

No. 4 of 1889.

An Ordinance to amend "The Land Registration Ordinance, 1877."

(See No. 5 of 1877.)

WHEREAS it is expedient to amend the Ordinance No. 5 of 1877, intituled "The Land Registration Ordinance, 1877:" Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows :

Preamble.

1 This Ordinance shall, so far as is consistent with the tenor thereof, be construed and read as one with the Ordinance No. 5 of 1877, intituled "The Land Registration Ordinance, 1877," and hereinafter referred to as "the principal Ordinance," and this Ordinance may be cited as "The Land Registration Ordinance, 1889."

Construction and short title of Ordinance.

2 When any division is brought within the operation of the principal Ordinance by a Proclamation issued under section 5 thereof, any action or proceeding at law heretofore instituted, or which may hereafter be instituted, in any district court or court of requests or before any village tribunal, between the date of such Proclamation and the expiration of the period of six months mentioned in section 27 of this Ordinance—

No action at law to be brought between date of Proclamation under section 5 of Ordinance No. 5 of 1877 and expiration of notice under section 27 of this Ordinance.

- (a) In respect of any title to, or interest in, land situate within such division (except for the realization of a mortgage), when such title or interest can be made the subject of registration ; or
- (b) For the partition or sale, under the provisions of the Ordinance No. 10 of 1863, of any land situate within such division—

shall abate.

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Power to registrar to consolidate claims.

3 The registrar may, when he thinks fit, consolidate the claims of one or more persons made in pursuance of the provisions of the principal Ordinance, and the same shall then form the subject of one and the same investigation, and the record of all evidence, whether oral or documentary, taken by the registrar at such investigation shall be filed with any one of the statements of the claims so consolidated as aforesaid; and the finding or decision on each of such claims, and his reasons therefor, and all orders of the registrar in relation thereto, shall be duly entered on the said record, anything in the principal Ordinance to the contrary notwithstanding.

Claim of married woman on behalf of husband.

4 The registrar may, when he thinks fit, in respect of property held in community by a husband and wife, allow the wife to prefer a claim for and on behalf of her husband; and such claim when made may be dealt with in manner provided by the principal Ordinance as if such claim had been made personally by the husband or by his agent.

Power to registrar to accept claims at the investigation although not previously received or recorded.

5 At any investigation of disputed or undisputed claims, the registrar may, if he thinks fit, and he shall, when the other claimants consent thereto, receive and record any claim made by any person to or in respect of any land which has not previously been received or recorded under the provisions of the principal Ordinance. And every such claim so received and recorded as aforesaid shall be dealt with and disposed of in the same manner and subject to the same provisions as set forth in the principal Ordinance in respect of claims made under the 8th section thereof.

Power to registrar to issue writs of possession.

6 When the registrar shall have recorded, under section 12 of the principal Ordinance, on the statement of claims whether the title to the land or interest claimed is one of the first class or of the second class, or when the registrar shall have determined and decided upon the respective claims of the parties and recorded on the statement of claims whether the title made out is one of the first class or of the second class under the provisions of section 14 of the principal Ordinance, every claimant whose claim has been upheld, or his agent, may apply to the registrar for a writ of possession as against the unsuccessful claimant or claimants, and the registrar may at his discretion order such writ to issue as near as material in the form A in schedule I. hereto, upon the applicant giving such security as shall be determined by the registrar, and such writ shall be enforced according to the terms thereof by the fiscal, in the same manner as if such writ was issued by a district court.

Proviso.

Provided that in any case in which an appeal is allowed to the Supreme Court under the 21st section of the principal Ordinance, no writ of possession shall issue before the expiry of the time allowed for such appeal, and that in the event of an appeal being taken the registrar may, after the Supreme Court has made order thereon, issue a writ of possession in conformity with such order.

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7 If in the execution of a writ of possession issued under section 6 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 person placed by the officer in possession is hindered by any person in taking complete and effectual possession, the person in whose favour the writ of possession has issued, or his agent, may at any time within one month from the time of such resistance or obstruction, complain thereof to the registrar, and the registrar shall appoint a day for the determination of the complaint, and intimate to the person obstructing the writ that he will be heard in opposition to the petitioner if he appears before the registrar for that purpose on the day so appointed.

Procedure in event of resistance to execution of writ of possession.

8 On the hearing of the matter of the petition of complaint so made, the registrar, if he is satisfied that the obstruction or resistance complained of was occasioned by one or more of the unsuccessful claimants, or by some person at his or their instigation, may sentence such unsuccessful claimant or claimants, or the person acting on the instigation of such unsuccessful claimant or claimants, to imprisonment for a term not exceeding thirty days, and direct the person in whose favour the writ of possession issued to be put in possession of the property.

Punishment of person obstructing execution of writ of possession.

9 If in the execution of a writ issued by the registrar any claim is preferred to, or objection offered against, the seizure or sale of any immovable or movable property which may have been seized thereunder 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 registrar, and the registrar shall thereupon proceed in a summary manner to investigate such claim or objection, and shall record the evidence, whether oral or documentary, taken at such investigation, in a separate file; and his finding or decision thereon, and his reasons therefor, and his orders in relation thereto, shall be duly entered on the said record. And the record so made up shall be open at all reasonable times, upon application in writing first being made to the registrar, to the inspection of any party interested in such investigation, or his duly authorized counsel or agent, who shall be entitled to copies of such record or any part thereof to be made at the expense of the party applying for the same.

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

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

Registrar may stay sale.

11 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.

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Discretion of registrar to release the property claimed.

12 If upon the said investigation the registrar is satisfied that for the reason stated in the claim or objection such property was not, when seized, in the possession of the person against whose property the writ was issued, 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 person against whose property the writ issued, 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 registrar shall pass an order releasing the property wholly, or to such extent as he thinks fit, from seizure.

Registrar may disallow the claim.

13 If the registrar is satisfied that the property was at the time it was seized in possession of the person against whom the writ issued as his own property, and not on account of any other person, or was in possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the registrar shall disallow the claim.

Appeal to the Supreme Court from finding of the registrar.

14 If any party to any petition of complaint or to any investigation into any claim or objection against the execution of a writ be dissatisfied with any finding, decision, order, or sentence of the registrar given in respect of such petition of complaint or such investigation, he may within ten days after the pronouncing thereof appeal to the Supreme Court; and the registrar shall without delay forward to the said court the record so made up as aforesaid, and the said court shall make such order as the justice of the case may require; and such order as shall be made by the Supreme Court under this section the registrar shall duly carry into effect. Every such appeal shall be dealt with and disposed of in the same manner and subject to the same rules as appeals from orders of district courts are dealt with and disposed of.

Proviso.

Provided, however, that no appeal shall be so forwarded as aforesaid unless the appellant shall, within ten days from the date of such appeal, give security for the costs of the hearing or investigation and of the appeal, the amount whereof shall be fixed by the registrar.

Proviso.

Provided also that no appeal from any sentence of the registrar shall have the effect of staying the execution of such sentence, unless the appellant shall enter into a recognizance with or without sureties, as the registrar shall consider necessary, to appear and abide by the judgment of the Supreme Court upon the appeal.

Certificate to issue in name of deceased claimant.

15 In case a claimant shall die in the interval between the date of his claim being upheld under the principal Ordinance and the date on which the certificate of title shall be issued, the certificate shall be issued in the name of the claimant, and the land shall devolve in like manner as if the certificate had been issued prior to the death of the claimant.

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16 Every person or persons partitioning any land after the investigation of the claims to it by the registrar has terminated, shall forthwith furnish information respecting such partition to the registrar, and shall deposit with that officer a map of such land. The map shall exhibit distinctly every allotment into which the land has been divided, marked with distinct numbers or symbols, and show the areas, and shall be declared to be accurate by a declaration of a licensed surveyor, in the form B in schedule I. hereto.

Communication of partition to registrar.

No person shall be permitted to practise as a surveyor under this Ordinance or the principal Ordinance unless he shall have obtained a license from the Surveyor-General in the form C in schedule I. hereto; and in every case in which it may be necessary in the opinion of the Surveyor-General to test the competency of an applicant for a license by an examination to be conducted by the Surveyor-General or under his directions, the Surveyor-General shall be entitled to demand and receive a fee of twenty rupees for every such examination. All such fees shall be accounted for and appropriated as the Governor may from time to time direct.

Surveyor.

17 If at the time any partition shall be made under the provisions of the principal Ordinance an undivided share only of the land, and not the whole thereof, shall be subject to mortgage, the right of the mortgagee shall be limited to the share in severalty allotted to his mortgagor by and under the same conditions, covenants, and reservations as shall be stipulated in the mortgage bond, so far as the same shall apply to a share in severalty, and the owner of the share in severalty so subject to mortgage shall, without a new deed of mortgage, warrant and make good to the mortgagee the said several part after such partition as he was bound to do before such partition.

Effect of partition when property is subject to mortgage.

18 If at the time any partition shall be made under the provisions of the principal Ordinance the property shall be held under any lease, the tenant thereof, or of any part thereof, before such partition was made, shall be tenant of such part set out severally to the respective owners thereof, by and under the same conditions, rents, covenants, and reservations as they held by and under, before such partition; and the owners of the several parts so divided and allotted as aforesaid shall, without any new deed of lease, warrant and make good to the said tenant or tenants the said several parts severally, after such partition as they were bound to do before such partition.

Effect of partition when property is subject to lease.

19 Every person entitled to a certificate of ownership under section 28 of the principal Ordinance shall, before the same is issued to him, deposit with the registrar every deed or instrument affecting the land referred to in the certificate.

Surrender of title deed on issue of certificate of ownership.

Upon issuing a certificate of ownership the registrar shall endorse on every deed or instrument so deposited as aforesaid the nature of the certificate which has been issued in respect of the land described in the said deed or instrument. If any such deed or instrument shall relate to or include

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any property other than the land included in the certificate, the registrar shall return such deed or instrument to the person who deposited the same, but otherwise he shall retain such deed or instrument in his office ; and no person shall be entitled to the inspection of any deed or instrument so retained, except upon the personal application or written order of the person who deposited the same, or any person or persons claiming through or under him or upon the order of some competent court.

Cancellation of certificate which has been superseded.

20 Upon the recovery of any land or interest therein, by any proceeding at law, from the holder of any certificate of title, the court shall recall and cancel every such certificate of title, and direct the registrar to cancel or correct any entry in the register book relating to such certificate of title ; and the registrar shall give effect to such order and issue an amended certificate of title whenever necessary.

Power of registrar to correct errors.

21 The registrar shall, upon such evidence as shall appear to him sufficient in that behalf, correct errors in any certificate of title or in the register book, or entries made therein respectively, and supply omitted entries. Provided that, in the correction of any such error, he shall not erase or make illegible the original words, and shall affix the date on which such correction was made or entry supplied, and his initials.

Every certificate of title or entry so corrected or supplied shall have the like validity and effect as if such error had not been made or such entry omitted, except as regards any deed or instrument which may have been registered previous to the actual time of correcting the error or supplying the omitted entry.

Registrar may issue summons for the purpose of cancelling certificate of title.

22 In case it shall appear to the satisfaction of the registrar that any certificate of title has been issued in error or contains any misdescription of land or of boundaries, or that any entry in any certificate of title has been made in error, or that any certificate of title or entry has been fraudulently or wrongfully obtained, or that any certificate of title is fraudulently or wrongfully retained, he may summon the person to whom such certificate of title has been so issued, or by whom it has been so obtained, or is retained, or any person in whose possession such certificate may be, to deliver up the same for the purpose of being cancelled or corrected, or for the substitution and issue of such certificate of title as the circumstances of the case may require.

Registrar may apply to court to compel delivery of certificate of title.

23 In case such person cannot be served with such summons, or he shall refuse or neglect to comply with such summons, the registrar may apply to the district court having jurisdiction with respect to the land for which the certificate of title issued, to issue a summons for such person to appear before the court and show cause why such certificate of title should not be delivered up to be cancelled or corrected ; and if such person, when served with such summons, shall neglect or refuse to attend before such court

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at the time therein appointed, it shall be lawful for such court to issue a warrant authorizing and directing the person so summoned to be apprehended and brought before the court for examination.

24 Upon the appearance before the court of any person summoned or brought up by virtue of a warrant as aforesaid, it shall be lawful for the court to examine such person upon oath and to order him to deliver up such certificate of title, and upon refusal or neglect of such person to deliver up the same pursuant to such order, to commit him to jail for any period not exceeding six months, unless such certificate of title shall be sooner delivered up.

Court may order delivery of certificate of title.

In such case, or in case a summons or warrant by the court cannot be served, the court may direct the registrar to cancel or correct any entry in the register book relating to such land, and to substitute and issue such certificate of title and make such entries as the circumstances of the case may require, and the registrar shall give effect to such order.

Court may direct registrar to cancel certificate of title.

25 Every person who has acquired by purchase or otherwise the right, title, or interest in or to any land from a claimant subsequently to such claimant having delivered a statement of his claim or stated such claim to the registrar, and prior to the investigation of such claim by the registrar, shall personally or by his agent notify to the registrar his acquisition, and shall make his claim in writing or shall state verbally the particulars of his claim, and the registrar shall record in writing, and the claimant or his agent shall sign, such particulars in manner provided in the principal Ordinance; and the registrar, when satisfied that the person so notifying his acquisition has become legally entitled to the right, title, or interest of the original claimant to the land, shall proceed to investigate and decide the claim in manner provided by the principal Ordinance as if such person had originally stated his claim under the principal Ordinance.

Power to registrar to substitute name or person acquiring original claimant's interest in lieu of original claimant.

26 When the registrar has, under the provisions of the 26th section of the principal Ordinance, registered the lands situate in any division in a book bearing the name of such division or of the village or district wherein it is situated, all subsequent alienations or incumbrances affecting any right to or interest in any such lands as, under the said section, shall have been registered in the said book, shall be registered by the registrar or registrars of lands in such book, and not in the books mentioned in the 37th section of the Ordinance No. 8 of 1863.

When lands registered under section 26 of Ordinance No. 5 of 1877, all subsequent alienations and incumbrances to be registered in same book.

27 The following enactment shall be substituted for section 22 of the principal Ordinance, which is hereby repealed:

Repeal of section 22 of Ordinance No. 5 of 1877.

So soon as the registrar shall have completed his inquiries respecting the lands in any division, he shall prepare a notice calling upon all persons who may assert a right adverse to that of any of the claimants whose claims have been upheld

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by him, to assert such right within six months from the date thereof ; and every such notice shall be as near as may be in the form D in schedule I. hereto annexed.

Whenever in any section of the principal Ordinance or any other Ordinance reference is made to the 22nd section of the principal Ordinance, the same shall be taken and read as though the foregoing substituted enactment had been referred to therein.

Notary to ascertain number of allotments of land and insert same at head of deed.

28 It shall be the duty of every notary, from and after the expiration of the said period of six months, before attesting any deed or instrument affecting any land or any interest in land the title to which has been registered under the provisions of the principal Ordinance—

- (a) To ascertain the number of the allotment of such land in the registered plan, and to insert such number at the head of the deed or instrument attested by him ; and
- (b) To cause to be registered under the provisions of the law in that behalf every such deed or instrument attested by him ; and for that purpose he shall be entitled to demand and receive before attestation from the person at whose instance he prepares such deed or instrument the stamp duty payable for such registration, and to refuse to attest such deed or instrument if such stamp duty shall not have been paid.

If any notary shall neglect or fail to perform the duty imposed on him by this section, he shall be guilty of an offence, and shall be liable to a penalty not exceeding two hundred rupees. Provided that no deed or instrument shall be held to be invalid in consequence of the non-performance by the notary of the foregoing duty.

Repeal of sections 20 and 47 and part of section 23 of Ordinance No. 5 of 1877.

29 The words "list and" in the 23rd section of the principal Ordinance and sections 20 and 47 of the said Ordinance shall be and the same are hereby repealed.

Amendment of section 6 of Ordinance No. 5 of 1877.

30 In section 6 of the principal Ordinance, the words "or court of requests" shall be inserted before the words "for the partition or sale of any land"; and the said section shall be read and construed accordingly.

Costs.

31 It shall be lawful for the registrar at the hearing of the matter of a petition of complaint under section 8, or at any investigation held under section 9 or 22, to determine by whom the costs of the hearing or investigation shall be payable, and to tax the amount of such costs ; and such costs shall be recoverable in manner provided by section 14 of the principal Ordinance.

Plans may be signed by officer authorized thereto by Surveyor-General.

32 The plan and description of the allotment of land referred to in any certificate issued under section 30 of the principal Ordinance may be signed either by the Surveyor-General or by any officer of his department specially authorized thereto in writing by the Surveyor-General.

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33 The rules appearing in schedule II. hereto annexed shall regulate the practice and procedure of the registrar in the matters therein provided; and the Governor in Executive Council may from time to time make such other rules not inconsistent with this or the principal Ordinance as may be necessary—

Rules.

- (a) For the guidance of the registrar in dealing with and disposing of claims, and in all other matters relating to the investigation of claims and registration of titles and recovery of costs, damages, moneys, and expenses, and to appeals from the registrar not otherwise provided for in this or the principal Ordinance;
- (b) For regulating the practice and procedure to be observed by fiscals in the execution of writs of execution against property and person and by the registrar in matters arising therefrom; and
- (c) For every other purpose necessary for effectually carrying out the several provisions of this and of the principal Ordinance.

SCHEDULE I.

A.—Form of Writ of Possession.

In the matter of the claim of _____, of _____, and others, under
"The Land Registration Ordinances, 1877 and 1889."

Registration Plan No. _____.

_____ Pattu	}	_____	{	_____ District.
_____ Kóralé				_____ Province.

A. B.—Statement of claim No. _____.

C. D.—Statement of claim No. _____.

E. F.—Statement of claim No. _____.

To the Fiscal of the _____ Province.

Whereas by an order dated the _____ day of _____, 18—, the registrar upheld the claim of A. B., of _____, claimant under "The Land Registration Ordinances, 1877 and 1889," as against C. D., of _____, and E. F., of _____, to the land _____, No. _____, in registration plan No. _____, bounded _____.

These are to command you that without delay you enter the said land and cause the said A. B. to have possession of the said land and premises, or such person as he shall authorize to receive possession of the same, and if need be remove the said C. D. and E. F. and any person claiming under both or either of them.

You are further commanded to return this writ 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.

The _____ day of _____, 18—.

(Signed) A. B.,
Registrar.

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B.

In the matter of "The Land Registration Ordinances, 1877 and 1889,"
and in the matter of the partition of land No. —, registration
Plan No. —.

I, —, solemnly and sincerely declare and affirm as follows :

I am a surveyor specially licensed by the Surveyor-General of the
Island of Ceylon for the purposes of "The Land Registration Ordina-
nces, 1877 and 1889."

The plan now produced and shown to me (marked A) is a true and
correct survey of the land No. —, registration plan No. —;
and I have truly and correctly delineated thereon its areas, boundaries,
and allotments, and the area of each allotment into which the said
land has been subdivided and partitioned.

And I make this solemn declaration conscientiously believing the
same to be true.

The — day of —, 18 —. (Signed) A. B.

C.—Surveyor-General's License.

In the matter of "The Land Registration Ordinances, 1877 and 1889."

I, —, Surveyor-General of the Island of Ceylon, being
satisfied of his competency in that behalf, do hereby authorize and
license —, of —, to practise as a surveyor under "The
Land Registration Ordinances, 1877 and 1889."

The — day of —, 18 —. Surveyor-General.

D.—Final Notice to Claimants.

Registration Plan No. —.

— Pattu } — { — District.
— Kóralé } — { — Province.

All persons having or pretending to have any claim to any of the
lands situated in — aforesaid, and asserting a right adverse to
that of any of the claimants whose claims have been upheld by the
registrar, are hereby required to prefer their claims before the registrar
within six months from the date hereof.

The — day of —, 18 —. Registrar.

SCHEDULE II.

1. When a day is fixed for the investigation and hearing of a
disputed claim, the claimants or their agents shall deliver to the
registrar a list of their witnesses and of their documentary evidence,
and no witness shall be called nor any document admitted at the
investigation other than those appearing in such list, unless the
registrar, on cause shown, shall see fit to direct otherwise. Provided
that it shall be competent for any such claimant or agent as aforesaid,
instead of delivering such list in writing, to appear in person before

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the registrar and to state verbally the names of the witnesses and to specify the documents intended to be relied on, and the registrar shall record the same in writing, which shall be signed by the claimant or his agent.

2. If any claimant or his agent fails to appear on the day fixed for the investigation of any undisputed claim, and no good and sufficient cause is shown for such absence, it shall be lawful for the registrar to make an order that the claim do abate, or such other order as he may deem fit.

3. If any claimant or his agent fails to appear on the day fixed for the investigation of disputed claims, and no good and sufficient cause is shown for such absence, it shall be lawful for the registrar to proceed with the investigation and to determine and decide upon the respective claims of the parties, or to make such order as he may deem fit.

4. In case of the death of a claimant, it shall be lawful for the registrar, on the application of the legal representative of the deceased, or his agent, to make an order that his name be substituted in the statement of claim in the place of such claimant, and thereupon to proceed with the investigation of the claim.

5. If no application be made to the registrar by any person claiming to be the legal representative of a deceased claimant, the registrar may examine such person or persons as he deems necessary for the purpose of ascertaining the name of the legal representative of the deceased, and thereupon issue a summons to such person to appear on a day to be therein mentioned.

6. If the person so summoned appears in person or by his agent and makes application as aforesaid, it shall be lawful for the registrar to substitute his name in the statement of claim in the place of the deceased, and to proceed with the investigation of the claim.

7. If the person so summoned appears in person or by his agent, but does not make application as aforesaid, or neglects to appear and does not account for his absence, and the summons is reported to have been duly served on him, the registrar shall make an order that the claim do abate.

8. In the event of any dispute arising as to who is the legal representative of a deceased claimant, it shall be competent to the registrar to decide, as between the persons before him, who shall be admitted to be such legal representative for the purpose of being substituted in the place of the deceased, and this question shall in such case be dealt with and disposed of by the registrar as an issue preliminary to the investigation of the merits of the claims.

9. When a petition of appeal has been received by the registrar under the principal Ordinance, the appellant shall forthwith give forty-eight hours' notice to the respondent that he will, on a day to be specified in such notice, and within a period of ten days of the date of such appeal, tender security for the costs of the investigation and of the appeal, the amount whereof shall be fixed by the registrar; and on such day the claimants or their agents so noticed shall be heard to show cause, if any, against such security being accepted. And in the event of such security being accepted, the registrar shall forward to the Supreme Court the record made up as provided by the aforesaid section.

10. The security to be required from a party appellant shall be by bond 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 amount fixed by the registrar.

11. If any document produced before the registrar in proof of any claim is written in the Singhalese or Tamil language, a correct translation thereof shall be furnished by the party producing the same to accompany the original. No such translation shall be read unless the same shall be signed by an interpreter of the Supreme Court, or by a Government or district court sworn translator, or by a sworn translator appointed by the registrar.

12. Every person so appointed by the registrar shall, before he enters upon the duties of his office, receive a certificate from the registrar that he is competent to fulfil the duties of a translator, and take an oath before a justice of the peace faithfully to perform the duties of his office.

13. For every folio or fractional part of a folio of 120 words there shall be payable a fee of 12½ cents for every copy or extract of claims or of the record of evidence, and a fee of 33 cents for every translation of any document.

20th March, 1889.
