right to make it, e.g.:*)

1.—That the said A. B., of ———, lately deceased, was one of the plaintiffs in the above-named action.

2.—That the said A. B. died on the ——— day of ———, 18— (*and go on to show that the right of action survives to the remaining plaintiff alone*).

(Your petitioner therefore humbly prays for an order that the above-named action do proceed at the instance of the said petitioner, or for such other order in the premises as to this court seems meet. And your petitioner will ever, &c.)

(*Annex to the petition any affidavits, &c. (see section 376), requisite to furnish prima facie proof of the material facts set out.*)

Civil Procedure Code.

**No. 66.—Form of (a) Order Nisi or (b) Interlocutory Order
on a Petition in an Action of Summary Procedure.**

(See Section 377.)

(Title.)

This matter coming on for disposal before (name and office of judge) on the _____ day of _____, 18—, after reading (the affidavit of _____, or as the case may be) and hearing the evidence of _____ (as the case is) (recite petition and exhibits, &c., adduced in support).

(a) (It is ordered that (state the order as that the said action do proceed at the instance of the said _____), unless sufficient cause be shown to the contrary on the _____ day of _____, 18—.)

(b) (It is ordered that the _____ day of _____, 18—, be, and the same is hereby appointed for the determination of the matters in the said petition contained, and that the said (respondent) be heard in opposition to the prayer of the same if he appear before this court on the said day.)

In the alternative (a)—

(It is further ordered that the (respondent) do pay to the (petitioner) his costs of, and occasioned by, this application.)

(Signed, &c., as in No. 41.)

**No. 67.—Form of Order refusing Petition where grounds
adduced insufficient to show *prima facie* Case.**

(See Section 380.)

(Proceed as in No. 66, and the order will be—)

It is ordered that the prayer of the said petition be and the same is hereby refused.

**No. 68.—Form of Order Dismissing Petition where Petitioner
does not appear.**

(See Section 382.)

(Proceed as in No. 66, reciting the order made under (b) of section 377, and continue—)

And the said (petitioner) not having appeared either in person or by counsel before this court in support of his said petition :

It is ordered that the said petition be, and the same is hereby dismissed. (It is further ordered that the said (petitioner) do pay to the said (respondent) his costs of, and occasioned by, this application.)

No. 69.—Form of Order where Respondent does not appear.

(See Section 393.)

(Proceed as in No. 66, reciting the order made under section 377; and continue—)

And the petitioner having appeared in (person or by proctor or counsel) in support of his said petition, and the respondent not having appeared either in person or by proctor or counsel, although the said recited order was duly served upon him as appears by the (oath or affidavit) of _____.

(Then, if the order is an order nisi under section 377 (a)—)

The above order is made absolute.

(But if the order was an interlocutory order under section 377 (b)—)

It is ordered (state the order; and where costs have been prayed in the petition, and the court thinks right to allow them, further order as to costs)

*Civil Procedure Code.***No. 70.—Form of Order where both Parties appear.**

(See Sections 384, 386, and 387.)

(Proceed as in No. 66, reciting the order under section 377, and continue—) And both parties appearing (in person, or as may be) and (the affidavit of _____ having been read) and (the evidence of _____ taken) and both parties heard: It is ordered on the application of (petitioner) that this matter be adjourned to the _____ day of _____, 18—, to enable the said (petitioner) to adduce additional evidence in support of his said petition, or that the questions or issues of fact arising in this matter be tried and determined.

The questions or issues of fact to be so tried and determined on such day are:

1.—Whether, &c.

2.—Whether &c.

(Formal conclusion as in No. 41.)

No. 71.—Form of Summons to Legal Representative of a Deceased Defendant.

(See Section 398.)

(Title.)

To _____, of _____.

Whereas the above-named _____ has, as plaintiff, instituted the above-named action in this court against the above-named _____, who has since deceased, and has made an application to the court alleging you to be the legal representative of the said deceased _____, and desiring that you be made defendant in his stead: You are hereby summoned to attend (in person or by proctor, or in either way) in this court at _____ o'clock of the forenoon on the _____ day of _____, 18—, to defend the said action, and in default of your so appearing the said action will be heard and determined in your absence.

By order of court,

Signed _____,

Secretary.

The _____ day of _____, 18—.

No. 72.—Form of Application for Permission to Withdraw from an Action.

(See Section 406.)

(Title.)

I, _____, plaintiff in the above-named action, hereby request the permission of the court to withdraw from the said action, with liberty to bring a fresh action in the same matter; on the ground (state sufficient grounds for withdrawing).

Signed _____,

Plaintiff.

The _____ day of _____, 18—.

No. 73.—Form of Notice of Payment into Court.

(See Section 410.)

(Title.)

To (plaintiff),

Take notice that the defendant in the above-named action has paid into court _____ rupees, and that that sum is enough to satisfy the plaintiff's claim (or the plaintiff's claim for _____).

Signed _____,

Party (or Proctor).

The _____ day of _____, 18—.

*Civil Procedure Code.***No. 74.—Form of Security for Defendant's Costs where Plaintiff resides out of Jurisdiction of the Court.**

(See Section 416.)

(Title.)

Know all men by these presents that we, *A. B.*, of _____, and *C. D.*, of _____, are jointly and severally held and firmly bound to *E. F.* (*here insert name of secretary of court, or as the case is*) in the penal sum of _____ rupees (*the sum mentioned in the order*) to be paid to the said *E. F.* or his successors in the said office of (*as the case is*), for which payment to be well and faithfully made we bind ourselves and each of us, our and each of our heirs, executors, and administrators firmly by these presents, hereby renouncing, &c.

Dated this _____ day of _____, 18 —.

Whereas by an order of the said _____ court of _____, dated the _____ day of _____, 18 —, made in the above-named action, wherein _____ is plaintiff and _____ is defendant, it was, on the application of the said defendant (*or as the case may be*), ordered (*recite the mandatory part of the order*): and whereas the above-bounden *A. B.* and *C. D.* have, at the request of the said (*person required to give security*), agreed to enter into the above-written obligation subject to the condition hereinafter contained:

Now the condition of the above-written obligation is such, that if the above-bounden *A. B.* and *C. D.*, or either of them, their or either of their heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to _____, the defendant in the said action, all such costs as the said court shall think fit to award to the said defendant in the said action, then the above-written obligation to be void, or else to remain in full force and virtue.

*A. B.**C. D.*Signed by the above-bounden *A. B.* and *C. D.* in the presence of*X. Y.*, of _____,*Y. Z.*, of _____.

(Use the same form with alterations where defendant resides out of the jurisdiction.)

No. 75.—Formal Parts of an Affidavit in an Action.

(See Section 438.)

In the Supreme Court of the Island of Ceylon.

*(or)*In the { District Court } of Colombo (*or as the case may be*).

{ Court of Requests }

(Title.)

I, *A. B.* (*full name and description of deponent, and if a married woman, full name and description of her husband*), of (*place of residence*) (*and if a party, say so, and in what capacity*), make oath and say (*or if deponent is not a Christian, solemnly, sincerely, and truly affirm and declare*) as follows:

1. _____,

2. _____,

Sworn (*or affirmed*) (*if there are more than one deponent sworn or affirmed by the deponent*) *A. B.*, at _____, this _____ day of _____, 18 —.Before me (*name and office of person administering the oath or affirmation*).

*Civil Procedure Code.***No. 76.—Form of Application for Permission to Sue as a Pauper.**

(See Section 443.)

*(Head in the action and insert all the particulars required in plaints; then continue—)*I, *A. B.*, of ———, plaintiff above-named, hereby apply to be allowed to sue as a pauper in the action above specified.

Annexed is a full and true schedule of all the movable and immovable property (other than my necessary wearing apparel and the subject-matter of the said action) belonging to me, with the estimated value thereof.

(Subscribe as in the case of a plaint.)

The Schedule.

(Annex affidavits of the applicant and of two headmen or other respectable inhabitants of the place where plaintiff resides, verifying his poverty and containing the other particulars required by section 444.)

No. 77.—Form of Certificate of Proctor Referee.

(See Section 447.)

(Title.)

I do hereby certify that I have, in accordance with the terms of the reference made to me in the matter above specified, made due inquiry of the plaintiff therein as to the grounds of his proceeding, and the evidence by which he proposes to support it, and have duly examined such documents and other evidence as he has produced to me.

I am of opinion that the said plaintiff has (or has not, as the case may be) a good cause of action against the defendant for, &c.

The ——— day of ———, 18 —. (Signed) *A. B.*,
Proctor, ——— Court.**No. 78.—Notice to Party permitted to Sue or Defend *in forma pauperis* of Motion by the Opposite Party that he be dispaupered.**

(See Section 454.)

(Title.)

To ———, of ——— (plaintiff or defendant in the above-named action).

Whereas you have been admitted to sue (or defend) as a pauper in the above-named action, and whereas the defendant (or plaintiff) has moved this court that you may be dispaupered, on the ground (*state ground, see section 454*): This is to give you notice that the said motion will be heard and determined in this court on the ——— day of ———, 18 —, at ——— o'clock of the forenoon.

Given, &c.

Signed ———,
Judge.

Civil Procedure Code.

No. 79.—Form of Notice to Attorney-General or Public Officer of the Institution of an Action.

(See Section 461.)

To the Hon. the Attorney-General (or the public officer concerned).

Take notice that I, A. B., of _____, am about to institute an action against you as representing the Crown (or, in the case of a public officer, in your official capacity as _____) for (state the cause of action and the relief claimed).

(Signed) A. B.

The _____ day of _____, 18 —.

(Where the notice is issued by a proctor, alter the wording accordingly.)

No. 80.—Form of Authority to Sue or Defend given by a Naval or Military Man on Service.

(See Section 503.)

I, A. B., presently of _____, being a (rank) in Her Majesty's (regiment or ship, as the case may be), actually serving Government in such capacity, and unable to obtain leave for the purpose of (prosecuting or defending) a certain action brought (by or against) me (against or by) one _____, of _____, in the _____ court of _____, for (state what for), do hereby authorize C. D., of _____, to (sue or defend) for me and on my behalf in the said action, and for that purpose to make every appearance and application, and do every act which I might if present make or do, or be required or authorized by law to make or do, therein.

(Signed) A. B.

The _____ day of _____, 18 —.

In the presence of

(Signed) E. F. (the commanding officer, or if the party himself is the commanding officer, then the next subordinate in rank to him. Where the party is in staff employ, the witness must be the head of the office).

Witnesses.

No. 81.—Form of Affidavit to be produced with Will.

(See Section 516.)

(Formal parts as in No. 75.)

1.—I knew and was well acquainted with A. B., of _____, who died on the _____ day of _____, 18 —, at _____.

2.—The said A. B. duly executed his last will dated the _____ day of _____, 18 —.

3.—The said A. B. deposited his said will in my custody (or if the case is so, state the circumstances under which the deponent found the will).

4.—The said testator has left property within the jurisdiction of this (or any other, as the case may be) court of the nature and value shown in the schedule hereto annexed (or has left no property in Ceylon).

5.—I produce the said will.

(Formal conclusion.)

(The Schedule.)

Civil Procedure Code.

No. 82.—Form of Application by way of Summary
Procedure for Probate or for Administration
with the Will annexed.

(See Sections 518–525.)

In the matter of the will of *A. B.*, deceased.

C. D., of ———, petitioner,

vs.

(For respondent, name any person likely or competent to oppose
the application.)

(Formal parts as in No. 65.)

1.—*A. B.*, late of ———, died on the ——— day of ———,
18 —.

2.—The said *A. B.* duly executed his last will dated the ——— day
of ———, 18 — (now deposited in this court, or, and the said will
is appended hereto, or on the case is—see section 524).

3.—To the best of your petitioner's knowledge the heirs of the said
A. B., deceased, are :

4.—Full and true particulars of the property left by the deceased,
so far as your petitioner has been able to ascertain the same, are con-
tained in the schedule hereto annexed.

5.—Your petitioner claims as (executor, creditor, &c., as the case is).
Your petitioner therefore humbly prays for an order declaring the
said will proved, and that he may be declared executor of the said will,
and that probate thereof may be issued to him accordingly (or where
the case is so, for a grant of administration with copy of the will annexed,
&c.). (If a limited grant is asked for, set out to that effect.)

(Formal conclusion.)

(The Schedule.)

(Support paragraphs 2 and 5 by affidavit or oral evidence. Where no
respondent is named, state the reason to be that no opposition is apprehended,
and support with an affidavit; and if the testator died out of Ceylon, state
that the applicant has obtained an order appointing the court to have sole
testamentary jurisdiction.)

No. 83.—Form of Application for Administration where
there is no Will.

(See Section 530.)

(Formal parts.)

(Proceed as in last form, substituting a statement that the will
cannot be found, or that there is none, for paragraph 2.)

Your petitioner therefore humbly prays for an order declaring that
he is entitled as such (creditor, or as the case is) to administer the
estate of the said intestate, and directing that letters of administration
of the said estate be granted to him accordingly. (If a limited grant
is asked for, set out to that effect.)

(Formal conclusion.)

*Civil Procedure Code.*No. 84.—Form of Order *Nisi* declaring Will proved, &c.

(See Sections 526-529.)

(Title.)

This matter coming on for disposal before *(name and office of judge)*, on the _____ day of _____, 18__ (in the presence of _____ on the part of the petitioner, and _____ on the part of the respondent), (and the affidavit of _____, dated _____, having been read, and the evidence of _____ taken), (and all parties heard):

It is ordered that the will of _____, deceased, dated _____ (and now deposited in this court, or as the case is), be and the same is hereby declared proved, unless *(the respondent or any person on whom the court directs the order to be served)* shall, on or before the _____ day of _____, show sufficient cause to the satisfaction of this court to the contrary.

It is further declared that the said *(petitioner)* is the executor named in the said will, and that he is entitled to have probate of the same issued to him accordingly *(or declare the petitioner's status where he is not executor, and state that he is entitled to administration with copy of the will annexed)*, unless, &c.

Signed, &c. _____.

(Where there is no respondent, the order may be absolute in the first instance.)

(Where there is no will, this form can be adapted. In either case the order is to be served on the respondent or on any other person on whom the court directs service. Where the grant is to be limited, say so, and how far.)

No. 85.—Form of Order making Absolute or Discharging the preceding Order.

(See Section 534.)

(Title.)

This matter coming on for final determination before _____ on _____, in the presence of _____ (and the affidavits of _____ having been read and the evidence of _____ taken) (and all parties heard):

It is ordered (that the order of this court made on the _____ day of _____, 18__, be made absolute, and that probate of the will of _____ be issued to _____ *(or as the case may be)*, or (that the order _____ be discharged, and the petition of _____ be and the same is hereby dismissed).

(And it appearing to this court that _____ (respondent or objector) has established his right thereto, it is further ordered that (probate or administration, as the case may be) be issued to the said _____ accordingly.

Signed, &c. _____.

(When the grant is to be limited, say so, and how far.)

Civil Procedure Code.

No. 86.—Form of Probate.

(See Section 519.)

(Title.)

In the District Court of _____.

Be it known to all men that on the _____ day of _____, 18 —, the last will and testament of _____, deceased, a copy of which is hereunto annexed, was exhibited, read, and proved before this court, and administration of all the property and estate, rights and credits, of the deceased was and is hereby committed to (*name and description*) the executor in the said last will and testament named; the said _____ being first sworn (*or affirmed*) faithfully to execute the said will by paying the debts and legacies of the deceased testator as far as the property will extend and the law will bind, and also to exhibit into this court a true, full, and perfect inventory of the said property on or before the _____ day of _____, 18 —, and to file a true and just account of _____ executorship on or before the _____ day of _____, 18 —.

Given under my hand and the seal of the court this _____ day of _____, 18 —.

Signed _____,
District Judge.

(When probate is limited, insert the limitation.)

No. 87.—Form of Letters of Administration (with the Will annexed and otherwise).

(See Sections 519, 530, &c.)

In the District Court of _____.

To (*widow, widowess, next of kin, secretary of the court, creditor, &c., as the case may be*).

Whereas _____, of _____, deceased, lately departed this life (leaving a will which has been duly proved in this court, a copy whereof is hereunto annexed; and whereas no executor is named in that will, or without leaving any will): You are therefore fully empowered and authorized by these presents to administer and faithfully dispose of the property and estate, rights and credits, of the said deceased, and to demand and recover whatever debts may belong to _____ estate, and to pay whatever debts the said deceased did owe (and also the legacies contained in the said will), so far as such property and estate, rights and credits, shall extend, you having been already sworn (*or affirmed*) well and faithfully to administer the same and to render a true and perfect inventory of all the said property and estate, rights and credits, to this court on or before the _____ day of _____, 18 —, next, and also a true and just account of your administration thereof on or before the _____ day of _____, 18 —. And you are therefore by these presents deputed and constituted administrator (with a copy of the will annexed) of all the property and estate, rights and credits, of the said deceased. (You are nevertheless hereby prohibited from selling any immovable property of the estate unless you shall be specially authorized by the court so to do.)

Signed, &c. _____.

*Civil Procedure Code.***No. 88.—Form of Oath by Executor or Administrator referred to in the two preceding forms.**

You swear (or the form of affirmation) that you believe the writing now produced to you, bearing date ———, and marked ———, to be the last will and testament of deceased. (That you are the executor named therein, *where the case is so.*) That you will faithfully execute the said will (or that you will administer and faithfully dispose of the property and estate, rights and credits, of ———, deceased) by paying the debts (and legacies) of the deceased as far as the property will extend and the law bind, and by demanding and recovering whatever debts may belong to ——— estate. That you will exhibit into this court a true, full, and perfect inventory of all the property, movable and immovable, and all the rights and credits of the deceased on or before the ——— day of ———, 18 —, and that you will file a true account of your executorship (or administration) on or before the ——— day of ———, 18 —.

Sworn (or affirmed), &c.

No. 89.—Form of Affidavit where Deceased is Intestate.

(See Section 541.)

(Formal parts as in No. 75.)

1.—I am (*widow, next of kin, &c.*) of ———, late of ———, deceased, and knew and was well acquainted with the said ——— during his lifetime.

2.—The said ——— died on the ——— day of ———, 18 —, at ———, without having made a will, and leaving property within the jurisdiction of ——— court of the nature and value shown in the schedule hereto annexed.

(Formal conclusion.) *Schedule.*

No. 90.—Form of Security Bond to be given by Executor or Administrator when required.

(See Sections 521, 538, 541.)

In the District Court of ———,

Know all men by these presents that we (executor or administrator), and ——— and ——— (*sureties*), are hold and firmly bound unto ———, Secretary of the District Court of ——— (or to the Secretary of the District Court of ———, for the time being), the said ——— in the sum of ——— rupees, and the said ——— and ——— in the sum of ——— rupees each, to be paid to the said (Secretary or Secretary for the time being), for which payment well and truly to be made we and each of us do hereby bind ourselves, our heirs, executors, and administrators firmly by these presents, hereby renouncing ———.

Whereas by order of the said court of the ——— day of ———, 18 —, it is ordered that (probate of the will or letters of administration of the property and estate of ——— deceased) be granted to the said (executor or administrator) on his giving security for the due (execution or administration) thereof: And whereas the estate of the said deceased has been appraised and valued at the sum of ——— rupees:

Now the condition of this obligation is such, that if the above-bounden (executor or administrator) do render into this court a true and perfect inventory of all the property and estate, rights and credits, of the said deceased, which have or shall come to the possession or knowledge of the said ———, or of any other person for him, on or before the ——— day of ———, 18 —, and shall well and truly administer the same; that is to say, shall pay all and singular the debts

Civil Procedure Code.

of the said deceased which (he) did owe at (his) decease fairly and justly according to their respective degrees, or in equal proportion if the estate should prove insufficient to satisfy all the debts in full (and shall then pay the legacies contained in the said will annexed to the said letters of administration) so far as the said property will extend and the law charge (him), and further shall render to this court a true and just account of (his) said administration on or before the _____ day of _____, 18 —, and shall deliver and pay over the rest and residue of the said property and estate, rights and credits, which shall be found remaining upon the said administration, to the person or persons lawfully entitled to the same: Then this obligation to be void and of none effect, otherwise to remain in full force.

(Dated and signed by all the obligors.)

No. 91.—Form of Letters *ad bona colligenda*.

(See Section 546.)

In the District Court of _____.

To _____ and _____.

Whereas it has been verified to this court that _____, late of _____, died leaving property within the jurisdiction of this court: You and each of you are hereby empowered and authorized to take, collect, demand, and receive all and every the said property, and the rents, issues, and profits thereof, and safely to keep the same until administration thereof be granted in due form of law to such person or persons as shall appear entitled to the same, or until you receive further orders from this court in the premises.

By order of court,

The _____ day of _____, 18 —,

Secretary.

No. 92.—Form of Verification of Inventory and Valuation.

(See Section 538.)

I, A. B., of _____, executor of the last will of _____, deceased (or administrator of the estate, &c., if so), make oath and say (or solemnly, sincerely, and truly affirm and declare) as follows:

1.—To the best of my knowledge, information, and belief, the above-written inventory contains a full, true, and correct account of all the property, movable and immovable, and rights and credits of the said _____, deceased, so far as I have been able with due diligence to ascertain the same.

2.—I have made a careful estimate and valuation of all the property, the particulars of which are set forth and contained in the said inventory, and to the best of my judgment and belief the several sums respectively set opposite to the several items in the said inventory fully and fairly represent the present values of the items to which they are so respectively set opposite.

No. 93.—Form of *Caveat*.

(See Section 535.)

In the District Court of _____.

Let nothing be done in the estate and effects of _____, late of _____, deceased, who died on the _____ day of _____, 18 —, at _____, unknown to (Mr. _____, of _____, Proctor for parties having interest, or as the case may be).

(Signed by the Party, and dated.)

*Civil Procedure Code.***No. 94.—Form of Certificate of Curatorship and Guardianship.**

(See Chapter XL.)

In the District Court of _____.

In the matter of the estate of *A. B.*, a minor.

1.—Whereas this court has, under the provisions of chapter XL of the Code of Civil Procedure, appointed you _____, of _____, to be curator of the estate of _____, a minor, until the said _____ shall have attained the age of twenty-one years: You are hereby entrusted with the charge of the property of the said _____; you may exercise the same powers in the management of the estate as might have been exercised by the said _____ if not a minor; and you may collect and pay all just claims, debts, and liabilities due to or by the estate of the said _____.

(2.—You are authorized to retain from the estate of the said _____, _____ rupees a month assigned by this court as a suitable remuneration for the trouble and responsibility connected with the discharge of your trust.)

3.—You are to keep regular accounts of all moneys received or disbursed by you on account of the estate, and to preserve all vouchers and other documents necessary to prove the correctness of such accounts.

4.—In the event of this certificate being recalled under the provisions of section 591 of the said Code, you will be required to make over the property in your hands to your duly appointed successor, and to account to such your successor for all sums of money or other property received or disbursed by you.

5.—In the event of your desiring to resign your trust, this court will give you a discharge therefrom on your accounting to your duly appointed successor for all sums of money or other property received or disbursed by you, and on your making over the property in your hands to such your successor.

(6.—You are also hereby appointed guardian of the person of the said _____, and are authorized to retain from the estate of the said _____ the sum of _____ rupees a month assigned by this court as a suitable remuneration for the trouble and responsibility connected with the discharge of your trust.)

7.—You are bound to provide for the education of the said _____ in a suitable manner under the general superintendence and control of this court.

8.—You are authorized to expend the sum of _____ rupees a month fixed by this court as an allowance for the maintenance and education of the said _____. (*Here may be inserted, if the court is satisfied of its expediency, a direction to raise the allowance out of corpus.*)

9.—You may, for any sufficient cause, be removed from your trust by this court.

Signed _____,
District Judge.

(When some person other than the curator is appointed guardian of the person, the above form must be modified. The heading will be the same; the recital will be that the appointee is entrusted with the charge of the person and maintenance (and education) of the minor; paragraph 2 of the last form must be adapted thus: "You are authorized to receive from the curator," &c.; paragraphs 7, 8, and 9 may be used as they stand. In this event the preceding form may be easily adapted.)

Civil Procedure Code.

No. 95.—Form of Decree for Separation *à mensâ et thoro*,
(See Chapter XLII.)

(Begin as in an ordinary decree, see No. 41, and continue—)
And it appearing to the court that the defendant has been guilty of
(state act justifying separation) so as to render it unsafe and improper
under existing circumstances for the plaintiff to cohabit with him,
or be under his dominion and control: It is thereupon ordered and
decreed that the plaintiff and defendant be separated from bed and
board for ever: Provided, however, that the parties may at any time
hereafter, by their joint and mutually free and voluntary act, apply
to this court for leave to be discharged from this decretal order,
And it is hereby declared that it will be criminal and an act void in
law for either of them, during the life of the other, to contract
matrimony with any other person. (And it is further decreed that
the plaintiff, according to the prayer of plaint, be entitled to, and
charged with the custody, care, and education of (mention the children)
in the pleadings mentioned: Provided always that this order for the
custody, care, and education of the said infant (infants) may at any
time hereafter be modified, varied, or annulled upon sufficient cause
shown.) (And it is further decreed that the defendant do pay to the
plaintiff (set out amount of alimony decreed, and manner of payment, &c.)
to be applied towards the maintenance of the plaintiff and her said
———, and that this allowance is to continue until further order,
and be subject to variation as future circumstances may require.)
And it is further ordered (state order as to costs).

No. 96.—Form of Decree of Nullity of Marriage.
(See Section 607.)

(Proceed as in last form, and continue—)
And it appearing to this court that on the ——— day of ———,
18 —, a pretended marriage was had and solemnized between the said
A. B. C. and E. F. G. otherwise called E. F. C., but that at the time
of the solemnization of the said pretended marriage (she, the said
E. F. G., otherwise called E. F. C., was insane and incapable of entering
into such a contract, or state other grounds making the marriage a nullity):
It is thereupon pronounced, declared, and decreed that the said
pretended marriage so had and solemnized between the said (names as
before) was and is wholly and absolutely null and void to all intents
and purposes whatsoever: And that the said A. B. C. was, and is, free
from all bond of marriage with the said E. F. G., otherwise called
E. F. C. (State order as to costs.)

Signature, &c. ———.

No. 97.—Form of Decree for Divorce *a vinculo matrimonii*.
(See Chapter XLII.)

Use the necessary parts of the foregoing forms. The decree will be:
That the bonds of matrimony heretofore entered into between the said
——— and ——— be and are hereby set aside, dissolved, and
annulled, and that the woman may resume her maiden name (and be
restored to the rights, &c., of a *single* sole).

The form given under No. 95 may be adapted for the orders as to
custody, &c., of children, alimony, costs, &c.

No. 98.—Form of Mandate of Sequestration.
(See Section 645.)

(Adapt the form given under Nos. 33 and 104.)

Civil Procedure Code.

No. 99.—Form of Notice of Sequestration.

(See Section 646.)

In the District Court of _____.

No. ———. A. B., Plaintiff, vs. C. D., Defendant.

Notice is hereby given that the above action was on the ——— day of ——— instituted in this court, and is now pending therein, for the recovery of the sum of ——— rupees, being value of goods sold and delivered by plaintiff to defendant, with legal interest thereon from commencement of action till payment in full and costs.

That summons was accordingly issued against the defendant at ——— to appear and answer to the said claim so made in the said action, to which summons the Fiscal of the said district did on the ——— day of ——— make his report stating that the defendant is not to be found within the district.

Whereupon the said court did on the ——— day of ——— aforesaid direct a certain writ of sequestration to issue commanding the Fiscal of the said district to sequester and seize the houses, lands, goods, moneys, securities for moneys, and debts of the defendant to the value of ——— rupees, where-soever or in whose custody soever the same may be within this district, to retain and secure the same until the said defendant shall appear and abide the order of this court, or until the said Fiscal shall receive further directions therein, which said writ was accordingly issued, and the said Fiscal did on the ——— day of ——— aforesaid make his return to the writ of sequestration, stating that he has seized and sequestered (*mention property by particulars*).

Notice is hereby given that if the said defendant do not appear in the said action and abide the order of this court, the court will on ———, the ——— day of ———, proceed with the first proclamation, and on ———, the ——— day of ——— next, proceed with the second proclamation, and on the last-mentioned day proceed to hear and decide the case *ex parte*.

N.B.—The Fiscal of the district of ——— is hereby directed to affix one set of these notices at the defendant's last place of abode, one set on the wall of the ——— Kachchéri, and one set on the wall of the District Court, and to make his return on or before the ——— day of ———, 18 —.

By order of court.

E. F.,
Secretary.

No. 100.—Form of Warrant of Arrest before Judgment.

(See Section 650.)

(Title.)

To the Fiscal of _____.

Arrest and seize ———, the above-named defendant, and keep him safely, so that you have his body before this court forthwith to answer the above-named plaintiff in an action to recover (*as the case may be*), whereof the said plaintiff has filed his plaint in this court, unless and until the said defendant shall give you good and sufficient security to the amount of ——— rupees (*or shall deposit, &c., see section 650*) to appear and answer the said plaintiff's claim, and to abide by and perform the judgment of this court, or to surrender himself or be surrendered to be charged in execution for the same; and on his giving such security you are hereby authorized to discharge the said defendant. And have here this mandate on the return day thereof.

Signed _____.

Memorandum.—This warrant is to be executed within one calendar month from the date thereof, including the day of such date, and not afterwards.

Civil Procedure Code.

No. 101.—Form of Security, &c., to be given by Defendant arrested before Judgment.

(See Section 651.)

(Title.)

Know all men by these presents that we ——— and ———, &c. (*making the Fiscal the obligee, and proceeding according to the forms Nos. 74 and 80*).

The condition, &c., is, that if the above bounden ——— do appear before the ——— court of ———, on the ——— day of ———, 18 —, to appear and answer and abide by and perform the judgment, &c. (*describe claim*), then this obligation, &c.

No. 102.—Form of Bail on Appearance.

(See Section 651.)

Bond, as in last preceding, making the secretary of the court obligee. The condition is to appear and answer, &c., in terms of section 651.

No. 103.—Form of Warrant of Commitment.

(See Section 651.)

(Title.)

To the Fiscal of ———.

Receive into your custody the body of ———, taken under a warrant of arrest at the suit of ———, and keep him safely until he give good and sufficient security in the sum of ——— rupees to abide by and perform the judgment of this court in the premises, and pay all such sum or sums of money as shall be decreed, or surrender himself or be surrendered to be charged in execution for the same.

Signed, &c. ———.

No. 104.—Form of Mandate of Sequestration.

(See Section 653.)

(Title.)

Whereas it appears that ——— is fraudulently alienating his property, &c. (*set out the necessary averments*), and the plaintiff above-named has verified his demand to the satisfaction of this court; you are therefore commanded (*proceed as in No. 38, with the necessary modifications*).

*Civil Procedure Code.***No. 105.—Form of Security to be given by Plaintiff.**

(See Section 654.)

Bond in ordinary form, the Secretary being obligee; the condition is to pay all sums of money awarded by the court to defendant as costs, damages, or otherwise sustained by reason of arrest or sequestration.

No. 106.—Form of Authority to Proctors to apply for Reference to Arbitration.

(See Section 676.)

(Title.)

Whereas we ——— (plaintiff and defendant) are desirous that *(here state the particular matter sought to be referred)* in the action above specified should be referred to the final decision of the arbitrator *(or arbitrators)* herein-below named, viz. *(nomina)*.

Therefore we, the said ——— and ———, do hereby specially authorize our proctors, that is to say, ——— on the part of the said plaintiff, and ——— on the part of the said defendant, to apply to the said court for an order of reference accordingly.

Witness our hands this, &c.

Witnesses,

———, Plaintiff.

———, Defendant.

No. 107.—Form of Order of Court referring matter to Arbitration.

(See Section 677.)

(Title.)

Upon *(&c.)*, It is ordered, by and with the consent of all parties, that *(state the matter)* in difference between them in this action *(including all dealings and transactions between all parties)* be referred to the final determination of ——— and ———, who are to make their award in writing and submit the same to this court together with all proceedings, depositions, and exhibits in this action within ——— from the date hereof. And it is further ordered, by and with the like consent, that if the said arbitrators are unable to agree upon any award in the premises, within the time so fixed for the making of their award *(state whether any particular umpire is to be appointed, or that the arbitrators are empowered to appoint an umpire, or as the case may be; and in case an umpire is appointed, limit the time for his award)*. And it is further ordered, by and with, &c., that the said arbitrators *(or umpire)* shall be at liberty to examine the parties and their witnesses upon oath or affirmation which they *(or he)* are *(is)* empowered to administer, and shall have all such powers or authorities as are vested in arbitrators *(and umpires)* under the Code of Civil Procedure, including therein power to call for all books of account they *(or he)* may consider necessary. And it is further, &c., that the costs of this action, together with the costs of this reference up to and including the award of the said arbitrators *(or umpire)*, and the enforcement thereof, do abide the result of the finding of the said arbitrators *(or umpire)*. And it is further, &c., that the said arbitrators *(or umpire)* be at liberty to appoint a competent accountant to assist them *(or him)* in the investigation of the several matters so referred as aforesaid, and that the remuneration of such accountant and other charges attending the same be in the discretion of the said arbitrators *(or umpire)*.

(Signed as an order.)

Civil Procedure Code.

No. 108.—Form of Order of Reference on the above.

(See Section 577.)

(Title.)

To _____ and _____.

Whereas the above-named plaintiff and defendant have agreed to refer all matters in difference between them (or state the particular matter) in the above-named action to your arbitration and award: You are hereby appointed arbitrators accordingly to determine all the said matters in difference between the parties, and with power to determine which party shall pay the costs, &c. (*Direct the delivery of the award as in preceding form; give power to appoint an umpire in cases of difference, specifying particular umpire if necessary; give power to appoint an accountant as in preceding form, and continue.*) Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this court on your application, and you are empowered to administer to such witnesses oath or affirmation.

Given, &c.

Judge.

No. 109.—Form of Notice to Arbitrators to appoint an Umpire.

(See Section 680.)

(Title.)

To (arbitrators).

Whereas by an order of court made in the above-named action on the _____ day of _____, 18—, you were appointed arbitrators for the decision of the matters therewith referred to you, and were by the terms of the said order of reference empowered to appoint an umpire in the event of your failing to agree upon an award within the time therein limited, and such time has elapsed and no umpire has yet been appointed by you:

This is to give notice that I hereby require you to appoint an umpire forthwith.

Signed and dated _____,
Party Plaintiff (or Defendant).

No. 110.—Form of Notice of Filing of Award.

(See Section 685.)

(Title.)

To (parties).

This is to give you notice that the arbitrators (or umpire) appointed in the above action have (has) this day filed their (his) award in this court.

Given, &c.

Judge.

Civil Procedure Code.

No. 111.—Form of Citation.

(See Section 712.)

(Title.)

To _____,

Whereas one *A. B.* (executor of the last will of _____, deceased, or administrator of the estate and effects of _____, deceased), has presented a petition to this court praying that you may be cited to attend an inquiry whether (*set out shortly the substance of the application*); and whereas the said *A. B.* has satisfied this court that there are reasonable grounds for such inquiry: You are hereby cited and required personally to be and appear before this court on the _____ day of _____, 18—, at _____ o'clock of the forenoon, then and there to answer (*set out what the subject of the inquiry is*).

Signed, &c. _____,

District Judge.

No. 112.—Form of Order to be annexed to, or endorsed on, the preceding.

(See Section 713.)

(Title.)

On reading and filing the petition of *A. B.*, dated _____ (and on reading the affidavit, &c., and hearing the evidence, &c.): It is ordered that a citation returnable on the _____ day of _____, 18—, at _____ o'clock of the forenoon, do issue to _____, requiring him to (*set out as in last form*).

Signed, &c. _____,

District Judge.

No. 113.—Form of Affidavit of Failure to return Inventory.

(See Section 714.)

(Formal part as in No. 75.)

1.—(*Allege residence and interest in estate.*)

2.—That (*probate was granted of the will, or letters of administration issued of the estate and effects*) of _____, deceased, by a decree of this court dated, &c., to one _____, of _____.

3.—That more than _____ has elapsed since the said appointment, and the said _____ has not returned any inventory of the property and effects of the said _____ (*or any sufficient inventory, &c., specifying the defects*).

(Formal conclusion.)

No. 114.—Form of Petition for Payment of Debt.

(See Section 720.)

(Title.)

The petition of *A. B.* sheweth as follows:

1.—Your petitioner resides at _____ in _____, and is a creditor of the estate of _____, deceased, late of _____ (probate of whose will was, or letters of administration to whose estate and effects were) duly issued to one _____, of _____, by a decree of this court dated the _____ day of _____, 18—, and more than twelve months have elapsed since such (grant or letters).

2.—That the said _____ has filed an inventory of the property and effects of the said _____,

Civil Procedure Code.

3.—(*Allege claim, as, e.g.:*) On the _____ day of _____, 18 __, your petitioner, in an action brought by him in the _____ court of _____ against the said _____ as (executor or administrator) of the said _____, upon a debt then justly due to him from the estate of the said deceased, recovered a judgment duly given by the said court against the said _____ as such (executor, &c.) for the sum of _____ rupees. And no part of the same has been paid (except _____).

4.—Your petitioner is informed and believes that the said _____ has sufficient assets in hand applicable to the payment of your petitioner's claim (or to pay one _____ th thereof), and that the same can be so applied without injuriously affecting the rights of others entitled to priority or equality of payment with your petitioner.

5.—Your petitioner has applied to the said _____ for payment of his said claim, and the same has not been paid.

Wherefore, &c., that a decree be made requiring the said _____ to (render an account of his proceedings and) pay the said claim, and that the said _____ be cited to show cause why he should not pay the same.

(Conclusion.) _____

No. 115.—Form where Applicant is a Legatee.

(See Section 720.)

Proceed as in last preceding form, substituting in paragraph 1: "Legatee named in the will of _____" for "creditor of the estate of _____"; and add "and by the said will a legacy of _____ rupees was bequeathed to your petitioner." Omit paragraph 3. In paragraphs 4 and 5 for "claim" substitute "legacy (or distributive share)"; and in the prayer make the corresponding alterations.

No. 116.—Form of Citation on preceding Applications.

(See Section 721.)

(Title as in No. 111.)

Proceed as in No. 111. The citation is "to show cause why a decree should not be made directing you as (executor or administrator, &c.) of _____, deceased, to pay the claim of _____ against the estate of the said deceased in the sum of rupees _____."

No. 117.—Form of Decree on the preceding Citation.

(See Section 721.)

(Title.)

A. B., of _____, having presented to this court a petition dated the _____ day of _____, 18 __, asking that a decree be made herein directing the said _____ (executor, &c.) to pay (state claim; and if petition was by a creditor, add statement of issues and return of service of citation). And it having been proved to the satisfaction of this court by the said petition and the affidavit of, &c., that the assets of the said deceased in the hand of the said _____ exceed the debt (and where the petitioner is a creditor: And that the petition may be granted without injuriously affecting the rights of others entitled to priority or equality of payment or satisfaction): It is decreed that the said _____ the (executor, &c.) of the said _____, deceased, pay to the said A. B. (the full) amount of his said claim, to wit, _____ rupees, with interest thereon at _____ per cent. per annum from the _____ day of _____, 18 __, the whole amounting to rupees _____.

Signed _____,
District Judge.

*Civil Procedure Code.***No. 118.—Form of Account to be filed by Executor or Administrator.**

(See Section 723 et seq.)

(Title.)

(The only difference between a voluntary account and an account ordered by the court will be that the former will be headed "In the matter of the voluntary account of ———, executor (or administrator, &c.) of ———, deceased," and the latter "In the matter of the judicial settlement of the account of," &c.)

To the District Court of ———.

I, A. B., of ———, do hereby render the following account of my proceedings as executor of the will (or administrator, &c.) of ———, late of ———, deceased (if not brought down to date, add "to and including the ——— day of ——— last").

On the ——— day of ———, 18 — (recite grant of probate or administration), were issued to me.

I subsequently caused an inventory of the property and estate of the deceased to be filed in this court, which property amounts as therein set forth, by appraisement, to ——— rupees.

Schedule A hereto annexed contains (here enumerate the schedules. As many schedules and in such order and relation as will best exhibit clearly all transactions had, whatever they may be, should be annexed: such as statement of property sold, with prices and manner of sale; statement of debts collected and not collected; property unsold and perished by loss, &c.; moneys paid for funeral and other expenses; and in referring to them show that things done have been properly done, and give the reasons why certain things have not been done).

On or about the ——— day of ———, 18 —, I caused a notice for claimants to present their claims against the said estate (show manner of notice and publication).

Schedule ——— contains a statement of all the claims of creditors presented and allowed, or disputed by me (&c.).

(Go on to show that there are schedules containing statements of payments to legatees, names of persons entitled as widows, next of kin, legatees, &c., and finally:)

Schedule ——— hereto annexed contains a statement of all other facts affecting my administration of the said estate, and my rights and those of others interested therein.

I charge myself as follows:

Rs.

With amount of inventory
With amount of increase as shown by Schedule A

I credit myself as follows:

With amount of loss on sales as shown by
Schedule B
With debts not collected as shown by ———

Leaving a balance of ——— rupees, to be distributed to those entitled thereto, subject to the deduction of the amount of my compensation and the expenses of this accounting. The said schedules, which are severally signed by me, are part of this account.

Signed, &c. ———.

(Schedules in order, each signed.)

(Affidavit as in next form.)

No. 119.—Form of Affidavit of Accounting Party.

(See Section 733.)

(Title and formal parts "In the matter," &c., as in last form.)

I, A. B. (executor, or as may be), of ———, deceased, being (&c.), say that the charges made in the foregoing account of proceedings and schedules annexed, for moneys paid by me to creditors, legatees, and

Civil Procedure Code.

next of kin, and for necessary expenses, are correct; that I have been charged therein all the interest for moneys received by me and embraced in the said account, for which I am legally accountable; that the moneys stated in the said account as collected were all that were collectible according to the best of my knowledge, information, and belief, on the debts stated in such account at the time of this settlement thereof; that the allowances in the said account for the decrease in the value of any assets and the charges therein for the increase in such value are correctly made; and that I do not know of any error in the said account or anything omitted therefrom which may in any wise prejudice the rights of any party interested in the said estate. And I further say that the sums under twenty rupees charged in the said account, for which no vouchers or other evidences of payment are produced, or for which I may not be able to produce vouchers or other evidences of payment, have actually been paid and disbursed by me as charged, and that the said account contains to the best of my knowledge and belief a full and true statement of all my receipts and disbursements on account of the estate of the said deceased, and of all moneys and other property belonging to the said estate which have come into my hands, or which have been received by any other person by my order, or authority for my use, and that I do not know of any error or omission in the account to the prejudice of any creditor of, or person interested in the estate of, the said deceased.

(Formal conclusion.)

No. 120.—Petition for Judicial Settlement of
Executor's Account.

(See Section 725.)

(Adapt form No. 114, adding:)

That _____ has elapsed since issue of (*probate, &c.*), but the said (executor, &c.) has not rendered any account of his proceedings as such.

No. 121.—Form of Order on Executor, &c., to
render Account.

(See Section 727.)

(*Title of the action, "and in the matter of the judicial settlement of the account _____," &c.*)

A citation having been heretofore issued on the petition of _____, requiring _____ to show cause before this court on _____ at _____, &c., why he should not render his account as (executor, &c.) of _____, late of _____, deceased, and the said citation having been returned on that day together with proof of due service on the said _____, and the said _____ having failed to appear (or to show cause to the contrary and to present a petition that his account be judicially settled); It is ordered that the said _____ render an account of his proceedings as (&c.) to this court on the (&c., at &c.) and file the same herein on or before that time; and that the said _____ personally be and appear before this court at that time and attend from time to time for the purpose of the said account as the court may order; and that in case of disobedience to this order an attachment may issue against him.

Signed, &c. _____,
District Judge.

*Civil Procedure Code.***No. 122.—Form of Executor's Petition for a Judicial Settlement.**

(See Section 729.)

*(Title.)*To the District Court, &c. (*formal hearing*).1.—More than one year since (*recite issue of probate or administration to petitioner*).2.—The persons interested in the estate of the said deceased as creditors, wife (husband), next of kin (legatees), or otherwise, and their places of residence, to the best of the knowledge, information, and belief of your petitioner, are as follows; to wit: (*Set out. If necessary, negative the existence of any more; and where an address cannot be ascertained, show that it is so*).Wherefore (&c.) that his account of his proceedings as such _____ may be judicially settled, and that the creditors or persons claiming to be creditors of the deceased, and the said wife (husband), next of kin (legatees) (and the said _____ as executor (*or otherwise*) of the said _____) (and your petitioner's co-executor, C. D.) be cited to attend such settlement.*(Formal conclusion.)**Signed, &c.* ———**No. 123.—Form of Citation on such Application.**

(See Section 729.)

*(Adapt No. 111. The citation is: "to attend the final judicial settlement of the account of the proceedings of _____ as _____, &c. of the said deceased _____.")***No. 124.—Form of Answer by Party contesting an Account.**

(See Section 730.)

*(Title as in form of account.)*A. B., a creditor (*or a legatee or otherwise*) of the said _____, deceased, contesting the _____ account filed by _____, executor (*or, as the case may be*) of, &c., alleges that the said account is erroneous in the following particulars:*(Here set forth objections, e.g., thus:)*

- 1.—That the item of _____ rupees for _____ is extravagant, &c.
- 2.—That the item of _____ rupees is without vouchers, &c. (*as the case may be*).
- 3.—That the said account should be surcharged by the following items:

(1) That it does not include (*and so on*).4.—The item of _____ rupees is erroneous (*and so on with regard to all the items to which objection is taken*).

Lastly.—Your contestant further reserves the right and privilege of making the foregoing objections more definite and certain, and of interposing other and further objections to the said account, or to any of the acts of the said (executor, &c.).

(Signature and address of contestant.)

The _____ day of _____, 18 —

Civil Procedure Code.

No. 125.—Form of Decree on Final Settlement of Account.

(See Section 740.)

(Title, &c., and in the matter, &c.)

A. B. (executor or administrator, &c.), of _____, late of _____, deceased, having heretofore made application to this court for a judicial settlement of his final account as such _____ (or, where the application was made by some one else, recite accordingly), and a citation having been thereupon issued (recite terms of citation), and the said citation having been returned and filed with proof of the due service thereof on (insert), and the said (executor) having appeared on the return day of the said citation, and the said (executor) having rendered his account under oath (or affirmation) before this court; and the said account having been filed together with the vouchers in support thereof, and no objection having been made to the said account (or recite fact of objections), and the said matter having been duly adjourned to this day, this court, after having examined the said account and vouchers, now finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof made by the said court, as finally settled and adjusted by the court to be recorded with and taken to be a part of the decree in this matter, to wit:

A summary statement of the account of A. B. (executor, &c., set out) made by this court as finally and judicially settled and allowed.

The said (executor) is chargeable as follows :				Rs.
With amount of inventory	...	...	...	_____
With amount of increase as per Schedule A	...	...	...	_____
He is credited as follows :				_____
With amount of loss on sales as per Schedule B	...	...	...	_____
&c.	&c.	&c.	...	_____
Leaving a balance of	...	...	...	_____
The said balance consists of :				_____
_____	_____
_____	_____

And it appearing that the said (executor) has fully accounted for all the moneys and property of the said deceased which have come into his hands as such _____, and his final account having been adjusted by the said court and a summary settlement of the same having been made as above recorded: It is hereby ordered and decreed:

That the said account be and the same is hereby finally and judicially settled and allowed as filed and adjusted.

And it is further ordered and decreed that out of the balance so found, as above, remaining in the hands of the said (executor), he retain the sum of _____ rupees for the compensation to which he is entitled on this account; and that he pay into this court the sum of _____ rupees for the expenses of this accounting.

(Other recitals and directions will have to be inserted according to circumstances.)

And it appearing that after retaining the amounts above specified a balance of _____ rupees will remain in the hands of the said (executor): It is therefore further ordered and decreed that the said (dec.) distribute the said remaining balance of _____ rupees as follows, viz.: That he pay (dec., setting out how the balance is to be distributed).

And it is further ordered and decreed that the said (dec.) pay the remainder of the said balance, being the sum of _____ rupees, to _____ (the residuary legatee named in the said will).

(Formal conclusion.)

*Civil Procedure Code.***No. 126.—Form of Notice to Respondent that Appellant will tender Security in Appeal, &c.**

(See Section 756.)

*(Head with the title of the action in the lower court.)*To *(respondent)*.

Take notice that the petition of appeal presented by me in the above-named action on the _____ day of _____, 18 —, against the (order or decree) of the _____ court of _____, dated the _____ day of _____, 18 —, in the said action, having been received by the said court, counsel on my behalf will, on the _____ day of _____, 18 —, at _____ o'clock of the forenoon, or so soon thereafter as, &c. (being within _____ days from the day of the date of such (order), move to tender security by *(mention how)* for any costs which may be incurred by you in appeal in the premises, and will on the said day deposit in court a sufficient sum of money to cover the expenses of serving notice of appeal on you.

Signed _____,
Party Appellant.

The _____ day of _____, 18 —.

No. 127.—Form of Notice of Appeal to be served on Respondent or his Proctor.

(See Section 756.)

*(Head as in last form.)*To *(party respondent or his proctor)*.

You are required to take notice that the petition of appeal of the _____ from the (order) of this court dated, &c., in the above-named action having been received, and the security tendered by him for your costs of appeal in the said matter having been accepted, and a sufficient sum of money to cover the expenses of serving this notice on you having been deposited in this court, the petition of appeal of the said _____, copy of which is hereto annexed, will be forthwith forwarded to the Supreme Court for hearing in due course.

By order of court,

The _____ day of _____, 18 —.

Signed _____.

No. 128.—Form of Secretary's Certificate in Appeal.

(See Section 756.)

Case instituted.	Order made.	Decision in whose favour.	Petition of Appeal filed.	Security given on	Whether Plaintiff or Defendant appeared in formal papers.

I, A. B. (secretary, &c.), do hereby certify that the above statement is correct.

(Signed and dated.)

Civil Procedure Code.

No. 129.—Form of Security Bond in Appeal.

(See Section 757.)

(Follow the ordinary form of bond, making the secretary, &c., obligee, and making the condition: "to pay all costs which shall be incurred and taxed in prosecution of the said appeal if the said appellant shall be decreed to pay the same.")

No. 130.—Form of Security Bond where Execution is stayed.

(See Section 761.)

(Follow the last form, making this condition: "That if the above-bonded, &c., shall duly prosecute the appeal which he has instituted against, &c., and shall well and truly perform and abide by the judgment which shall ultimately be pronounced by the Supreme Court on the said appeal, and shall pay any sum or sums of money which the said Supreme Court shall decree to be paid by the said appellant, and shall pay all costs, as well those incurred and taxed in the said ——— court as those which shall," &c., as in last form.)

No. 131.—Form of Security in Appeal to the Privy Council.

(See Section 783.)

(Adapt the last form.)

No. 132.—Form of Summons to Person Accused of Contempt of Court.

(See Section 793.)

In the ——— court of ———.

Whereas your attendance is necessary to answer to a charge of contempt committed against the authority of this court in that you (having duly attended the same in obedience to a summons requiring you to testify on behalf of one ——— in (title of case, &c.), departed from the said court in contravention of the provisions of section 136 of the Code of Civil Procedure (or as the case may be) as appears from (state how): You are hereby required to appear in person before this court on the ——— day of ———, 18 —, at ——— o'clock of the forenoon, to answer to the said charge.

Signed and dated ———
Judge.

Civil Procedure Code.

No. 133.—Form of Warrant in the like case.

(See Section 794.)

(Heading as in last form.)

To _____, Fiscal, &c.

Whereas _____, of _____, has been summoned to attend in person before this court on the _____ day of _____, 18—, at _____ o'clock of the forenoon, to answer to a charge of contempt of the authority of this court, and this court has reason to believe that the attendance of the said _____ cannot be secured to answer such charge on the said day without the issue of a warrant in that behalf: You are hereby directed to arrest the said _____ and him safely keep in custody, and to produce him before this court on the said _____ day of _____, 18—, at _____ o'clock of the forenoon accordingly.

(Endorse on this warrant: If the said _____ shall at any time after such his arrest give you good and sufficient security either by his own bond or that of some other person in the sum of _____ rupees to attend before this court on the said _____ day of _____, and to continue so to attend until otherwise directed by the court, he may be released.)

No. 134.—Form of Conviction for Contempt.

(See Section 797.)

In the _____ court, &c.

A. B. being this day before this court on a charge of having committed contempt of the authority thereof, in that he on the _____ day of _____ (*state charge*), and it appearing (after reading in evidence the minute recorded by the court, &c., or as the case may be, and where the fact is so, and after hearing the evidence of _____, of _____) that (*state here the material facts of behaviour, language, &c., which under the circumstances amount to contempt*):

The said *A. B.* is therefore hereby convicted of the offence of having committed contempt of the authority of this court, and he is sentenced therefore to undergo (*state term of imprisonment, or to pay a fine of _____ rupees, &c.*).

Signed and dated _____,
Judge.

No. 135.—Form of Admission by the Defendant.

(See Section 809.)

The _____ day of _____, 18—

The defendant appears and admits the claim, and consents to judgment being entered for the plaintiff as prayed for in his plaint.

Signed in my presence :
_____, Chief Clerk.

_____, Defendant.

Civil Procedure Code.

SCHEDULE III.

DISTRICT COURTS.

Scale of Costs and Charges to be paid to Proctors in the District Courts as well between Party and Party as between Proctor and Client.

	Class I.	Class II.	Class III.	Class IV.	Class V.
Where the cause of action, title to land or property, value of estate, or subject-matter of the action is	Under Rs. 500.	Rs. 500 and under Rs. 750.	Rs. 750 and under Rs. 3,000.	Rs. 3,000 and under Rs. 5,000.	Rs. 5,000 and under Rs. 10,000.
	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.
Conference with client and receiving instructions to sue, defend, intervene, or interplead, to obtain or to oppose the grant of letters of administration or letters of guardianship or probate, or to take any other proceedings provided for under this Ordinance ...	1 75	2 50	4 0	5 0	6 0
Proxy to Proctor for any of the above purposes ...	0 50	0 75	1 0	1 0	1 25
Letter of demand ...	0 75	1 25	1 75	1 75	1 75
Every necessary attendance on client in the progress of an action or proceeding ...	0 75	1 0	1 50	2 0	3 0
Every necessary attendance on Advocate ...	0 75	1 0	1 50	2 0	3 0
Every necessary attendance on the Judge, Secretary, Fiscal, Justice of the Peace, adverse party or his Proctor or Advocate, Registrar of Lands, or any other person in the progress of an action or proceeding ...	0 50	0 75	1 0	1 0	1 0
Drawing plaint, answer, replication, plea, or any other pleading, petition, or application ...	1 25	2 50	3 75	5 0	6 0
Preparing written instructions for Counsel to draw or settle the above, and attendance therewith ...	1 0	1 30	2 0	2 50	3 0
Attending court and filing plaint, answer, replication, plea, or any other pleading, petition, or application ...	1 0	2 50	3 75	4 0	4 0
Making and serving copy of same or translation thereof for service, per folio* ...	0 25	0 50	0 50	0 50	0 50
Making copies of documents to be filed with pleading, or for service on parties, per folio* ...	0 12½	0 12½	0 12½	0 12½	0 12½
Drawing summons, notice, subpoena, writ, or other process, order of court, decree, or judgment ...	0 50	0 75	1 0	1 25	1 50
Making copy or translation thereof ...	0 12½	0 25	0 37½	0 37½	0 37½
Attending Secretary to get the same signed ...	0 75	1 0	1 25	1 25	1 25
Attending court to search for return to summons or notice ...	0 75	1 0	1 75	1 75	1 75
Attending court without Advocate to support or oppose application or motion for judgment or any other special motion or application ...	2 0	3 0	4 0	5 0	7 50

* A folio to consist of 120 words.

Civil Procedure Code.

	Class L.	Class II.	Class III.	Class IV.	Class V.
Where the cause of action, title to land or prop- erty, Value of estate, or subject-matter of the action is	Under Rs. 200.	Rs. 200 and under Rs. 750.	Rs. 750 and under Rs. 3,000.	Rs. 3,000 and under Rs. 5,000.	Rs. 5,000 and under Rs. 10,000.
	Rs. c.	Rs. p.	Rs. c.	Rs. c.	Rs. c.
Attending court to support or oppose all necessary or ordinary applications or motions	1 0	1 50	2 0	3 50	3 0
Drawing affidavit and fair copy, per folio*	0 50	0 50	0 50	0 50	0 50
Drawing probate, letters of administra- tion, interrogatories, cross interroga- torics, commissions, special case, injunctions, sequestrations, proclama- tion bonds, reference, citations, inven- tories, accounts, bills of costs, and fair copy, per folio*	0 50	0 50	0 75	1 0	1 25
Drawing brief for Advocate and fair copy, per folio*	0 25	0 30	0 50	0 50	0 30
Making copy of pleadings and docu- ments to accompany brief, per folio* ..	0 12½	0 12½	0 12½	0 12½	0 12½
Where two or more Advocates are engaged, for drawing second brief (no charges for further briefs), per folio*	0 12½	0 25	0 25	0 25	0 25
Attending court with Advocate on trial, if cause argued or heard	5 0	10 0	10 0	12 50	15 0
Attending court with Advocate on trial, if cause adjourned, postponed, or struck off	1 25	2 50	2 50	3 75	3 75
Attending court without Advocate on trial, and conducting cause	5 0	10 0	10 0	12 50	15 0
Attending court without Advocate on trial if cause adjourned, postponed, or struck off	1 25	2 50	2 50	3 75	3 75
Where judgment is deferred, attending court to hear it	0 75	1 25	1 75	1 75	1 75
Attending arbitration without Advoca- te, each sitting (no fees after sixth sitting)	3 50	3 75	5 0	5 0	5 0
Attending arbitrator with Advocate, each sitting (no fees after sixth sit- ing)	1 25	2 50	3 75	4 0	5 0
Attending Commissioner to examine or cross-examine witnesses on local examination of accounts or for any other purpose with Advocate	1 25	2 50	3 75	4 0	5 0
Attending Commissioner as above with- out Advocate	2 50	3 75	5 0	5 0	6 0
Perusing and considering papers, exhibits, or documents furnished or used in any action or proceeding by the adverse party, or furnished by a party to his own Proctor for the pur- pose of being used as evidence in any action or proceeding	Such sum as the Secretary shall consider fair and reasonable, subject to review and appeal as provided in this Ordinance.				
Examining witnesses preparatory to trial or for instructions for brief	1 0	1 50	2 0	3 50	3 0
For every necessary letter vouched by letter-book, exclusive of postage	0 25	0 50	0 50	0 50	0 50
Serving copy of bill of costs	0 25	0 37½	0 50	0 50	0 50
Attending taxation	0 75	1 50	2 50	2 30	2 50

* A folio to consist of 120 words.

Civil Procedure Code.

Maps, surveys, plans, or models, when necessary, such sum as the Secretary shall deem reasonable, subject to review and appeal.

Witnesses' expenses as the court may determine.

All necessary instructions, applications, and motions, and all necessary attendance at consultations, and copies of documents, and all fees and charges not otherwise provided for (including as between proctor and client perusing and writing letters), such sum as the Secretary shall deem reasonable, subject to review and appeal.

In all actions involving over Rs. 10,000, the taxable charges to be 1-6th higher than in Class V.

Scale of Fees to be paid to Advocates in the District Court.

	Class I. Under Rs. 200.	Class II. Rs. 200 and under Rs. 750.	Class III. Rs. 750 and under Rs. 2,000.	Class IV. Rs. 2,000 and under Rs. 5,000.	Class V. Rs. 5,000 and upwards.
Where the cause of action, title to land or property, value of estate, or subject-matter of the action is					
Retainer	Rs. 10 50	Rs. 10 50	Rs. 21 0	Rs. 21 0	Rs. 21 0
Advising action, defence, or appeal	10 50	10 50	21 0	21 0	21 0
Drawing, perusing, settling, and signing any pleading, application, or petition	10 50	10 50	21 0	21 0	21 0
Drawing, perusing, and settling special case	10 50	21 0	31 50	31 50	31 50
Drawing, perusing, and settling interrogatories, decree, &c.	10 50	10 50	21 0	21 0	21 0
Consultation fee	10 50	10 50	21 0	21 0	21 0
Supporting or opposing any special motion or application	10 50	21 0	21 0	21 0	21 0
Brief fee on trial or argument	21 0	42 0	62 50	62 50	105 0
Brief fee where trial or argument is resumed	10 50	21 0	21 0	21 0	31 50

N.B.—(1) The fee of a Junior Advocate will not be allowed where two Advocates are engaged in Classes I. and II.

(2) No fees will be allowed for a third Advocate in any class.

(3) The brief fee of a Junior Advocate, where two Advocates are engaged, will be half of the Senior Advocate's brief fee.

The Secretary may allow any charges or fees as he shall deem reasonable (not otherwise provided for) on special application being made to him, subject to review and appeal as provided in this Ordinance.

COURTS OF REQUESTS.

Scale of Costs and Charges to be paid to Proctors in the Courts of Requests as well between Party and Party as between Proctor and Client.

<i>In Money Cases which have not been contested :</i>		Rs. c.
Rs. 20 and not exceeding Rs. 50	...	5 0
Above Rs. 50 and not exceeding Rs. 100	...	10 0
<i>In Money Cases which have been contested :</i>		
Rs. 20 and not exceeding Rs. 50	...	10 0
Above Rs. 50 and not exceeding Rs. 100	...	16 0
<i>In all Land Cases :</i>		
Under Rs. 50	...	10 0
Rs. 50 and upwards	...	20 0
<i>Advocates' Fees :</i>		
Retainer and brief fee in all cases above Rs. 50, Rs. 10-50 to		21 0

Civil Procedure Code.

Surveys and plans when necessary, such sum as the Clerk of the Court shall deem reasonable, subject to review and appeal.

Witnesses' expenses, as the court may determine.

The Commissioner may allow a further sum as costs on special application being made, subject to appeal.

For interpleader, summary, or other incidental proceedings, such costs as the Commissioner in his discretion may allow, subject to appeal.

SUPREME COURT.

In Appeal.

Advocates' Fees.

<i>Appeals from Courts of Requests.</i>		Rs. c.	to	Rs. c.
Brief fee on argument	...	10 50		21 0
<i>Appeals from District Courts or Supreme Court.</i>				
Retainer	...	---		10 50
Consultation fee	...	10 50	to	31 50
Making or opposing any special motion	...	10 50	to	31 50
Brief fee	...	21 0	to	105 0
Drawing, perusing, settling, and signing any application or petition	...	10 50	to	31 50

Proctors' Fees as well between Party and Party as between Proctor and Client.

	Classes	Class	Classes
	I & II.	III.	IV. & V.
<i>Appeals from District Courts.</i>	Rs. c.	Rs. c.	Rs. c.
Proxy	0 75	1 0	1 50
Instructing Advocate to make or oppose any special motion, or for advice on appellant's or respondent's case	5 0	7 50	10 0
Drawing brief for Advocate or any bond, affidavit, petition, or application, and fair copy, per folio ^a	0 25	0 50	0 50
Close copy of pleadings, evidence, and documents to accompany brief, per folio ^a	0 12½	0 12½	0 12½
Attending court	5 0	7 50	10 0
Every necessary attendance on Registrar	2 50	2 50	2 50
Drawing bill of costs	2 25	2 25	2 25
Serving copy with notice of taxation	0 75	0 75	0 75

The Registrar may allow any charges or fees not specially provided for, as he shall deem reasonable, on special application being made, subject to an appeal to the court.

^a A folio to consist of 120 words.

19th February, 1889.