

SUPPLEMENT
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DRAFT ORDINANCE.

MINUTE.

The following Draft of a proposed Ordinance is published for
general information :—

THE CODE OF CIVIL PROCEDURE.

An Ordinance to regulate the Procedure of the Civil Courts.

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- 12 Form of order.
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- 19 Upon hearing respondent may object to decree as if he had preferred separate appeal.
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- 28 Death or change of status of a party to the appeal after the despatch of the record to England.
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- 30 Printing of case.
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- 33 Execution of judgment of His Majesty in Council.
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- 39 Extension of time.
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- 3 Plaints.
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C.—Discovery, Inspection, and Admission.

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G.—Appeal.

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THE CODE OF CIVIL PROCEDURE.

An Ordinance to regulate the Procedure of the Civil Courts.

Preamble.

WHEREAS it is expedient to make better provision for the regulation of the Procedure of the Civil Courts: Be it enacted by the Governor of Ceylon, with the advice and consent of the Legislative Council thereof, as follows :

Short title.

Date of operation.

1 (1) This Ordinance may be cited as " The Code of Civil Procedure, 191 " and shall come into operation at such date as the Governor shall, by Proclamation to be published in the " Government Gazette," appoint.

Division of Ordinance into Parts.

(2) This Ordinance is divided into Parts as follows :

I.—Preliminary.

II.—Actions in General.

III.—Execution.

IV.—Service of Process.

V.—Actions in particular Cases.

VI.—Actions which fail for want of Jurisdiction.

VII.—Compensation where Injunction obtained on insufficient Grounds.

VIII.—Special Proceedings.

IX.—Revision and Appeals.

X.—Rules.

XI.—Miscellaneous.

PART I.

PRELIMINARY.

Definitions.

2 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 :

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

(2) " Attorney-General,"* unless otherwise expressly provided, includes also the Solicitor-General and any Crown Counsel specially authorized by the Attorney-General to represent the Attorney-General.

†(3) " 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.

(4) " Civil Court " means a Court in which civil actions may be brought.

(5) " 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.

(6) " 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.]

(7) " Foreign Court " means a Court situate beyond the limits of, and not having authority in, Ceylon.

Note.—This section reproduces section 5 of the old Code. The definitions are numbered and alphabetically arranged. The terms defined in the Interpretation Ordinance, 1901 (No. 22 of 1901), are omitted, and definitions are added of " Rules," " Orders," and " Mesne profits."

* E.g., O. XXXII., r. 1 (2).

† Has been retained as frequently occurring in the Rules.

- (8) " Foreign judgment " means the judgment of a foreign Court.
- (9) " Judge " means the presiding officer of a Court, and includes Judges of the Supreme Court, District Judges, and Commissioners of Requests.
- (10) " Judgment " means the statement given by the Judge of the grounds of a decree or order.
- (11) " 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.
- (12) " Judgment-debtor " means any person against whom a decree or order capable of execution has been made.
- (13) " Mesne profits " of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom.
- (14) " Order " means the decision of a Civil Court which is not a decree.
- (15) " Public officer " includes all officers or servants employed in this Colony by or under the Imperial Government or the Government of Ceylon.
- (16) " Recognized agent " includes the persons designated under that name in *Order II., rule 2*, and no others.
- (17) " Rules " means the rules and forms contained in the *First Schedule of this Ordinance or made under sections 61 and 62*.
- (18) " This Ordinance " or " This Code " includes *Rules, Orders, and Schedules*.
- (19) " Written " and " writing " include " printed " and " print " and " lithographed " and " lithograph " and " typewritten " and " typewriting " and " steel engraved " and " steel engraving " respectively.

Saving of provisions under any special or local laws.

3 *In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any Imperial statute or local Ordinance for the time being in force.*

Note.—This section, which follows the lines of section 4 of the new Indian Code, reproduces the substance of the proviso to section 4 of the old Code. The first part of the section has not been reproduced in view of the provisions for amending the Rules by the Rules Committee.

PART II.

ACTIONS IN GENERAL.

General Provisions.

Definition of action.

4 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.

Note.—This section reproduces section 6 of the old Code without alteration.

Procedure : regular, or summary under *Order XL.*, or by petition under *Order XXVI.*

5 The procedure of an action may be either regular, or summary under *Order XL.*, or by petition under *Order XXVI.*

Note.—This section reproduces section 7 of the old Code. The *Illustrations* are omitted as unnecessary. They do not correctly state the practice in actions on negotiable instruments, &c., the only form of summary action retained under the present Code.

Procedure ordinarily regular.

6 Except where it is by this Code specially provided that proceedings may be taken under *Order XL.*, or by petition under *Order XXVI.*, every action shall commence and proceed by a course of regular procedure, as prescribed by *Order IV.*

Note.—This section reproduces section 8 of the old Code with merely verbal amendments.

Jurisdiction of the Courts and res judicata.

Stay of suit.

7 No Court shall proceed with the trial of any action in which the matter in issue is also directly and substantially in issue in a previously instituted action between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such action is pending in the same or any other Court in Ceylon having jurisdiction to grant the relief claimed, or before His Majesty in Council.

Note.—This section reproduces section 10 of the new Indian Code.

Explanation.—The pendency of an action in a foreign Court does not preclude the Courts in Ceylon from trying an action founded on the same cause of action.

Res judicata.

8 No Court shall try any action or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former action between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent action or the action in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Note.—This section reproduces section 11 of the new Indian Code.

Explanation 1.—The expression “former action” shall denote an action which has been decided prior to the action in question whether or not it was instituted prior thereto.

Explanation 2.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to the right of appeal from the decision of such Court.

Explanation 3.—The matter above referred to must in the former action have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation 4.—Any matter which might and ought to have been made ground of defence or attack in such former action shall be deemed to have been a matter directly and substantially in issue in such action.

Explanation 5.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation 6.—Where persons litigate bona fide in respect of a public right, or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Bar to further action.

9 Where a plaintiff is precluded by any rule or rules from instituting a further action in respect of any particular cause of action, he shall not be entitled to institute an action in respect of such cause of action in any Court to which this Ordinance applies.

Note.—This section reproduces section 12 of the new Indian Code, and takes the place of section 207 of the old Ceylon Code.

When foreign judgment not conclusive.

10 A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title, except—

Note.—This section reproduces section 13 of the new Indian Code. The old Ceylon Code did not attempt to define the limits within which foreign judgments are conclusive.

- (a) Where it has not been pronounced by a Court of competent jurisdiction.
- (b) Where it has not been given on the merits of the case ;
- (c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law, or a refusal to recognize the law of Ceylon in cases in which such law is applicable ;
- (d) Where the proceedings in which the judgment was obtained are opposed to natural justice ;
- (e) Where it has been obtained by fraud.
- (f) Where it sustains a claim founded on a breach of any law in force in Ceylon.

Presumption as to foreign judgments.

11 The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record ; but such presumption may be displaced by proving want of jurisdiction.

Note.—This section reproduces section 14 of the new Indian Code.

Place of Suing.

Actions relating to immovable property.

12 (1) Subject to the pecuniary or other limitations prescribed by any Ordinance, actions—

- (a) For the recovery of immovable property with or without rent or profits ;
- (b) For the partition of immovable property ;
- (c) In the case of a mortgage of or charge upon immovable property, for the enforcement of the mortgage or charge or for sale or redemption ;
- (d) For the determination of any other right to or interest in immovable property ;
- (e) For compensation for wrong to immovable property ;
- (f) For the recovery of movable property actually under seizure—

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

(2) An action to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant, or, if there be more than one defendant, any one of them, actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section “property” means property situate in Ceylon.

Actions for immovable property situate within jurisdiction of different Courts.

13 Where an action is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the action may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate.

Provided that, in respect of the value of the subject-matter of the action, the entire claim is cognizable by such Court.

Place of institution of action where local limits of jurisdiction of Courts are uncertain.

14 (1) Where 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.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before the Supreme Court that a decree or order in an action relating to such property was made by a Court not having jurisdiction where the property is situate, the Supreme Court shall not allow the objection, unless in its opinion there was, at the time of the institution of the action, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto, and there has been a consequent failure of justice.

Action for compensation for wrong to person or movables.

15 Where an action is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides, or carries on business, or personally works for gain, or, if there be more than one defendant, all the defendants reside, or carry on business, or personally work for gain, within the local limits of the jurisdiction of another Court, the action may be instituted at the option of the plaintiff in either of the said Courts.

Note.—This section reproduces section 16 of the new Indian Code with merely verbal alterations.

The sections under this heading are adapted from sections 16 to 21 of the new Indian Code. The provisions of these sections with regard to the place of suing are fuller and, it is considered, more precise than those of the corresponding sections (9, 35, &c.) of the old Code.

Note.—This section reproduces section 17 of the new Indian Code without material alteration.

Note.—Sub-section (1) is identical with the second paragraph of section 9 of the old Code. Sub-section (2) reproduces section 18 (?) of the new Indian Code.

Note.—This section reproduces section 19 of the new Indian Code.

Illustrations.

- (a) A, residing in Colombo, beats B in Jaffna. B may sue A either in Jaffna or in Colombo.
- (b) A, residing in Colombo, published in Jaffna statements defamatory of B. B may sue A either in Jaffna or in Colombo.

Other actions to be instituted where defendants reside or cause of action arises.

16 *Subject to the limitations aforesaid, every action shall be instituted in a Court within the local limits of whose jurisdiction—*

Note.—This section reproduces section 20 of the new Indian Code.

- (a) *The defendant, or each of the defendants where there are more than one, at the time of the commencement of the action, actually and voluntarily resides, or carries on business, or personally works for gain ; or*
- (b) *Any of the defendants, where there are more than one, at the time of the commencement of the action, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution ; or*
- (c) *The cause of action, wholly or in part, arises.*

Explanation 1.—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation 2.—A corporation shall be deemed to carry on business at its sole or principal office in Ceylon or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

- (a) *A is a tradesman in Colombo. B carries on business in Kandy. B, by his agent in Colombo, buys goods of A and requests A to deliver them to the Government Railway. A delivers the goods accordingly in Colombo. A may sue B for the price of the goods either in Colombo, where the cause of action has arisen, or in Kandy, where B carries on business.*
- (b) *A resides at Kandy, B at Galle, and C at Badulla. A, B, and C being together at Colombo, B and C make a joint promissory note payable on demand and deliver it to A. A may sue B and C at Colombo, where the cause of action arose. He may also sue them at Galle, where B resides, or at Badulla, where C resides ; but in each of these cases, if the non-resident defendant objects, the action cannot proceed without the leave of the Court.*

Decree.

Amendment of decree.

17 (1) *The Court may at any time, either on its own motion or on that of any of the parties, correct any clerical or arithmetical mistake in any judgment or order or any error arising therein from any accidental slip or omission, or may make any amendment which is necessary to bring a decree into conformity with the judgment.*

Note.—This section replaces section 189 of the old Code which has been re-drafted on the lines of the English "slip order" R. S. C., O. 28, r. 11. It extends the powers of amendment to accidental slips or omissions, and makes it clear that the amendment may be made at any time.

(2) *Reasonable notice of any proposed amendment under this section shall in all cases be given to the parties or their proctors.*

Costs.

Costs in general.

18 (1) *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.*

Note.—Sub-section (1) of this section reproduces section 208. Sub-section (2) provides for the case of a Law Officer or Crown Counsel or a proctor being paid by annual salary.

(2) *Where a Law Officer or Crown Counsel or a proctor receives a fixed salary by way of remuneration for appearing in Court on behalf of his client or for transacting his legal business, then so much of such salary as is fairly attributable to his professional services in any action shall be considered to be expenses reasonably incurred on account of the action, and may be allowed on taxation as costs.*

Court may apportion.

19 (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all actions shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the action shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding nine per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

Note.—Sub-sections (1) and (2) correspond to section 211 of the old Code, and sub-section (3) to section 213. The language of section 35 of the new Indian Code has been adopted.

Action by proctor to recover costs.

20 (1) No proctor shall institute or maintain any action for the recovery of any fees, charges, or disbursements until the expiration of at least one month after he has delivered to 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.

(2) After delivering or serving the bill of costs, either the proctor or the party charged therewith may obtain an appointment from the taxing officer for the taxation thereof; and if either party 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.

Note.—This section reproduces section 215 of the old Code with slight verbal alterations.

PART III.

EXECUTION.

Property exempted from seizure and sale.

21 (1) The following property shall not be liable to seizure or sale in execution of a decree for the payment of money, namely:

- (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 Rs. 500;
- (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 or 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.

(2) Nothing in sub-section (1) shall be deemed to affect the Army Act, 1881 (44 and 45 Vict. c. 58), or any similar law for the time being in force.

Note.—This section reproduces, with verbal amendments, the provisos to section 218 of the old Code.

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

22 Where a seizure of any negotiable instrument, debt, share, money, decree, or any other movable property has been effected and made known in the manner provided for by Order XXIV., 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 such seizure.

Note.—This section reproduces, with verbal amendments, section 236 of the old Code.

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

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

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

Limitation of sub-section (1).

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

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

Protection of officer executing the same.

23 Where a seizure of immovable property has been effected and made known and registered in the manner provided for by Order XXIV., any private alienation of the property seized, whether by sale, gift, mortgage, lease, or otherwise, after the seizure and before the removal thereof, or the sale and conveyance of the property by the Fiscal, shall be void as against such seizure.

24 (1) 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 in pursuance of the sale.

(2) When such sale has been so confirmed, and the Fiscal's conveyance in pursuance thereof has been executed, the grantee under such conveyance shall be deemed to have been vested with the legal estate in the property sold as from the date of the sale.

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

(2) Where 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.

(3) Where all or any portion of the money realized in execution of a decree is in the distribution made under Order XXIV. 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.

Note.—This section reproduces, with verbal alterations, section 238 of the old Code.

Note.—This section reproduces, with verbal amendments, section 289 of the old Code.

Note.—This section reproduces, with verbal amendments, section 352 of the old Code.

PART IV.

SERVICE OF PROCESS.

26 (1) Every mandate, writ, warrant, 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.

(2) Every person charged under this Code 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 where 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.

(3) 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.

(4) 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 plaintiff, 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.

(5) Where the Court by its judgment in the action shall hold that the amount so tendered and paid into Court is sufficient amends, decree shall be passed in favour of the plaintiff for such amount, but he shall be condemned to pay all costs.

Note.—This section reproduces, with verbal amendments, section 362 of the old Code.

What acts not within last section.

27 (1) Seizure or sale of property, which does not belong to the person whose property is authorized by a writ 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 *sub-section (2)* of the last preceding section.

Note.—This section reproduces section 363 of the old Code with verbal amendments.

(2) No person shall be liable in damages for any such seizure or sale if the same shall be shown to have been effected *by him* under the *bona fide* belief that the property did belong to the person whose property is authorized to be seized or sold.

When process may not be served.

28 Process in civil cases, whether at the suit of the Crown or *at the suit of* 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.

Note.—This section reproduces, with verbal amendments, section 365 of the old Code.

Outer door not to be forced.

29 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, *except where* such person shall have escaped or shall have been rescued after having been duly arrested.

Note.—This section reproduces, with verbal amendments, section 366 of the old Code.

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

30 *Where* the person executing under this Ordinance or *under the Rules* any process directing or authorizing the 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.

Note.—This section reproduces, with verbal amendments, section 367 of the old Code.

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

31 Where in *any civil case* process of execution issues against the person, 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 *shall* express his acquiescence in the arrest without being so seized or touched.

Note.—This section reproduces, with verbal amendments, section 369 of the old Code.

PART V.

ACTIONS IN PARTICULAR CASES.

Actions by or against the Crown or Public Officers in their Official Capacity.

Attorney-General and public officer entitled to notice.

32 (1) 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, or left at *the office of*, such Attorney-General or officer, as the case may be.

Note.—This section reproduces, with amendments in drafting, section 461 of the old Code.

(2) *Every such notice of action shall state* the cause of action, the name and place of abode of the person intending to institute the action, and the relief which he claims.

(3) The plaint in such action must contain a statement that such notice of action has been *duly given*.

No writ against person or property in such action.

33 No writ against person or property shall be issued against the Attorney-General in any action brought against the Crown.

Note.—This section reproduces, with verbal amendment, section 462 of the old Code.

Actions by Aliens and by or against Foreign States.

Actions by aliens.

34 (1) Alien enemies residing in Ceylon with the permission of the Governor, and alien friends, may sue in the Courts of *the Colony* as if they were subjects of *His Majesty*.

Note.—This section reproduces, with verbal amendments, section 466 of the old Code.

(2) 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 *His Majesty's* Secretaries of State, or of the Colonial Secretary of *Ceylon*, shall, for the purpose of *sub-section (2)*, be deemed to be an alien enemy in a foreign country.

Actions by foreign states.

35. (1) A foreign state may sue in the Courts of the Colony, provided that *such foreign state*—

- (a) Has been recognized by *His Majesty*; and
- (b) The object of the action is to enforce the private rights of *its head* or of *its subjects*.

(2) The *Courts* shall take judicial notice of the fact that a foreign state has not been recognized by *His Majesty*.

Note.—This section reproduces, with verbal amendments, section 467 of the old Code.

Recognized agents of foreign powers.

36. (1) *Any person* appointed by order of Government *in writing*—

- (a) At the request of any *foreign state or country*, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without the *Colony*; or
- (b) At the request of any person competent, in the opinion of the Government, to act on behalf of such *state or country*—

to prosecute or defend any action on *its* behalf shall be deemed to be the recognized *agent*, by whom appearances and applications may be made or acts may be done under this *Code* on behalf of such *state or country*.

(2) *Any person* appointed under *sub-section (1)* may authorize or appoint *any other person* to make appearances and applications, and do acts in any such action, as if he were himself a party *thereto*.

Note.—This section reproduces, with verbal amendments, section 468 of the old Code.

When foreign state may be sued.

37. (1) Any such foreign state *or country* and any ambassador or envoy *thereof* 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.

(2) Such consent shall not be given unless the *foreign state or country or its ambassador or envoy*—

- (a) Has instituted an action in such Court against the person desiring to sue *it*; or
- (b) By *itself* or himself or another trades within the local limits of the jurisdiction of such Court; or
- (c) Is in possession of immovable property situate within such limits and is to be sued with reference to such possession or for money charged *thereon*.

(3) No prince *or head of any foreign state or country*, or his ambassador, or envoy shall be arrested under this *Code*; and no decree shall be executed against the property of any such prince, *head*, ambassador, or envoy, unless with *the* consent of Government certified as aforesaid.

Note.—This section reproduces, with verbal amendments, section 469 of the old Code

Interpleader Actions.

Interpleader actions.

38. (1) *Where* 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 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.

(2) *Where* any action is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute an action of interpleader.

Note.—This section reproduces, with verbal amendments, section 628 of the old Code.

Who may not be sued in interpleader.

39. Nothing in *section 38* shall be *deemed* 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 *claiming* through such principals or landlords.

Note.—This section reproduces, with verbal amendments, section 632 of the old Code.

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.

PART VI.

ACTIONS WHICH FAIL FOR WANT OF JURISDICTION.

Duty of Court where subject-matter of action within jurisdiction of Village Tribunal.

40 Whenever it appears to the Court that the subject-matter of the action is within the exclusive jurisdiction of the Village Tribunal, the Court shall dismiss the action at the earliest stage at which the want of jurisdiction has been established, whether the defendant in his answer has or has not taken exception to the jurisdiction of the Court to the action.

Note.—This section is based on section 636 of the old Code completely re-drafted.

Conclusive effect of order under last section.

41 Every order dismissing an action on the ground that it is within the exclusive jurisdiction of the Village Tribunal shall contain a specific finding to that effect; and if the same claim is subsequently preferred in the Village Tribunal, the order shall be conclusive evidence of the jurisdiction of such Village Tribunal to entertain the claim.

Note.—This section is based on section 637 of the old Code completely re-drafted.

Conclusive effect of decision of Village Tribunal declining jurisdiction.

42 A decision of a Village Tribunal that any claim is not within its jurisdiction shall, if the same claim is subsequently brought before any other Court, be conclusive evidence that the Village Tribunal had not jurisdiction to hear the claim.

Note.—This section is based on section 638 of the old Code completely re-drafted.

PART VII.

COMPENSATION WHERE INJUNCTION OBTAINED ON INSUFFICIENT GROUNDS.

When Court may award compensation.

43 (1) Where it appears to the Court that an injunction has been applied for on insufficient grounds, or where, after the issue of an injunction, 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 reasonable ground for applying for the injunction, the Court may, on the 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.

Note.—This section reproduces, with verbal amendments, section 667 of the old Code.

(2) An award under this section shall bar any action for compensation in respect of the issue of the injunction.

PART VIII.

SPECIAL PROCEEDINGS.

Administration and Judicial Settlement of Accounts.

Administration and judicial settlement.

44 Save in so far as is otherwise provided by the Courts Ordinance, 1889 (No. 1 of 1889), or by any other law for the time being in force, all proceedings for the administration and judicial settlement of the estates of deceased persons shall be governed by the provisions contained in the Second Schedule.

Note.—The provisions of Chapters XXXVIII., LIV., and LV. have, as a temporary measure, been removed to the Second Schedule. See the Report of the Committee.

Lunacy, Guardianship, Matrimonial, Mortgage, and Arbitration Proceedings.

Lunacy.

45 Save in so far as is otherwise provided by any other law for the time being in force, all proceedings with regard to the person and property of lunatics shall be governed by the provisions contained in Part I. of the Third Schedule.

Note.—The provisions of Chapter XXXIX. of the old Code have, as a temporary measure, been removed to the Third Schedule. See the Report of the Committee.

Appointment of guardians.

46 Save in so far as is otherwise provided by the Courts Ordinance, 1889 (No. 1 of 1889), or by any other law for the time being in force, all proceedings for the appointment of guardians shall be governed by the provisions contained in Part II. of the Third Schedule.

Note.—The provisions of Chapter XL. of the old Code have, as a temporary measure, been removed to the Third Schedule.

Matrimonial proceedings.

47 Save in so far as is otherwise provided by the Amended Kandyan Marriage Ordinance, 1870 (No. 3 of 1870), or by any other law for the time being in force, all matrimonial proceedings shall be governed by the provisions contained in Part III. of the Third Schedule.

Note.—The provisions of Chapter XLII. of the old Code have, as a temporary measure, been removed to the Third Schedule.

Proceedings for the realization of moneys due on mortgages.

48 Save as is otherwise provided by any other law for the time being in force, all proceedings for the realization of moneys due on mortgages shall be governed by the provisions contained in Part IV. of the Third Schedule.

Arbitration.

49 All references to arbitration, whether by an order in an action or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in Part V. of the Third Schedule.

Actions relating to Public Charities.

Public charities.

50 (1) In the case of any alleged breach of any express or implied trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of the trust, the Attorney-General, or two persons having an interest in the trust and having the assent in writing of the Attorney-General, may institute an action, whether contentious or not, in the Court within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) Removing any trustee ;
- (b) Appointing a new trustee ;
- (c) Vesting any property in any trustee ;
- (d) Directing accounts and inquiries ;
- (e) Declaring what proportion of the trust property or of the interest therein shall be attached to any particular object of the trust ;
- (f) Authorizing the whole or any part of the trust property to be let, sold, or exchanged ;
- (g) Settling a scheme ; or
- (h) Granting such further or other relief as the nature of the case may require.

(2) Save where provision to the contrary is made by any Ordinance, no action claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

Note.—The provisions of Chapter XLVI. of the old Code have, as a temporary measure, been removed to the Third Schedule.

Note.—The provisions of Chapter LI. of the old Code have, as a temporary measure, been removed to the Third Schedule.

Note.—This section reproduces section 639 with alterations and additions based on section 92 of the new Indian Code. The scope of the section is extended to trusts of a religious nature, and it is made clear that, where there is no statutory provision to the contrary, actions of the nature indicated in the section must be brought in conformity with the section.

PART IX.

REVISION AND APPEALS.

Revision.

Powers of Supreme Court in revision.

51 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.

Note.—This section reproduces section 753 of the old Code.

Appeals.

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

52 Upon hearing an 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 (No. 1 of 1889), or to order a new or further trial on the ground of discovery of fresh evidence subsequent to the trial.

Note.—This section reproduces, with merely verbal amendments, section 773 of the old Code.

When appeal may be re-heard

53 (1) Where the bench hearing an 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 three Judges of the Court on a day specially appointed for the purpose, of which notice shall be given to the parties or their proctor.

Note.—This section reproduces, with verbal amendments, section 775 of the old Code, as amended by section 2 of Ordinance No. 23 of 1901.

(2) 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 his reasons for the same.

(3) In the case of appeals from the decision of a Judge of the Supreme Court sitting alone, as in the Courts Ordinance, 1889 (No. 1 of 1889), provided, where the two Judges hearing the appeal do not agree, the original judgment shall stand affirmed.

(4) Where 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.

Appeals to the Privy Council.

Special interpretation clause.

54 For the purposes of Order XLV., unless the context otherwise requires—

“Appeal” means appeal to His Majesty in Council.

“His Majesty” includes His Majesty’s heirs and successors.

“Judgment” includes decree, order, sentence, or decision.

“Court” means the Supreme Court of Ceylon consisting of either not less than three Judges, or of not less than two Judges, or of a single Judge, according as the matter in question is one which by virtue of the Ordinance or Ordinances constituting and regulating the Supreme Court or of any Rules made thereunder properly appertains to a Court of not less than three Judges, or to a Court of not less than two Judges, or of a single Judge.

“Record” means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence, and judgments) proper to be laid before His Majesty in Council on the hearing of the appeal.

“Registrar” means the Registrar or other proper officer having the custody of the records in the Court appealed from.

Rules regulating appeals from Supreme Court to Privy Council.

55 From and after the commencement of this Ordinance the right of parties to civil suits or actions in the Supreme Court to appeal to His Majesty in Council against the judgments and orders of such Court shall be subject to and regulated by—

(a) The limitation and conditions prescribed by Order XLV., or by such other Rules as may from time to time be made by His Majesty in Council; and

(b) Such general Rules and Orders of Court as the Judges of the Supreme Court may from time to time make in exercise of any power conferred upon them by any enactment for the time being in force.

Power of Supreme Court to regulate procedure.

56 (1) The Judges of the Supreme Court or any three of them, of whom the Chief Justice or Acting Chief Justice shall be one, may from time to time make such general Rules and Orders of Court as to them shall seem meet for regulating the form and manner of proceeding where not specially provided by Order XLV., or by any Rules made by His Majesty in Council, to be observed in any proceedings before the Supreme Court under Order XLV., or under such Rules as aforesaid.

(2) In particular and without prejudice to the generality of the powers conferred by the foregoing sub-section such Rules may—

(a) Declare in any case where express provision in that behalf is not made by the Ordinances constituting and regulating the Supreme Court, whether the several matters and proceedings referred to in the Rules in Order XLV., properly appertain to a Court of not less than three Judges, or to a Court of not less than two Judges, or to a single Judge;

(b) Require the appellant to deposit the amount required to defray the cost of translating, transcribing, indexing, and transmitting to His Majesty in Council a correct copy of the record of the action and prescribe the time, which shall not exceed three months from the date of the hearing of the application for leave to appeal, within which such deposit shall be made;

(c) Prescribe the fees to be paid to the Registrar of the Supreme Court for examining and certifying copies of the record for transmission to the Registrar of the Privy Council.

Note.—This section reproduces, with verbal amendments, section 2 of the Appeals (Privy Council) Ordinance, 1909 (No. 31 of 1909).

Note.—This section reproduces, with verbal amendments, section 4 of the Appeals (Privy Council) Ordinance, 1909 (No. 31 of 1909).

Note.—This section reproduces, with verbal amendments, section 5 of the Appeals (Privy Council) Ordinance, 1909 (No. 31 of 1909).

PART X.

RULES.

Enactment of Rules.

57 *The Rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.*

Constitution of Rules Committee.

58 (1) *A Committee to be called the Rules Committee shall be constituted as in this section provided for revising the rules in the First Schedule in manner provided by this Code.*

(2) *Such Committee shall consist of the following persons, namely :*

(a) *The Chief Justice or a Judge of the Supreme Court to be nominated by the Chief Justice.*

(b) *The Attorney-General or the Solicitor-General or a Crown Counsel.*

(c) *A District Judge.*

(d) *A practising advocate.*

(e) *A practising proctor.*

(3) *The members referred to in sub-heads (b), (c), (d), and (e) shall be nominated by the Governor, and shall hold office during the Governor's pleasure.*

(4) *Whenever any member retires, resigns, dies, or becomes incapable of acting as a member of the Committee, the Governor or, in case of the member referred to in sub-head (a) of sub-section (2), the Chief Justice may appoint another person to be a member in his stead.*

(5) *Temporary vacancies in the Committee may be filled in the manner provided by the last preceding sub-section.*

(6) *The Registrar of the Supreme Court, who shall receive such remuneration in this behalf as the Governor shall direct, shall be the Secretary of the Committee.*

Power of Committee to make rules.

59 *The Rules Committee may from time to time make rules which shall not be inconsistent with the provisions in the body of this Code, or with the provisions of any other Ordinance for any matter relating to the procedure of Civil Courts ; and, subject as aforesaid, may add to, cancel, vary, or amend any of the rules in the First Schedule.*

Confirmation and publication of rules.

60 (1) *No rule made by the Rules Committee shall have effect until the same has been confirmed by the Governor in Executive Council.*

(2) *All such rules when so confirmed shall be published in the "Government Gazette," and shall thereupon, subject to the provisions of the next following sub-section, have the force of law.*

(3) *All rules when published as aforesaid shall be laid, as soon as conveniently may be, before the Legislative Council ; and if a resolution is passed within forty days of their being laid before the Legislative Council praying that any rule shall be annulled, such rule thenceforth shall be void, but without prejudice to anything done thereunder.*

PART XI.

MISCELLANEOUS.

Privilege from arrest of Judges, parties, proctors, and advocates.

61 (1) *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.*

(2) *Where any matter is pending before a Court having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto and their proctors and advocates shall be exempt from arrest under civil process while going to, or attending, or returning from, such Court for the purpose of such matter.*

Note.—This section reproduces, with verbal amendments, section 834 of the old Code.

Privilege from arrest of witnesses.

62 *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.*

Note.—This section reproduces section 142 of the old Code without alteration.

Sentences that may be imposed for contempt of Court.

63 The following sentences of fine or imprisonment, as the case may be, may be imposed on conviction for contempt of Court, under Order XLVI., by the following Courts respectively, namely :

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 Rs. 5,000 in addition thereto or in lieu thereof.

By a District Court.—Fine not exceeding Rs. 1,000 or imprisonment, either simple or rigorous, for a period not exceeding six months.

By a Court of Requests.—Fine not exceeding Rs. 100 or imprisonment, either simple or rigorous, for a period not exceeding three months.

Note.—This section reproduces, with verbal amendments, section 800 of the old Code.

When Civil Court may send cases for investigation to Police Court.

64 (1) Where in any case pending before any Court there appears to the Court to be sufficient ground for a charge of the commission by any person of any offence under sections 190, 193, 196, 197, 202, 203, 204, 205, 206, 207, 452, 459, 462, 463, 464, or 466 of the Ceylon Penal Code, the Court may cause such person to be detained till the rising of the Court, and may then or sooner send him in custody to a Police Magistrate, or take sufficient bail for his appearance before such Magistrate.

(2) The Court shall send to the Magistrate any evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

(3) The Magistrate shall receive such charge and proceed with it according to law.

Note.—This section reproduces section 835 of the old Code re-drafted.

Warrant of arrest may be cancelled on the ground of illness of party.

65 At any time after a warrant of arrest has been issued under this Code, the Court may cancel it on the ground of the serious illness of the person against whom the warrant was issued.

Note.—This section reproduces, with verbal amendments, section 836 of the old Code.

Judgment-debtor under arrest may be released on ground of illness,

66 (1) Where a judgment-debtor has been arrested, the Court may release him, if in its opinion he is not in a fit state of health to undergo imprisonment.

Note.—Sub-sections (1) and (2) of this section reproduce, with verbal amendments, section 837 and sub-section (3), section 838, of the old Code.

(2) Where a judgment-debtor has been committed to prison, he may be released therefrom—

(a) By the Inspector-General of Prisons or by any two visitors of the prison, 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 prison may be situate, on the ground of his suffering from any serious illness.

(3) A judgment-debtor released under sub-sections (1) or (2) may be re-arrested, but the period of his imprisonment shall not in the aggregate exceed six months.

but may be re-arrested.

Assimilation of the procedure in District Courts and Courts of Requests.

67 Unless otherwise expressly provided, the provisions of this Code shall apply equally to Courts of Requests and to District Courts.

Note.—This section is new. The procedure in District Courts and that in Courts of Requests has generally been assimilated in the new Code.

Consequence of neglect to plead claim in reconvention.

68 (1) Where the defendant in an action in the Court of Requests for breach of a contract neglects to set up a claim in reconvention arising out of the same contract, which might have been allowed to him at the trial of the action, he and every person deriving title thereto through or from him shall be precluded from maintaining an action to recover the same at any time thereafter.

Note.—The object of sub-section (1) of this section is to put in a more intelligent form what is understood to be the intention of the old section, viz., section 817. Sub-section (2) reproduces section 818 of the old Code.

(2) The provisions of sub-section (1) shall not extend to the following cases :

(a) Where the claim in reconvention consists of a judgment rendered before the commencement of the action in which it might have been set up ;

(b) Where the claim in reconvention is for unliquidated damages ;

(c) Where the claim in reconvention consists of a claim upon which another action was pending at the time the action was commenced.

(d) Where judgment is obtained against the defendant without personal service of the summons upon him, or without an appearance by him.

The last sub-section qualified.

Enlargement of time.

69 Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period; even though the period originally fixed or granted may have expired.

Note.—This section reproduces section 148 of the new Indian Code.

Pending actions.

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

Note.—This section corresponds with section 3 of the old Code.

Repeal.

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

71 On and from the date on which this Code comes into operation, the Ordinances and Rules of Court respectively mentioned in the first column of the Fourth Schedule shall be severally repealed to the extent mentioned in the third column thereof.

Note.—The saying clause appended to section 2 of the old Code is omitted in view of section 5 of the Interpretation Ordinance, 1901 (No. 22 of 1901).

THE SCHEDULES.

THE FIRST SCHEDULE.

RULES OF COURT.

ORDER I.

NOTES.

PARTIES TO ACTIONS.

Who may be joined as plaintiffs.

1. All persons may be joined in one action as plaintiffs in whom any right to relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same act or transaction or series of acts or transactions, where, if such persons brought separate actions, any common question of law or fact would arise.

This rule is taken from the new Indian Code of Civil Procedure, O. 1, r. 1; and see the English R. S. C., O. 16, r. 1, and s. 11 of our old Code.

The same act arise. These words are intended to get rid of such difficulties as arose in England in *Smurthwaite v. Hanway*, (1894) A. C. 494; and see the Ceylon case *Appukami v. Rosa*, (1905) 9 N. L. R. 68.

Power of Court to order separate trials.

2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the action, the Court may put the plaintiffs to their election or order separate trials, or make such other order as may be expedient.

This rule is new. It is taken from the new Indian Code, O. 1, r. 2.

Where ownership in common.

3. Where two or more persons are entitled to the ownership or possession of immovable property in common, one or more of them may, unless the Court otherwise directs, maintain an action in respect of his or their undivided shares in the property, against any other co-owner or trespasser, in any case where such an action might be maintained by all.

The corresponding words in s. 12 of the old Code were "as joint tenants or tenants in common." Joint tenancy and tenancy in common do not exist in the law of Ceylon, and the reference to them has, therefore, been omitted.

Substituted and added plaintiffs.

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

This rule is s. 13 of the old Code, which has been adopted without amendment. It is the same as O. 1, r. 10 (1) of the new Indian Code.

ORDER I.

NOTES.

Who may be joined as defendants.

5. All persons may be joined as defendants against whom any right to relief is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same act or transaction or series of acts or transactions, where, if separate actions were brought against such persons, any common question of law or fact would arise.

Court may give judgment for or against one or more of joint parties.

6. Judgment may be given—

(a) For such one or more of the plaintiffs as may be found entitled to relief. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by the joinder of any person as plaintiff, who is not found entitled to relief, unless the Court in disposing of the costs of the action otherwise directs.

(b) Against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Defendant need not be interested in all the relief claimed.

7. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any action against him.

Joinder of parties liable on same contract.

8. (1) 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.

(2) The personal legal representative of a deceased party to a joint and several promissory note may be sued jointly with the surviving maker or makers.

(3) The heirs of a deceased payee of a promissory note may sue to recover the amount without taking out administration where the estate of the deceased payee is under one thousand rupees in value.

Where plaintiff in doubt from whom relief is to be sought.

9. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants, in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

One person may sue or defend on behalf of all in same interest.

10. (1) Where there are numerous persons having the same interest in one action, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend in such action on behalf, or for the benefit, of all persons so interested. But the Court shall in such case give, at the expense of the person applying so to sue or defend, notice of the institution of the action to all such persons either by personal service or where, from the number of persons or any other cause, such service is not reasonably practicable, then by public advertisement, as the Court in each case may direct.

Notice.

(2) Any person on whose behalf, or for whose benefit, an action is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such action.

This rule embodies the first paragraph of s. 14 of the old Code. See the new Indian Code, O. 1, r. 3, and notes to rule 1 *supra*. See also the English R. S. C., O. 16, r. 4.

This rule is adapted from the new Indian Code, O. 1, r. 4. It embodies the provisions of the second paragraphs of ss. 11 and 14 of our old Code. See also the English R. S. C., O. 16, r. 4. The latter part of r. 6 (a) is taken from the latter part of s. 11 of the old Code; and see the English R. S. C., O. 16, r. 1.

This rule is entirely new. See new Indian Code, O. 1, r. 5, and English R. S. C., O. 16, r. 5.

Rule 8 (1) is s. 15 of the old Code. See the new Indian Code, O. 1, r. 6, and the English R. S. C., O. 16, r. 6.

Rule 8 (2) is new, and has been inserted in consequence of the decision in *Vellayappa Chetty v. Sinnatamby*, (1894) 1 N. L. R. 350; and see *Muttiah Chetty v. De Silva*, (1896) 2 N. L. R. 109.

Rule 8 (3).—It was held by the Full Court in the case of *Nona v. Adris Appu*, (1899) 1 Tambyah's Reports, No. 4, page 46, that an action on a promissory note in favour of a payee-holder, who died before its institution, can only be brought by his executor or administrator whatever may be the value of the estate. Mr. Justice Lawrie, one of the Judges who heard the appeal, dissented from the majority of the Court.

Mr. Justice Middleton, in the case of *Andris v. Sutiya*, (1902) 3 Br., page 80, held that the heirs of a deceased maker may be sued without administration where the estate of the maker was under Rs. 1,000 in value, in this case Mr. Justice Middleton considered the case of *Nona v. Adris Appu*, and said: "If the action in question was for money belonging to an estate exceeding Rs. 1,000 I quite agree with the majority of the Court; if not, I agree with Mr. Justice Lawrie."

It is suggested that effect should be given in the new Code to the view of Lawrie J.

This rule is new. See new Indian Code, O. 1, r. 7, and English R. S. C., O. 16, r. 7.

Rule 10 (1) is based on s. 16 of the old Code. It has been amended so to bring it into substantial conformity with O. 1, r. 8 (1) of the new Indian Code. See also R. S. C., O. 16, r. 9.

Rule 10 (2) is new. It is taken from r. 8 (2) of the new Indian Code.

ORDER I.

Misjoinder and nonjoinder.

11. (1) 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.

(2) 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.

Court may strike out or add parties.

12. (1) The Court may on or before the hearing, either upon or without the application of either party, and on such terms as the Court thinks just, order that the name of any party improperly joined, whether as plaintiff or as defendant, 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.

(2) In the case of a party being added, the added party shall be described as "added party" in all pleadings or processes or papers entitled in the action after the date of the order.

(3) No person shall be added as a plaintiff *suing without a next friend*, or as the next friend of a plaintiff *under any disability*, without his consent.

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant, and, if the Court thinks fit, on the original defendants.

(5) The proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

Where defendant added, plaint to be amended.

Intervention not otherwise allowed.

13. 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 rule.

Conduct of the action.

14. The Court may give the conduct of the action to such plaintiff as it deems proper.

Objections as to nonjoinder or misjoinder.

15. All objections on the ground of nonjoinder or misjoinder of parties shall be taken at the earliest possible opportunity, and in all cases before the action has been first set down for hearing, unless the ground of objection has subsequently arisen; and any such objection not so taken shall be deemed to have been waived.

Appearance of one of several plaintiffs or defendants for others.

16. (1) Where 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 these rules; and in like manner, where 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.

(2) The authority shall be in writing signed by the party giving it, and shall be filed in Court.

NOTES.

Rule 11 (1) is the first paragraph of s. 17 of the old Code, unaltered, and corresponds with O. 1, r. 9 of the new Indian Code, and the English R. S. C., O. 16, r. 11.

The second paragraph of s. 17 of the old Code:—"Nothing in this Ordinance shall be deemed to enable plaintiffs to join in respect of distinct causes of action," has been omitted. It was out of place in a section dealing with joinder of parties.

Rule 11 (2) was the third paragraph of s. 17 of the old Code. It has been reproduced without amendment.

Rule 12 (1)—the first paragraph of s. 18 of the old Code—has been amended so as to bring it into conformity with O. 1, r. 10 (2) of the new Indian Code. It corresponds with the English R. S. C., O. 16, r. 11.

Rule 12 (2) is the second paragraph of s. 18 of the old Code, omitting a provision, to which effect has not been given in practice, and which there seems no good reason for retaining, that the facts and reasons, forming the ground on which an order of amendment is made, should be stated.

Rule 12 (3) is the second sentence of s. 19 of the old Code. See new Indian Code O. 1, r. 10 (3), and English R. S. C., O. 16, r. 11 (3).

Rule 12 (4) is s. 21 of the old Code, altered in accordance with the new Indian Code, O. 1, r. 10 (4).

Rule 12 (5) is based on O. 1, r. 10 (5) of the new Indian Code. See the Ceylon case *Corea v. Pieris*, (1910) 13 N. L. R. 212, and the final words of section 19 of the old Code.

This rule reproduces, with verbal amendments, the first portion of s. 19 of the old Code.

This rule is s. 20 of the old Code. See new Indian Code, O. 1, r. 11; and see English R. S. C., O. 16, r. 39.

This rule reproduces s. 22 of the old Code amended so as to bring it into conformity with O. 1, r. 13 of the new Indian Code.

This rule reproduces s. 23 of the old Code, with verbal amendments adopted from O. 1, r. 12 of the new Indian Code.

ORDER II.

NOTES.

RECOGNIZED AGENTS AND PROCTORS.

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

1. (1) Any appearance, application, or act in or to any Court, required or authorized by law to be made or done by a party in such Court, except *where* otherwise expressly provided by any law for the time being in force, 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 *his* behalf. Provided that any such appearance shall, if the Court so directs, be made by the party in person.

(2) An advocate, instructed by a proctor for this purpose, represents the proctor in Court.

Recognized agents.

2. The recognized agents of parties by whom such appearances and applications may be made, or acts may be done, are :

- (a) On behalf of the Crown in respect of any Court, the Attorney-General, or a proctor appointed by the Attorney-General or by any person to whom the Attorney-General has delegated his power in that behalf by a written document signed by him and filed in the Court to which it relates.
- (b) Persons holding general powers of attorney authorizing them to make such appearances and applications, and do such acts on behalf of such parties ; which powers or copies 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 whose 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, the Government Agent, or Assistant Government Agent, or Collector of Customs of the province or district within which the Court is situate, and any person appointed in writing in that behalf by the Attorney-General, or by such Government Agent, Assistant Government Agent, or Collector of Customs as aforesaid, 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.

Process served on agent effectual.

3. (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The provisions 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.

4. (1) The appointment of a proctor to make any appearance or application, or do any act, for any person shall be in writing, and shall be signed by such person or by his recognized agent, or by some other person duly authorized by power of attorney to act in that behalf.

(2) Every such appointment shall contain an address at which service of any process on the proctor may be made.

(3) Every such appointment, when accepted by a proctor, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court by a writing signed by the client or the proctor, as the case may be, 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 so far as regards the client.

(4) 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.

5. If any such proctor as in the last preceding rule is mentioned shall die, or be removed, or suspended, or otherwise become incapable to act, at any time before judgment, no further proceeding shall be taken in the action against the party for whom he appeared until thirty days after notice to appoint another proctor has been given to that party either personally or in such other manner as the Court directs.

This rule reproduces s. 24 of the old Code, with verbal amendments adopted from O. 3, r. 1 of the new Indian Code.

This rule reproduces s. 25 of the old Code.

Clause (a) has been re-drafted in order to make it clearer and simpler.

Clause (b) corresponds to O. 3, r. 2 (a) of the new Indian Code. The original clause (b) was restricted to (i.) general powers of attorney, (ii.) from non-resident parties. There seems to be no good reason for these limitations, and they have been omitted.

The reference to Crown Counsel in s. 25 of the old Code has been omitted. Every Crown Counsel is now a Crown Counsel for the Island, and resides in Colombo, and has no authority departmentally to appoint a person to represent the Crown.

As the paragraph originally stood, a Government Agent or Assistant Government Agent or Collector of Customs has authority to appoint a person to represent the Crown. The person so appointed can give a proxy to a proctor and represent the Crown. But the Government Agent or Assistant Government Agent or Collector cannot give a proctor a proxy and represent the Crown himself. (*C. R. Batticaloa*, 8,026, S. C. Mins., November 6, 1903.)

This rule is s. 26 of the old Code; and see O. 3, r. 3 of the new Indian Code.

This rule reproduces, with amendments suggested by O. 3, r. 4 of the new Indian Code, s. 27 of our old Code.

This rule reproduces s. 28 of the old Code.

ORDER II.

NOTES.

Service on proctor.

6. Any process served on the proctor of any party or left at the office or ordinary residence of such proctor, *and whether* the same is for the personal appearance of the party *or not*, 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 as if the same had been given to, or served on, the party in person.

This rule reproduces the substance of s. 29 of the old Code. *And whether or not.* These words are taken from O. 3, r. 5 of the new Indian Code. S. 29 of our old Code contained an exception as regards process for the personal appearance of a party. The adoption of the Indian rule in Ceylon will, it is thought, be beneficial, since it will compel proctors to keep in touch with their clients, and will thus check one of the most fertile sources of delay, at present, in civil proceedings.

Agent to accept service.

7. Besides the recognized agents described in *rule 2 of this Order*, 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.

This rule reproduces s. 30 of the old Code.

ORDER III.

SCOPE AND SUBJECT OF ACTION.

Action how to be framed.

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

This rule is s. 33 of our old Code, with verbal amendments so as to bring it into substantial conformity with the new Indian Code, O. 2, r. 1.

To include whole claim.

2. (1) 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.

This rule reproduces, with verbal amendments designed to bring it into conformity with the new Indian Code, O. 2, r. 2, s. 34 of the old Code.

(2) *Where* 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.

In rule 2 (3) the requirement of the old section that the leave of the Court should be obtained before the hearing has been omitted as being an unnecessary restriction on the power of the Court.

(3) A person entitled to more than one *relief* in respect of the same cause of action may sue for all or any of *such reliefs* ; but if he omits, except with the leave of the Court *expressly* obtained, to sue for *all* of such *reliefs*, he shall not afterwards sue for any *relief* so omitted.

In rule 2 (3) the word " expressly " has been added in order to make it clear that the leave of the Court cannot be implied from the mere fact of the acceptance of a plaint.

Explanation.—For the purpose of this *rule* an obligation and a collateral security for its performance, *and successive claims arising under the same obligation*, shall be deemed *respectively* 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.

In other cases.

3. (1) *Save as otherwise provided*, 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 *the same* defendants may unite such causes of action in the same action.

This rule reproduces in substance s. 36 of the old Code. The second paragraph of that section, which gave the Court power to order separate trials of causes of action united under the first paragraph, appears as rule 6 below.

(2) *Where* 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 *rule 6* of this *Order*.

In the old Code the exceptions as to claims in actions for immovable property and in actions against executors, &c., preceded the general rule as to the joinder of causes of action. It has been thought better that the general rule should come first. See the new Indian Code, O. 2, r. 3, and English R. S. C., O. 18, r. 1.

ORDER III.

NOTES.

Joinder of claims in actions for immovable property.

4. No cause of action shall, unless with the leave of the Court expressly obtained, be joined with an action for the recovery of immovable property, except—

- (a) Claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;
- (b) Claims for damages for breach of any contract under which the property or any part thereof is held, or for any wrong or injury to the property claimed; and
- (c) Claims in which the relief sought is based on the same cause of action.

Provided that nothing in this rule shall be deemed to prevent any party in an action for redemption from asking to be put in possession of the mortgaged property.

In actions against executors, &c.

5. No claim by or against an executor, administrator, or heir, as such, shall 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.

Power of Court to order separate trials.

6. Where it appears to the Court that any causes of action joined in one action cannot be conveniently tried or disposed of together, the Court may order separate trials, or make such other order as may be expedient.

Objection as to misjoinder.

7. All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER IV.

THE MODE OF INSTITUTION OF ACTION.

Action to commence by plaint.

1. (1) Every action of regular procedure shall be instituted by presenting a written plaint to the Court or to such officer as the Court shall appoint in this behalf.

(2) In the Court of Requests—

- (a) The plaintiff may personally state his own case *vidé voce* to the chief clerk or to such other officer as the Commissioner shall appoint in this behalf.
- (b) The plaintiff shall supply to the chief clerk or other officer so appointed such a stamp as would be required for a written plaint in respect of the same cause of action, and upon such stamp being supplied, the chief clerk or other officer shall record the plaintiff's statement in writing, and affix the stamp to such writing.
- (c) The statement so recorded and stamped shall be the plaint in the action.

Plaint to comply with requirements of Orders VI. and VII.

2. Every plaint shall comply with the rules contained in Orders VI. and VII., so far as they are applicable.

As to the present position of this rule, which is based on s. 35 (1) of the old Code, see notes to last preceding rule. See also new Indian Code, O. 2, r. 4, and English R. S. C., O. 18, r. 2.

For the words in the old section 35 (1) (b) "or consequential on the trespass which constitutes the cause of action," have been substituted, in accordance with the English R. S. C., O. 18, r. 2, "or for any wrong or injury to the property claimed," and the Example has been omitted in conformity with the new Indian rule.

The proviso is adapted from O. 2, r. 4 of the new Indian Code, omitting the reference to actions of foreclosure, which have no place in the common law of Ceylon.

As to the present position of this rule, which reproduces s. 35 (2) of the old Code, with the omission of the words "in any action," which are surplusage, see notes to r. 3 supra. It has been thought better to embody its provisions in a rule, and not in a sub-rule. See new Indian Code, O. 2, r. 5; and compare English R. S. C., O. 18, r. 5.

This rule is new. It reproduces the substance of the second paragraph of s. 36, and renders unnecessary ss. 37 and 38 of the old Code. See new Indian Code, O. 2, r. 6, and English R. S. C., O. 18, r. 1.

This rule is new, and reproduces r. 13 of O. 1 of the new Indian Code.

This rule is based on s. 39 of the old Code, re-drafted with a view to greater simplicity.

In rule 1 (2) the words "in open court" have been omitted, and Commissioners of Requests have been relieved of the duty of recording *vidé voce* statements of cases.

This rule is new, and has been taken from the new Indian Code, O. 4, r. 1 (2).

In Chapter VII. of our old Code, which was entitled "Of the mode of instituting action," numerous matters affecting the preparation and filing of plaints were dealt with. These have been eliminated from the present Order and embodied in Order VII.

Pleading generally is the subject of Order VI. Compare new Indian Code, Orders VI. and VII.

ORDER IV.

Register of Actions.

3. (1) The Court shall cause the particulars of every action to be entered in a book to be kept for the purpose and called "The Register of Civil Actions in the District Court of _____" or "the Court of Requests of _____," as the case may be. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

(2) Such registers shall be kept in the Form No. 9 in Appendix H.

Journal.

4. (1) 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.

The Record.

(2) Each minute shall be signed and dated by the Judge, and the journal so kept shall be the principal record of the action.

Abstract of title or of pedigree in land cases.

5. (1) Where title to land is in issue, the plaintiff's proctor shall file with his list of documents an abstract of the plaintiff's title in chronological order, and the defendant's proctor with his answer shall file a similar abstract of title for the defendant, showing the particulars set forth in Form No. 10 in Appendix H.

(2) Where a question of pedigree arises, the proctor for the party relying on it shall file with his plaint or answer a paper containing the pedigree on which he relies.

(3) The documents required to be filed under sub-rules (1) and (2) shall be written legibly, or typed, on good paper, and signed by the proctor filing them.

(4) The costs of preparing such documents shall be costs in the cause.

ORDER V.

THE ISSUE AND SERVICE OF SUMMONS.

Issue.

Summons.

1. (1) When the plaint has been filed and the copies or concise statements required by Order VII., rule 10 (1), presented, a summons may be issued by the Court on the application of the plaintiff or of its own motion, to the defendant to appear and to answer the plaint on a day to be therein specified. Provided that no such summons shall be issued where the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) In person, or

(b) By his proctor or recognized agent.

(3) Every such summons shall be in Form No. 2 in Appendix B hereto, and shall be signed by the secretary or clerk of the Court.

Copy or statement to be annexed to summons.

2. Every summons shall be accompanied by a copy of the plaint or, where the Court so permits, by a concise statement, each translated, if necessary, into the language of the defendant, attached thereto, and shall be delivered with such copy of the plaint or concise statement under a precept from the Court in Form No. 3 in Appendix B to the Fiscal of the district in which the defendant or his agent resides for service.

Court may order defendant to appear in person. Or plaintiff.

3. (1) Where 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.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

Fixing day for appearance of defendant.

4. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant, and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to appear and answer on such day.

NOTES.

This rule is new, and is adapted from the new Indian Code, O. 4, r. 2. Registers of civil actions are already kept in all the Civil Courts of original jurisdiction in Ceylon. But it may be desirable that the matter should be one of statutory obligation.

Such entries. With the enactment of a new Code of Civil Procedure, the numbering of actions in the various Courts will probably be commenced afresh. This will afford an opportunity of introducing a system of annual numberings.

This rule reproduces s. 92 of the old Code.

Rule 5 reproduces in substance rr. 1, 2, 4, and 5 of the Civil Procedure Rules, 1909.

Rule 1 (1) reproduces in substance the first clause of s. 55 of the old Code, re-drafted in accordance with O. 5, r. 1 (1) of the new Indian Code. The proviso did not appear in our old Code.

Rule 1 (2).—This sub-rule is new. Compare O. 5, r. 1 (2) of the new Indian Code.

Rule 1 (3).—This sub-rule is based on the first clause of s. 55 of the old Code; and compare O. 5, r. 1 (3) of the new Indian Code.

This rule is based on the second paragraph of s. 55 of the old Code, and O. 5, r. 2 of the new Indian Code.

This rule reproduces, with verbal amendments in accordance with O. 5, r. 3 of the new Indian Code, ss. 56 and 57 of the old Ceylon Code.

This rule embodies the substance of the second clause of s. 55 of the old Code, and is taken from O. 5, r. 6 of the new Indian Code.

ORDER V.

NOTES.

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

Mode of service.

Service on several defendants.

Service to be on defendant in person where practicable, or on his agent.

Service on agent by whom defendant carries on business.

Service on agent in charge of immovable property.

Where service may be made on male member of defendant's family.

Endorsement of time and manner of service.

Procedure when defendant refuses to accept service, or cannot be found.

Examination of process server.

Substituted service.

5. The summons to appear an answer shall order the defendant to produce all documents 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.

Service.

6. Service of the summons shall be made by delivering or tendering a copy thereof.

7. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

8. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

9. (1) 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.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

10. (1) Where 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, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

(2) Nothing in sub-rule (1) shall prejudice the plaintiff's right to proceed under Part IV. of the Third Schedule.

11. Where in an action the defendant cannot be found, and has no agent empowered to accept the service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

12. The process server shall, in all cases in which the summons has been served, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and such return shall be verified by the affidavit of the process server as required by Order XXV., rule 10, sub-rule (1).

13. Where the process server, after using all due and reasonable diligence, is unable to find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the Fiscal shall report such inability to the Court in a fair written return to the precept, having the summons attached thereto as an exhibit, and verified by the affidavit of the process server prescribed by Order XXV., rule 10, sub-rule (1).

14. (1) The Court may examine the process server on oath, or cause him to be so examined by another Court, in regard to the service or non-service of the summons, and may make such further inquiry in the matter as it thinks fit, and shall either declare that the summons has been duly served or order such service as it thinks fit.

(2) The examination of a process server and any inquiry held by a Court, under sub-rule (1), shall be a judicial proceeding within the meaning of section 9 of the Oaths Ordinance (No. 12 of 1895).

15. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business, or personally worked for gain, or in such other manner as the Court thinks fit.

This rule reproduces s. 58 of the old Code; and compare rr. 7 and 8 of O. 5 of the new Indian Code.

This rule reproduces s. 59 of the old Code, with verbal amendments; and compare O. 5, r. 10 of the new Indian Code. The first clause of s. 59, referring to the provisions of Chapter XXIII. as to service of process in execution, has been omitted as unnecessary.

This rule reproduces s. 63 of old Code; and see O. 5, r. 11 of the new Indian Code.

This rule is based on the first clause of s. 60 of the old Code; and compare O. 5, r. 12 of the new Indian Code.

This rule reproduces, with verbal amendments so as to bring it into conformity with O. 5, r. 13 of the new Indian Code, s. 65 of the old Ceylon Code. Service on partners, the subject-matter of s. 64 of the old Code, is dealt with by Order XXXV.

This rule reproduces s. 66 of the old Code, with amendments in sub-rule (1) suggested by O. 5, r. 14 of the new Indian Code.

This rule is new, and reproduces O. 5, r. 15 of the new Indian Code.

This rule is new, and is taken from O. 5, r. 18 of the new Indian Code.

This rule is based on the second paragraph of s. 60 of the old Code, and compare O. 5, r. 17 of the new Indian Code.

This rule is new.

Sub-rule (1) is taken with modifications from O. 5, r. 19 of the new Indian Code.

Sub-rule (2) is intended to add to proceedings under sub-rule (1) the sanction of summary punishment for false evidence.

Rule 15 is taken from r. 20 of O. 5 of the new Indian Code, but is based on ss. 60, 61, and 62 of the old Ceylon Code.

ORDER V.

NOTES.

Effect of substituted service.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Where service substituted, time for appearance to be fixed.

(3) *Where* 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.

Service out of the Colony.

16. (1) Service of a summons out of the Colony may be allowed by the Court in all cases in which the Court has jurisdiction.

Application for, what.

(2) 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.

Order for, to prescribe mode of.

(3) 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.

Form of summons.

(4) A summons under *sub-rules (1) and (2)* shall be in Form No. 4 in *Appendix B*.

Service on defendant in prison.

17. *Where* the defendant is confined in *any prison* the summons shall be delivered by the Fiscal or sent by post or otherwise to the officer in charge of the *prison for service* on the defendant.

This rule reproduces ss. 69 to 71 of the old Code. It has been thought better to deal with the cases in which service out of the Colony may be allowed in the Ordinance itself.

This rule reproduces, with verbal amendments so as to bring it into conformity with r. 24 of O. 5 of the new Indian Code, paragraph 1 of s. 68 of the old Ceylon Code.

The second paragraph of s. 68 of the old Code is embodied in r. 20 (1) of this Order.

Service on civil public officer or on servant of local authority.

18. Where the defendant is a public officer (*not belonging to His Majesty's Military or Naval Forces*) or the servant of a local authority, the Court may, if it *appears to it* that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is so employed, together with a copy to be retained by the defendant.

This rule is new, and is taken with modifications from r. 27 of O. 5 of the new Indian Code. See also s. 459 of the old Code.

Service on sailors and soldiers.

19. (1) *Where* any naval or military officer or any sailor or soldier is a defendant, a copy of the summons shall be sent by the Fiscal to his commanding officer for the purpose of being served on him.

This rule reproduces, with verbal amendments, s. 506 of the old Ceylon Code.

(2) The *commanding* officer to whom such copy is sent shall cause it to be served on the person to whom it is addressed, if practicable, and shall return it to the Fiscal with the written acknowledgment of such person endorsed thereon.

(3) *Where* from any cause the copy cannot be so served, it shall be returned to the Fiscal with a *statement* of the cause of non-service.

Duty of the person to whom summons is delivered or sent for service.

20. (1) *Where a summons is delivered or sent to any person for service under rule 17, rule 18, or rule 19, such person shall be bound to serve it, if possible, and to return it under his signature, and such signature shall be deemed to be evidence of service.*

This rule is new, and is taken from r. 29 of O. 5 of the new Indian Code. Sub-rule (1) embodies the substance of the second paragraph of s. 68 of the old Code.

(2) *Where from any cause service is impossible, the summons shall be returned to the Court with or full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.*

Misdescription not to vitiate summons, &c.

21. No misnomer or misdescription therein of any person or place shall vitiate any summons, order, or process *where* the person or place is described as he or it is commonly known, and the misnomer or misdescription is not such as to mislead the party served therewith.

This rule reproduces, with verbal amendments, s. 67 of the old Code.

ORDER VI.

PLEADINGS GENERALLY.

Pleading.

1. "*Pleading*" means *plaint, answer, further pleadings after answer, and claims in reconvention.*

See general note to O. 3, r. 2, *supra*.

Pleading to state material facts and not evidence.

2. *Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures.*

This rule is adapted from the new Indian Code, O. 6, r. 1.

This rule is taken from the new Indian Code, O. 6, r. 2; and compare English R. S. C., O 19, r. 4.

ORDER VI.

NOTES.

- Forms of pleading.* 3. *The forms in Appendix A when applicable, and where they are not applicable forms of the like character, may be used for all pleadings.*
- Particulars to be given where necessary.* 4. *In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.*
- Further and better statement, or particulars.* 5. *A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may be ordered, upon such terms, as to costs and otherwise, as may be just.*
- Condition precedent.* 6. *Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in the pleading.*
- Departure.* 7. *No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.*
- Denial of contract.* 8. *Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.*
- Effect of document to be stated.* 9. *Whenever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.*
- Malice, knowledge, &c.* 10. *Whenever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.*
- Notice.* 11. *Whenever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form of the precise terms of such notice or the circumstances from which such notice is to be inferred are material.*
- Implied contract, or relation.* 12. *Whenever any contract or any relation between any person is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances, without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.*
- Presumption of law.* 13. *Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied, e.g., consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.*
- Pleading to be signed.* 14. *Every pleading presented by a proctor shall be signed by such proctor. In every other case the pleading shall be signed by the party presenting it, and such signature shall be verified by that of some officer authorized by the Court in that behalf.*
- Striking out pleadings.* 15. *The Court may, at any stage of the proceedings, order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action.*
- Amendment of pleadings.* 16. (1) *The Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for determining the real questions in controversy between the parties.*
- This rule is taken from the new Indian Code, O. 6, r. 3; and compare English R. S. C., O. 19, r. 5.
- This rule is taken from the new Indian Code, O. 6, r. 4; and see English R. S. C., O. 19, r. 6.
- This rule is taken from the new Indian Code, O. 6, r. 5; and see English R. S. C., O. 19, r. 7.
- This rule is taken from the new Indian Code, O. 6, r. 6; and see English R. S. C., O. 19, r. 14.
- This rule is taken from the new Indian Code, O. 6, r. 7; and see English R. S. C., O. 19, r. 16.
- This rule is taken from the new Indian Code, O. 6, r. 8; and see English R. S. C., O. 19, r. 20.
- This rule is taken from the new Indian Code, O. 6, r. 9; and see the English R. S. C., O. 19, r. 21.
- This rule is taken from the new Indian Code, O. 6, r. 10; and see English R. S. C., O. 19, r. 22.
- This rule is taken from the new Indian Code, O. 6, r. 11; and see English R. S. C., O. 19, r. 23.
- This rule is taken from the new Indian Code, O. 6, r. 12; and see English R. S. C., O. 19, r. 24.
- This rule is taken from the new Indian Code, O. 6, r. 13; and see the English R. S. C., O. 19, r. 25.
- This rule is based on the first paragraph of s. 46 of the old Code; and see r. 14 of O. 6 of the new Indian Code.
- This rule is taken from the new Indian Code, O. 6, r. 16; and see the English R. S. C., O. 19, r. 27.
- This rule is taken from the new Indian Code, O. 6, r. 17, and absorbs s. 93 of the old Ceylon Code. See also the English R. S. C., O. 28, r. 1.

ORDER VI.

NOTES.

(2) Every such alteration or amendment shall be clearly written on the face of the pleading allowed to be amended, or if this cannot conveniently be done, a fair draft of the pleading as altered or amended shall be appended to the original pleading.

(3) Every alteration or amendment of a pleading shall be initialled by the Judge.

Failure to amend after order.

17. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

This rule is taken from the new Indian Code, O. 6, r. 18; and see the English R. S. C., O. 28, r. 7.

ORDER VII.

PLAINT.

Requisites of plaints.

1. 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 in which the action is brought and the 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 can be ascertained ;
- (d) Where the plaintiff or defendant is a minor or a person of unsound mind, a statement to that effect ;
- (e) The facts constituting the cause of action, and where and when it arose ;
- (f) The facts showing that the Court has jurisdiction ;
- (g) The relief which the plaintiff claims ;
- (h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished ; and
- (i) A statement of the value of the subject-matter of the action for the purposes of jurisdiction and of stamp duty, so far as the case admits.

In money actions.

2. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed.

This rule, which is based on the first paragraph of s. 40 of our old Code, has been amended so as to bring it into substantial conformity with the new Indian Code, O. 7, r. 1. The second portion of section 40 (d) of the old Code is dealt with by r. 9 *infra*. Rule 1 (f) embodies the substance of s. 45 of the old Code.

Where subject-matter is specific chattel, or immovable property.

3. 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 shall state approximately the value of the chattel, right, status, or privilege, or the amount sued for.

This rule is the first part of the second paragraph of s. 40 of our old Code, with verbal amendments taken from r. 2 of O. 7 of the new Indian Code.

This rule is the latter part of the second paragraph of s. 40 of our old Code, with verbal amendments taken from r. 2 of O. 7 of the new Indian Code.

Where the subject-matter of the action is immovable property.

4. Where the subject-matter of the action is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

This rule reproduces the substance of s. 41 of the old Ceylon Code, but is taken from the new Indian Code, O. 7, r. 3. The reference in s. 41 of the old Code, "metes and bounds" has been omitted.

Where plaintiff sues as representative.

5. Where the plaintiff sues in a representative character, the plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute an action concerning it.

This rule reproduces s. 42 of the old Code, with verbal amendments taken from the new Indian Code, O. 7, r. 4.

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.

Defendant's interest and liability to be shown.

6. The plaint shall 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.

This rule reproduces, with verbal amendments taken from the new Indian Code, O. 7, r. 5, s. 43 of our old Code.

Exemption from bar from lapse of time to be shown.

7. Where the cause of action arose beyond the period allowed by any law for instituting the action, the plaint shall show the ground upon which exemption from such law is claimed.

This rule reproduces, with verbal amendments taken from the new Indian Code, O. 7, r. 6, s. 44 of our old Code.

ORDER VII.

NOTES.

Relief to be specifically stated.

8. Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court may think just, to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his answer.

This rule is taken from the new Indian Code, O. 7, r. 7; and see the English R. S. C., O. 20, r. 6.

Relief founded on separate grounds.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly.

This rule reproduces r. 8 of O. 7 of the new Indian Code, and renders unnecessary the second portion of s. 40 (d) of the old Code.

List of documents to be endorsed on plaint.

10. (1) The plaintiff shall endorse on the plaint, or annex thereto, a list 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 translated, if necessary, 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 claimed in the action, in which case he shall present such statements.

This rule reproduces s. 49 of the old Code, with verbal amendments intended to bring it into substantial conformity with the new Indian Code, O. 7, r. 9.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) Such list 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.

Where plaint presented to wrong Court.

11. (1) 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 sections 12 to 16 of the Ordinance not being present, the plaint shall be returned to the proper Court.

Rule 11 (1) reproduces the substance of s. 47 of the old Code; and see O. 7, r. 10 (1) of the new Indian Code.

Rule 11 (2) is r. 10 (2) of O. 7 of the new Indian Code.

Procedure.

(2) On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

Rejection of plaint.

12. The plaint shall be rejected in the following cases:

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed 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 stamp duty within a time to be fixed by the Court, fails to do so;

(d) Where the action appears from the statement in the plaint to be barred by any law.

This rule corresponds with the third paragraph of s. 46 of the old Code, re-drafted in accordance with O. 7, r. 11 of the new Indian Code.

Procedure on rejecting plaint.

13. Where a plaint is rejected, the Judge shall record an order to that effect, with the reason for such order.

This rule is taken from O. 7, r. 12 of the new Indian Code; and see s. 48 of the old Code.

Where rejection of plaint does not preclude presentation of fresh plaint.

14. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

This rule is taken from O. 7, r. 13 of the new Indian Code; and see the last paragraph of s. 46 of our old Code.

Production of document on which plaintiff sues.

15. (1) Where 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.

Rule 15 (1) reproduces, with verbal amendments, s. 50 of our old Code, and is the same as r. 14 (1) of O. 7 of the new Indian Code.

List of other documents.

(2) Where 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.

Rule 15 (2) reproduces, with verbal amendments, s. 51 of the old Code, and is the same as r. 14 (2) of O. 7 of the new Indian Code.

ORDER VII.

NOTES.

Statement in case of documents not in his possession or power.

16. *Where any such document is not in his possession or power, he shall, if possible, state in whose possession or power it is.*

This rule reproduces, with verbal amendments, s. 52 of the old Code, and is the same as r. 15 of O. 7 of the new Indian Code.

Action on lost negotiable instrument.

17. *Where the action is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed 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.*

This rule reproduces the substance of s. 53 of the old Code, with verbal amendments to bring it into conformity with O. 7, r. 16 of the new Indian Code.

Document not produced with plaint inadmissible afterwards without leave.

18. (1) *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.*

This rule reproduces s. 54 of the old Code, with a verbal amendment to bring it into conformity with O. 7, r. 18 of the new Indian Code.

(2) *Nothing in this rule 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.*

Production of shop book or accounts.

19. (1) *Save in so far as is otherwise provided by section 90 of the Evidence Ordinance (No. 14 of 1895), where the document on which the plaintiff sues is an entry in a shop book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies, and, if necessary, a certified translation thereof.*

This rule is new, and is taken with verbal modifications from O. 7, r. 17 of the new Indian Code.

Original entry to be marked and returned.

(2) *The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause a copy to be filed.*

ORDER VIII.

APPEARANCE AND ANSWER.

Where defendant admits plaintiff's claim.

1. *Where the defendant, on being called upon to answer the plaint, admits the claim of the plaintiff, the Court shall give judgment against the defendant according to the admission so made.*

Rule 1 reproduces, with verbal amendments, s. 72 of the old Code.

The *Explanation* to that section as to what constitutes appearance has been omitted. There is no analogous *Explanation* in the new Indian Code, and it has been a source of considerable confusion in Ceylon.

Answer to be in writing; or in Court of Requests may be given by parol and reduced to writing.

2. (1) *Where the defendant does not admit the plaintiff's claim, he shall himself, or his proctor shall on his behalf, deliver to the Court or to such officer as the Court shall appoint in this behalf a written answer.*

This rule is s. 73 of the old Code.

Rule 2 (2) has been re-drafted with a view to greater simplicity; and see notes to O. 4, r. 1 (2).

(2) *In the Court of Requests—*

(a) *The defendant may state his answer *videlicet* to the chief clerk or to such other officer as the Commissioner shall appoint in this behalf.*

(b) *The defendant shall supply to the chief clerk, or other officer so appointed, such a stamp as would be required for a written answer in respect of the same cause of action, and upon such stamp being duly supplied, the chief clerk or other officer shall record the defendant's statement in writing and affix the stamp to such writing.*

(c) *The statement so recorded and stamped shall be the defendant's answer.*

Extension of time to answer.

3. *The Court may, on the application of the defendant or his proctor, and upon good cause therefor being shown, from time to time extend the time for filing or stating answer.*

This rule embodies the substance of s. 74 of the old Code.

ORDER VIII.

Requisites of answer.

4. *The answer 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 *in which the action is brought*, the number of the *action*, 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*, 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, and referring by number, where necessary, to the paragraphs of the *plaint*.

New facts must be specially pleaded.

5. *The defendant must raise by his answer all matters which show the action not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.*

Denial to be specific.

6. *It shall not be sufficient for a defendant in his answer to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact, of which he does not admit the truth, except damages.*

Evasive denial.

7. *Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.*

Facts not denied taken to be admitted.

8. *Every allegation of fact in the plaint, if not denied, specifically or by necessary implication, or stated to be not admitted, in the answer, shall be taken to be admitted, except as against a person under disability.*

Provided that the Court may in its discretion require any fact, so admitted, to be proved otherwise than by such admission.

Claim in reconvention.

9. (1) *The defendant may, in his answer, set up a claim in reconvention.*

(2) *Where such a claim is set up, the answer must contain a plain and concise statement of the facts constituting the ground thereof.*

(3) *The claim in reconvention 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 in respect of both the original and the cross claim.*

(4) *Nothing in sub-rule (3) shall effect the lien upon the amount decreed of any proctor in respect of the costs payable to him under the decree.*

Defence or claim in reconvention founded on separate grounds.

10. *Where the defendant relies upon several distinct grounds of defence or claim in reconvention, founded upon separate or distinct facts, they shall be stated, as far as may be, separately and distinctly.*

Court may reject answer if insufficiently stamped.

11. *The Court may reject the answer if it is not sufficiently stamped.*

NOTES.

This rule reproduces, with verbal amendments, s. 75 of the old Code. The words "shall be drawn in duly numbered paragraphs" in (d) have been omitted, as the matter is dealt with in O. 6, r. 2. Clause (e) is omitted from this rule and dealt with in rule 9.

This rule is new, and is taken from r. 2 of O. 8 of the new Indian Code; and see the English R. S. C., O. 19, r. 15.

This rule is new, and is taken from O. 8, r. 3 of the new Indian Code. See also the English R. S. C., O. 19, r. 17, and O. 21, r. 4.

This rule is new, and reproduces r. 4 of O. 8 of the new Indian Code; and compare the English R. S. C., O. 19, r. 19.

This rule is new, and is taken with verbal amendments from r. 4 of O. 8 of the new Indian Code; and compare the English R. S. C., O. 19, r. 13.

Section 76 of the old Ceylon Code required the averment of jurisdiction in the plaint to be specially traversed. It seems unnecessary to have a special provision of this kind as to one particular class of averments in plaints. The matter appears to be sufficiently covered by rules 6, 8, and 9 of this Order.

This rule embodies clause (e) of s. 75 of the old Code, re-drafted with a view to greater simplicity; and see O. 8, r. 6 of the new Indian Code.

This rule is new, and is taken with verbal modification from r. 7 of O. 8 of the new Indian Code; and compare the English R. S. C., O. 20, r. 7.

See s. 77 of the old Code, which has been curtailed owing to other provisions in these rules.

O. 6, r. 15, provides for the striking out, or amendment by the Court itself, of prejudicial matter in pleadings. Rule 16 of the same Order deals with amendments on the application of parties. Compare as to plaints, O. 7, rr. 12 to 14.

ORDER VIII.

Copy of answer to be delivered to plaintiff.

12. 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.

Exclusion of claim in reconvention.

13. Where a defendant sets up a claim in reconvention, if the plaintiff contends that the claim thereby raised ought not to be disposed of by way of claim in reconvention but in an independent action, he may at any time before pleading to the claim in reconvention apply to the Court for an order that it may be excluded, and the Court may, on the hearing of such application, make such order as shall be just.

Abatement, withdrawal, or dismissal of plaintiff's action.

14. Where, in any case in which the defendant sets up a claim in reconvention, the action of the plaintiff abates or is withdrawn or dismissed, the claim in reconvention may nevertheless be proceeded with.

ORDER IX.

REPLICATION AND FURTHER PLEADINGS AFTER ANSWER.

Replication and answer to claim in reconvention.

1. The plaintiff may file a replication to a claim in reconvention within such time as the Court may fix.

Subsequent pleadings.

2. Except where the defendant has set up a claim in reconvention, no pleading after answer shall be filed, unless with the leave of the Court expressly obtained upon such terms as the Court shall think fit.

Form and service of.

3. (1) All pleadings after answer shall be subject to the rules prescribed by Orders VI. and VII., so far as the same can be made applicable.

(2) Copies of such pleadings shall be kept with the secretary or clerk of the Court for delivery to, or shall be served on, the opposite party or his proctor.

NOTES.

This rule reproduces s. 78 of the old Code.

This rule is new, and is taken, with verbal modifications, from the English R. S. C., O. 21, r. 15. Rules 11 to 13 of the English Order provided for counter claims against persons who were not parties to the action. It has been thought inexpedient to introduce that procedure in Ceylon, especially in view of the provision in the present rules for the joinder of parties whose claims for relief arise out of the same transaction or series of transactions.

This rule is new, and is based on the English R. S. C., O. 21 r. 16.

This rule is new, and is adapted from the English R. S. C., O. 21, r. 14. The old Code contained no express provision for the filing of a replication to a claim in reconvention. The present rule supplies this omission.

This rule is based on the first paragraph of s. 79 of the old Code, and r. 9 of O. 8 of the new Indian Code. It leaves unaltered the old law as declared by the Full Court in *Lokuhamy v. Sirimala*, (1892) 1 S. C. R. 326, that, except where the defendant has set up a claim in reconvention, no replication can be filed without the leave of the Court. Where new matter is pleaded in the answer by way of defence and no replication is filed, every material allegation in the answer shall be deemed to have been denied, and the burden of proof of such new matter shall be on the party asserting it. *Lokuhamy v. Sirimala (ubi supra)*.

In drafting rule 2 various amendments have been made for the sake of clearness and simplicity.

In lieu of the provision in s. 79 prescribing a special motion for leave to file pleadings after answer, it is suggested that it will be sufficient if the leave of the Court is expressly obtained. The second part of s. 79 defining the circumstances under which further pleadings may be allowed has been omitted. There seems to be no need to fetter the discretion of the Court in the matter.

This rule is based on the last paragraph of s. 79 of the old Code.

ORDER X.

NOTES.

FIXING DAY OF TRIAL.

Day of trial.

1. (1) Forthwith on the expiration of the time allowed for the filing of the defendant's answer, or where a replication or other pleading after answer is permitted, of the time allowed for filing such replication or other pleading, and whether the same has been filed or not, the Court shall fix a day for the hearing and determination of the action.

(2) The plaintiff shall give notice of such day to the other party or parties to the action.

(3) The Court may, on application made by either party, and after hearing both parties, or after proof of notice of motion to the absent party, or without such proof, direct that the day fixed for the hearing of any action shall be advanced or deferred.

(4) The Court shall direct the party at whose instance the day for hearing or determination of the action has been so advanced or deferred, to give notice thereof to the other party or parties.

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

2. The Court in fixing the day of hearing shall not fix more than a reasonable number of actions for any one day.

3. (1) When any action is, in its turn, called on for hearing, the Court may, upon such terms as to costs or otherwise as it thinks fit, for sufficient cause order that the hearing be postponed.

(2) Save where the removal of an action from the trial roll is necessary, the Court shall not postpone the hearing of any case sine die, but shall specify in its order the date to which the hearing is postponed.

(3) Every such order shall be in writing, and the reason for the postponement shall be stated in the order.

Case may be called on for hearing out of its order. Cause lists.

4. The Court may, in its discretion and for good reasons, direct that any action be called on for hearing out of its order in the cause list for the day.

5. 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.

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

6. The actions in any day's cause list not disposed of on that day shall be placed at the head of the next day's cause list, unless the Court directs otherwise.

ORDER XI.

DEFAULT IN APPEARANCE OR PLEADING.

Non-appearance of plaintiff.

1. (1) Where on the day fixed for the hearing of the action, the plaintiff does not, when the action is called on for hearing, appear, or sufficiently excuse his absence, the Court may dismiss the plaintiff's action.

Provided that if the defendant shall appear in person or by proctor and admit the plaintiff's claim in whole or in part, the Court shall enter judgment for the plaintiff, notwithstanding his default, upon such admission, and where part only of the claim has been admitted, shall dismiss the action in so far as it relates to the remainder.

Decree against plaintiff by default bars fresh action.

(2) (a) Where an action has been wholly or partly dismissed under sub-rule (1), the plaintiff shall be precluded from bringing a fresh action in respect of the same cause of action. But he may, within fourteen days from the date of dismissal, apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the action was called on for hearing, the Court shall make an order setting aside the dismissal, upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the action.

This rule reproduces s. 80 of the old Code, with verbal modifications, and renders unnecessary s. 820 (1) as to Courts of Requests. The Court must fix the day for trial, as it alone is in a position to do so. But the Court should not be required to give notice of trial to the parties. It is the duty of the plaintiff, who invokes the aid of the Court, to see that this is done.

Sub-rule (2) has been inserted in consequence of the decisions in *Naina Mohammado v. Perera*, (1901) 2 Bro. 313; and *Lorensu Appuhami v. Paaris*, (1908) 3 A. C. R. 171.

This rule reproduces the substance of s. 81 of the old Code.

This rule is based upon s. 82 of the old Code, re-drafted with a view to greater clearness and simplicity.

Sub-rule (2), while preserving the right of the Court, now constantly exercised in practice, to remove a case from the trial roll, where necessary, gives effect to the decision in *Fernando v. Curera*, (1896) 2 N. L. R. 29, that a general postponement is irregular.

This rule is based on the proviso to s. 82 of the old Code.

This rule reproduces, with verbal modifications, the second paragraph of s. 83 of the old Code.

This rule reproduces the first paragraph of s. 83 of the old Code.

Sub-rule (1) and the following rules assimilate the practice of the District Courts as prescribed by ss. 84 to 88, both included, to that of the Courts of Requests as defined by s. 823 of the old Code in regard to default of appearance.

The system of decree nisi and decrees absolute, established as regards District Courts by ss. 84 et seq. of the old Code, has been productive of widespread carelessness both on the part of lay clients and their proctors in keeping in touch with their cases, has involved great waste of time in the courts of first instance, and has added to the cause lists of the Supreme Court a number of appeals, any occasion for which could easily have been avoided.

The third paragraph of s. 84 providing for postponement, where the defendant consented thereto, has been omitted. The Courts ought not to be compelled to grant postponements merely because no objection is raised on the side of the party ready to proceed.

ORDER XI.

(b) No order shall be made under this sub-rule unless notice of the application has been served on the opposite party.

Non-appearance of defendant.

2. Where on the day fixed for appearance and answer, or for the subsequent filing of the answer, the defendant does not, when the action is called on the roll, appear or file answer, as the case may be, or sufficiently excuse his absence, and the Court is satisfied that the defendant has been duly served with summons, the Court may enter judgment by default against the defendant. Where on the day fixed for the hearing of the action the defendant does not, when the action is called on for hearing, appear or sufficiently excuse his absence, and the Court is satisfied that he has received notice of trial where such notice is necessary, the Court may enter judgment by default against the defendant.

Provided, however, that in all cases in which the title to, or any interest in, or right to the possession of, land is in dispute the Court shall require the plaintiff, either forthwith or on a day fixed for that purpose, to adduce evidence in support of his claim, and after hearing such evidence the Court shall give judgment on the merits without reference to the default of the defendant.

Judgment by default may be opened up in certain cases.

3. Where, within a reasonable time after judgment against him by default, the defendant shall satisfy the Court that he had reasonable grounds for such default, the Court shall set aside the judgment and admit the defendant to proceed with his defence upon such terms as the Court shall deem fit.

Default by both plaintiff and defendant.

4. (1) Where neither party appears when the action is called on for hearing, the Court may enter judgment dismissing the action, but without costs.

(2) The dismissal of an action under sub-rule (1) shall preclude the plaintiff from instituting a fresh action upon the same cause of action. But the Court may upon the application of either party, made within a reasonable time after any such judgment of dismissal, and upon notice to the other side, restore the action to the trial roll upon such terms as it shall think fit.

Appeal lies in what cases.

5. No appeal shall lie against any judgment entered under the foregoing rules for default of appearance, but orders setting aside or refusing to set aside such judgments shall be appealable.

Procedure in case of non-attendance of one or more of several plaintiffs.

6. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the action to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants.

7. Where there are more defendants than one, and one or more of them appear, and the others do not appear, the action shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequence of non-attendance, without sufficient cause being shown, of party ordered to appear in person.

8. Where a plaintiff or defendant who has been ordered to appear in person does not so appear, or show sufficient cause to the satisfaction of the Court for his default, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

NOTES.

Sub-rule (2) is new, and is taken from r. 9 of O. 9 of the new Indian Code. Compare s. 823 (5) of the old Ceylon Code, which provided for the institution of a fresh action on terms.

This rule is an adaptation of s. 823 (2) of the old Code. See notes to r. 1. The reference in s. 85 of the old Code to notice of the day for filing answer or for trial has been omitted. The day for filing answer is fixed on the application of the defendant himself or his proctor. He has equally good opportunities of knowing the day of trial. Exceptional cases of innocent default can be remedied under r. 3.

This rule is an adaptation of s. 823 (3) of the old Code; and see notes to r. 1.

Sub-rule (1) is founded on s. 823 (4) of the old Code, and r. 3 of O. 9 of the new Indian Code. And see notes to r. 1 *supra*.

Sub-rule (2) is founded on the second paragraph of s. 88 of the old Code, except that permission to bring a fresh action is not provided for.

This rule is adapted from ss. 87 and 823 (6) of the old Code.

This rule is new, and is taken from O. 9, r. 10 of the new Indian Code.

This rule is new, and is taken from r. 11 of O. 9 of the new Indian Code.

The Court shall appear. These words embody the substance of s. 89 of the old Code.

This rule is new, and is taken, with verbal modifications, from O. 9, r. 12 of the new Indian Code.

No provision has been made in these rules, as was made by s. 84 of the old Code, in regard to default on the part of a plaintiff to appear on the day fixed for appearance and answer, or for filing of the answer or replication. The proctor for the plaintiff is generally present on these occasions, and the personal appearance of the plaintiff is not necessary unless specially ordered by the Court. Failure of the defendant to appear and answer or to file answer stands in a different position, as it arrests the progress of the case. Under r. 2 of this Order, as under s. 85 of the old Code, it is treated as a default.

Failure of either plaintiff or defendant to obey an order for personal attendance is the subject-matter of this rule, which makes it a ground for judgment in default.

ORDER XI.

Where two or more defendants severally liable.

9. (1) Where two or more defendants are alleged to be severally liable, and 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.

(2) Where judgment is so taken, the plaintiff may proceed in the same action against the other defendants.

NOTES.

This rule reproduces s. 89 of the old Code, with verbal amendments.

ORDER XII.

MOTIONS.

Motions.

1. 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.

This order reproduces s. 91 of the old Code.

How to be made.

2. A motion may be made by the applicant in person or his advocate or proctor, and a memorandum in writing of such motion shall be delivered to the Court at or before the time when the motion is made.

Court of Requests.

3. In the Court of Requests such applications may be made orally by the applicant in person, and shall be recorded by the Court or by some officer specially deputed by the Court for that purpose.

ORDER XIII.

DISCOVERY AND INSPECTION.

Interrogatories.

1. (1) In any action, whether in the District Court or in the Court of Requests, any party by leave of the Court to be obtained on motion ex parte may, subject to the provisions of sub-rule (3) of this rule, deliver interrogatories in writing for the examination of the opposite party or any one or more of such parties, and such interrogatories shall have a note at the foot thereof stating which of them each of such persons is required to answer.

This rule reproduces s. 94 of the old Code, with amendments taken from O. 11, r. 1 of the new Indian Code, and the English R. S. C., O. 31, r. 1.

(2) No party shall deliver more than one set of interrogatories to the same party without a further order for that purpose.

Chapter XVI. of the old Code dealt with admission, production, impounding, and return of documents, as well as with discovery and inspection. Order XIV. of these rules deals with admissions; and Order XV. with production, impounding, and return of documents.

(3) 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.

"Whether in the District Court or in the Court of Requests." These words have been added in order to repeal s. 824 of the old Ceylon Code, which provided that ss. 94 to 100 did not apply to Courts of Requests. The jurisdiction of Courts of Requests has been increased since 1889. Many of the cases tried in these Courts are complicated and important, and there seems no reason why discovery and inspection should not be provided for subject to the Courts' control.

(4) Interrogatories which do not relate to any matters in question in the action shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

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

Particular interrogatories to be submitted.

2. On a motion for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such motion, the Court shall take into account any offer which may be made by the party sought to be interrogated to deliver particulars, or to make admissions or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the action or for saving costs.

This rule is new, and is taken, with a verbal amendment, from O. 11, r. 2 of the new Indian Code, and the English R. S. C., O. 31, r. 2.

Service of interrogatories.

3. Interrogatories delivered under rule 1 shall be served on the proctor (if any) of the party interrogated, or in the manner provided in these rules for the service of summons, and the provisions therein contained with regard to service of summons shall, in the latter case, apply so far as may be practicable.

This rule reproduces s. 95 of the old Code.

ORDER XIII.

NOTES.

Cost of interrogatories.

4. In adjusting the costs of the action, *inquiry* shall, at the instance of any party, be made into the propriety of delivering such interrogatories; and if it is the opinion of the taxing officer or of the Court 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 paid in any event by the party in fault.

Form of interrogatories.

5. Interrogatories shall be in Form No. 1 in Appendix C, with such variations as circumstances may require.

Corporations.

6. Where any party to an action is a corporation or body of persons, whether incorporated or not, 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 or body, and an order may be made accordingly.

Objections to interrogatories by answer.

7. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant, or is not exhibited *bona fide* for the purposes of the action, or that the answer will tend to criminate the party interrogated, or that the matter inquired into is not sufficiently material at that stage of the action, or any other ground, may be taken in the affidavit in answer.

Setting aside and striking out interrogatories.

8. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous, and any application for this purpose may be made within seven days after delivery or service of the interrogatories.

Affidavit in answer, filing.

9. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

Form of affidavit in answer.

10. An affidavit in answer to interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

No exception to be taken.

11. No exception shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

Order to answer or further answer.

12. Where any person interrogated omits to answer or answers insufficiently any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further, either by an affidavit or by *viva voce* examination, as the Court may direct.

Using answers to interrogatories at trial.

13. Any party may, at the trial of an action, use in evidence any one or more of the answers, or any part of an answer, of the opposite party to interrogatories without putting in the others, or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

Application for discovery of documents.

14. (1) Any party may apply to the Court for an order directing any other party to any action to make discovery by affidavit of the documents which are or have been in his possession or power relating to any matter in question therein.

(2) On the hearing of such application, the Court may either refuse or adjourn the same, if satisfied that discovery is not necessary, or not necessary, at that stage of the action, or make such order, either generally or limited, to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the action or for saving costs.

This rule reproduces, with verbal amendments, s. 96 of the old Code, in accordance with O. 11, r. 3 of the new Indian Code, and the English R. S. C., O. 31, r. 3, s. 96 of the old Code.

This rule is new. See O. 11, r. 4 of the new Indian Code, and the English R. S. C., O. 31, r. 4.

This rule reproduces s. 97 of the old Code, with verbal amendments based on O. 11, r. 5 of the new Indian Code, and the English R. S. C., O. 31, r. 5.

This rule reproduces s. 98 of the old Code, amended in accordance with O. 11, r. 6 of the new Indian Code, and the English R. S. C., O. 31, r. 6.

This rule is new, and is taken, with a verbal amendment, from O. 11, r. 7 of the new Indian Code, and the English R. S. C., O. 31, r. 7.

This rule reproduces s. 99 of the old Code, with verbal amendments taken from O. 11, r. 8 of the new Indian Code, and the English R. S. C., O. 31, r. 8.

This rule is new, and is taken from O. 11, r. 9 of the new Indian Code, and the English R. S. C., O. 31, r. 9.

This rule is new, and is taken from O. 11, r. 10 of the new Indian Code, and the English R. S. C., O. 31, r. 10.

This rule reproduces s. 100 of the old Code, amended in accordance with r. 11 of O. 11 of the new Indian Code, and the English R. S. C., O. 31, r. 11.

The proviso to s. 100 of the old Code is omitted.

This rule is new, and is taken from r. 22 of O. 11 of the new Indian Code, and the English R. S. C., O. 31, r. 24.

Sub-rule (1) is based on the first paragraph of s. 102 of the old Code, amended in accordance with the first paragraph of r. 12 of O. 11 of the new Indian Code, and the English R. S. C., O. 31, r. 12.

Sub-rule (2) is new, and is taken from the second and third paragraphs of r. 12 of O. 11 of the new Indian Code, and the English R. S. C., O. 31, r. 12. A form of order under this sub-rule is given in Form No. 3 in Appendix C.

ORDER XIII.

NOTES.

Affidavit of documents.

15. *The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made shall specify which, if any, of the documents therein mentioned he objects to produce, together with the grounds of such objection, and shall be in Form No. 4 in Appendix C, with such variations as circumstances may require.*

This rule is based on the last paragraph of s. 102 of the old Code, amended in accordance with r. 13 of O. 11 of the new Indian Code, and r. 13 of O. 31 of the English R. S. C.

Order for production of documents.

16. *It shall be lawful for the Court, at any time during the pendency of any action, to order the production by any party thereto upon oath of such of the documents in his possession or power relating to any matter in question in such action or proceeding as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.*

This rule reproduces s. 103 of the old Ceylon Code, modified in accordance with r. 14 of O. 11 of the new Indian Code, and r. 14 of O. 31 of the English R. S. C.

Inspection of documents referred to in pleadings or affidavits.

17. (1) *Every party to an action may, at any time, 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.*

This rule reproduces s. 104 of the old Ceylon Code, amended, to some extent, in accordance with r. 15 of O. 11 of the new Indian Code, and r. 15 of O. 31 of the English R. S. C. A form of order under sub-rule (1) is given in Form No. 5 in Appendix C.

(2) *Any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other cause which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.*

Notice to produce.

18. *Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 6 in Appendix C, with such variations as circumstances may require.*

This rule is new, and is taken from r. 16 of O. 11 of the new Indian Code, and r. 16 of O. 31 of the English R. S. C.

Time for inspection when notice given.

19. *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 the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his proctor or, in the case of bankers' books or other books of accounts or books in constant use for the purpose of any trade or business, at their usual place of custody, and stating which, if any, of the documents he objects to produce, and on what grounds. Such notice shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.*

This rule reproduces s. 105 of the old Code, modified in accordance with r. 17 of O. 11 of the new Indian Code, and r. 17 of O. 31 of the English R. S. C.

Order for inspection.

20. (1) *Where the party served with notice under rule 17 omits to give notice under rule 19 of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his proctor, the Court may on the application of the party desiring it make an order for inspection in such place and in such manner as it shall think fit.*

Sub-rule (1) reproduces s. 106, and sub-rule (2) s. 107 of the old Code. The amendments are taken from r. 18 of O. 11 of the new Indian Code, and r. 18 of O. 31 of the English R. S. C.

Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the action or for saving costs.

(2) *Any application to inspect documents, except such as are referred to in any pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and in so far as the Court shall be of opinion that it is not necessary for disposing fairly of the action and for saving costs.*

Verified copies.

21. (1) *Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations. Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.*

This rule is new, and is taken from r. 19 of O. 11 of the new Indian Code, and r. 19 A of O. 31 of the English R. S. C.

(2) *Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.*

ORDER XIII.

NOTES.

(3) The Court may, on the application of any party to an action at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power ; and if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the action or to some of them.

Premature discovery.

22. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought 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 issue or question should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

Non-compliance with order for discovery.

23. (1) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, 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 or inspection may apply to the Court for an order to this effect, and an order may be made accordingly.

(2) Any party failing to comply with any order to answer interrogatories, or for discovery or inspection, shall also be deemed guilty of the offence of contempt of Court.

Court may inspect records of other Courts.

24. (1) The Court may of its own motion, or upon the application of any of the parties to an action, send for, either from its own records or from any other Court, the record of any other action or proceeding, and inspect the same.

(2) Every application made under this rule shall, unless the Court otherwise directs, be supported by an affidavit by 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.

(3) Nothing in this rule shall be deemed to enable the Court to use in evidence any document which by the law of evidence in force in the Colony would be inadmissible in the action.

Order to apply to minors.

25. This order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the action of persons under disability.

Provisions as to documents apply to other material objects.

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

ORDER XIV.

ADMISSIONS.

Notice of admission of case.

1. Any party to an action may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit documents.

2. (1) Either party may, by a notice issued by order of Court, to be obtained on motion ex parte within a reasonable time before the hearing, call upon the other party to admit any document saving all just exceptions.

(2) The admission shall be made in writing, signed by the other party or his proctor, and filed in Court.

(3) In case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be ; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give notice is, in the opinion of the Court, a saving of expense.

This rule reproduces s. 108 of the old Code, with verbal amendments bringing it into conformity with r. 20 of O. 11 of the new Indian Code, and r. 20 of O. 31 of the English R. S. C.

Sub-rule (1) reproduces with verbal amendments, taken from r. 21 of O. 11 of the new Indian Code, r. 21 of O. 31 of the English R. S. C., the first and second paragraphs of s. 109 of the old Code.

Sub-rule (2) is the last paragraph of s. 109 of the old Code.

This rule reproduces, with verbal amendments, s. 110 of the old Code.

This rule is new, and is taken from r. 23 of O. 11 of the new Indian Code, and r. 29 of O. 31 of the English R. S. C.

This rule reproduces s. 117 of the old Code ; and see O. 14, r. 9, and O. 15, r. 4. The breaking up of Chapter XVI. of the old Code into three separate orders necessitates its insertion in each.

This rule is new, and is taken from r. 1 of O. 12 of the new Indian Code, and r. 1 of O. 32 of the English R. S. C.

This rule reproduces s. 101 of the old Code, with verbal amendments taken from r. 2 of O. 12 of the new Indian Code, and r. 2 of O. 32 of the English R. S. C.

ORDER XIV.

Form of notice.

3. A notice to admit documents shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

Notice to admit facts.

4. (1) Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the action only, any specific fact or facts mentioned in such notice.

(2) Any admission made in pursuance of such notice may be made by the party called upon to make the admission or by his proctor on the record.

(3) Any such admission shall be deemed to be made only for the purposes of the particular action, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice, and the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

(4) In case of refusal or neglect to make any admission of a fact or of facts called for under sub-rule (1) within six days after service of the notice to admit, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless the Court otherwise directs.

Form of admissions.

5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

Judgment on admissions.

6. Any party may at any stage of an action, where admissions of facts have been made, either on the pleadings or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon such application make such order, or give such judgment, as the Court may think just.

Notice to produce documents.

7. Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit by the proctor giving such notice, or by the clerk of such proctor, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Costs.

8. If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

Provisions as to documents apply to other material objects.

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

NOTES.

This rule is new, and is taken from r. 3 of O. 12 of the new Indian Code, and r. 3 of O. 32 of the English R. S. C.

This rule is new, and is taken from r. 4 of O. 12 of the new Indian Code, and r. 4 of O. 32 of the English R. S. C. A form of admission of documents is given in Form No. 9 in Appendix C.

This rule is new, and is taken from r. 5 of O. 12 of the new Indian Code, and r. 5 of O. 32 of the English R. S. C.

This rule is new, and is taken from r. 6 of O. 12 of the new Indian Code, and r. 6 of O. 32 of the English R. S. C.

This rule is new, and is taken from r. 8 of O. 12 of the new Indian Code, and r. 8 of O. 32 of the English R. S. C.

This rule is new, and is taken from r. 9 of O. 12 of the new Indian Code, and r. 9 of O. 32 of the English R. S. C.

See notes to O. 13, r. 26.

ORDER XV.

RETURN, IMPOUNDING, AND TRANSLATION OF DOCUMENTS.

Recording of admitted and return of rejected documents.

1. Documents not admitted in evidence shall not form part of the record, and shall be returned to the persons respectively producing them.

This rule is based on the first sentence and the second paragraph of s. 114 of the old Code; and see r. 7, sub-rule (2), of O. 13 of the new Indian Code.

Court may order any document to be impounded.

2. 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.

This rule reproduces s. 115 of the old Code; and see r. 8 of O. 13 of the new Indian Code.

Return of documents.

3. (1) 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 rule 2, be entitled to receive back the same:

This rule reproduces s. 116 of the old Code, with amendments taken from r. 9 of O. 13 of the new Indian Code.

(a) Where the action is one in which an appeal is not allowed, when the action has been disposed of; and

(b) Where the action is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred, or, if an appeal has been preferred, when the appeal has been disposed of.

ORDER XV.

NOTES.

Provided that a document may be returned at any time if the person applying *therefor delivers* to the proper officer a certified copy to be substituted for the original, *and undertakes to produce the original if required to do so.*

Provided *also* that no document shall be returned which, by force of the decree, has become *wholly* void or useless.

(2) On the return of a document which has been admitted in evidence, a receipt shall be given by the *person* receiving it.

Provisions as to documents to apply to other material objects.

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

This rule reproduces s. 117 of the old Code; and see r. 11 of O. 13 of the new Indian Code. See also *Sup. O. 13, r. 26*; O. 14, r. 9.

Translation of documents.

5. 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.

This rule reproduces s. 118 of the old Code.

Who shall be deemed a translator.

6. (1) 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.

This rule reproduces s. 119 of the old Code.

(2) *The certificate and oath referred to in sub-rule (1) shall be in Forms 13 and 14 respectively in Appendix H.*

Fees of translators.

7. *Every* such translator shall be entitled to have or recover in respect of any such translation as aforesaid a fee of thirty-three cents for every folio, or part of a folio, of 120 words.

This rule reproduces, with verbal amendments, s. 120 of the old Code.

ORDER XVI.

SUMMONING AND ATTENDANCE OF WITNESSES.

Summons to attend to give evidence or produce documents.

1. (1) *At any time* after the summons has been delivered, *and the date of trial fixed*, the parties may obtain, on application to the Court or to such officer as *it* appoints in that behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Sub-rule (1) reproduces the first paragraph of s. 121 of the old Code, with verbal amendments suggested by r. 1 of O. 16 of the new Indian Code. The words "before the day fixed for the hearing" have been omitted.

(2) 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 Court shall consider reasonable, or at any time before the trial with the consent of the other side appearing on the face of such list.

Sub-rule (2) reproduces the second paragraph of s. 121 of the old Code.

Expenses of witnesses to be paid into Court on applying for summons.

2. (1) 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.

Sub-rules (1), (2), and (3) reproduce s. 122 of the old Code, with verbal amendments; and see r. 2 of O. 16 of the new Indian Code. Sub-rule (4) is new, and is taken from sub-rule (2) of r. 2 of O. 16 of the new Indian Code.

(2) In the case of a witness residing within four miles from the Court at which his attendance is required, no such payment shall be made nor security given.

(3) The making of any such payment and the giving of any such security shall *not* be made a condition precedent to the issue of a summons, but where (except in the case of a witness residing within four miles from the Court) a summons issues without such payment having been made or security given, the summons shall state on the face of it that such is the case, and that *the witness* is not *obliged* to attend.

Experts.

(4) *In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.*

Tender of expenses to witness.

3. The sum so paid into Court, or so secured, shall at the 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.

This rule reproduces s. 123 of the old Code; and see r. 3 of O. 16 of the new Indian Code.

ORDER XVI.

NOTES.

Procedure where insufficient sum paid in.

4. (1) Where 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 or reasonable remuneration, 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 seizure and sale of the movable property of the party obtaining the summons; 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.

Sub-rule (1) reproduces, with verbal amendments suggested by r. 4 (1) of O. 16 of the new Indian Code, s. 124 of the old Ceylon Code.

Or reasonable remuneration. These words are rendered necessary by the provision as to experts in r. 2 (4) supra.

Sub-rule (2) reproduces, with verbal amendments taken from r. 4 (2) of O. 16 of the new Indian Code, s. 125 of the old Code.

Expenses of witnesses detained more than one day.

(2) Where 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 seizure and sale of the movable property of such party; 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.

Place and purpose of attendance to be specified in summons.

5. (1) Every summons for the attendance of a person to give evidence or to 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.

This rule reproduces s. 126 of the old Code; and as to sub-rule (1) see r. 5 of O. 16 of the new Indian Code.

(2) Where money has been deposited or security given under the provisions of rule 2, sub-rule (1), the summons shall contain a statement to that effect.

Summons to produce document.

6. 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 causes such document to be produced, instead of attending personally to produce the same.

This rule reproduces s. 127 of the old Code; and see r. 6 of O. 16 of the new Indian Code.

Power to require person in Court to give evidence or produce document.

7. 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.

This rule reproduces s. 128 of the old Code; and see r. 7 of O. 16 of the new Indian Code.

Service of summons.

8. Every summons under this Order shall be served as nearly as may be in the same manner as a summons to a defendant; and the rules in Order V. as to proof of service shall apply in the case of all summonses served under this rule.

This rule reproduces, with verbal amendments taken from r. 8 of O. 16 of the new Indian Code, s. 129 of the old Code.

Service must afford reasonable time for attendance.

9. 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.

This rule reproduces s. 130 of the old Code; and see r. 9 of O. 16 of the new Indian Code.

When summons cannot be served, proclamation may issue.

10. (1) Where the Fiscal returns to the Court that a summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court may examine the process server on oath, or cause him to be so examined by another Court touching the service or non-service of the summons.

This rule reproduces the substance of the first and second paragraphs of s. 131 of the old Code, with amendments in sub-rules (1) and (2) from r. 10 of O. 16 of the new Indian Code. Sub-rule (3) is new, and is intended to render a process server giving false evidence liable to summary punishment for perjury.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has without lawful excuse failed to attend or to produce the document in compliance with such summons, or has intentionally avoided service, the Court may in its discretion either issue a warrant for the apprehension of such witness or issue a proclamation requiring him to attend to give evidence or to 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.

(3) Any examination of a process server under sub-rule (1) shall be a judicial proceeding within the meaning of section 12 of the Oaths Ordinance, 1895 (No. 9 of 1895), without prejudice to the liability of any such process server to be proceeded against in the alternative under any other law for the punishment of false evidence.

Failure to attend where summoned by proclamation.

11. Where the person summoned by proclamation as aforesaid fails to attend at the time and place named in such proclamation, the Court may in its discretion make an order for the seizure of the property of such person to such amount as the Court thinks fit, not exceeding the amount of the costs of seizure and of the fine which may be imposed under rule 13 of this Order.

This rule reproduces, with verbal amendments, the last paragraph of s. 131 of the old Code.

ORDER XVI.

NOTES.

If witness appears sequestration may be withdrawn.

12. Where, at any time after the seizure of his property, such person appears and satisfies the Court—

(a) That he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service; and

(b) Where he has failed to attend at the time and place named in a proclamation issued under rule 10, sub-rule (2), that he had no notice of such proclamation in time to attend, the Court shall direct that the property be released from seizure, and shall make such order as to the costs of the seizure as it thinks fit.

Procedure where witness fails to appear.

13. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, 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 the case; and may order his property or any part thereof to be seized and sold or, if already seized under rule 11, to be sold for the purpose of satisfying all costs incurred in consequence of such seizure, 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 fine as aforesaid, the Court shall order the property to be released from seizure.

Mode of sequestration and sale.

14. The provisions of Order XXIV, with regard to the seizure and sale of property in execution of a decree shall, so far as they are applicable, be deemed to apply to any seizure and sale under this Order.

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

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

Person summoned must attend.

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

When he may depart.

17. (1) A person so summoned and attending shall, unless, the Court otherwise directs, attend at each hearing until the action has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the action is disposed of, and, in default of his furnishing such security, may order him to be detained in prison as a civil prisoner.

Application of rules 10 to 14.

18. (1) The provisions of rules 10 to 14 shall, so far as they are applicable, be deemed to apply to any person who, having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 17.

(2) Any person who, having so attended on a summons, departs without lawful excuse, in contravention of rule 17 (1), shall be deemed to be guilty of, and shall be punished for, contempt of Court, in addition to any liability attaching to him under rules 10 to 14.

Procedure when witness apprehended cannot give evidence or produce document.

19. Where any person arrested under a warrant is brought before the Court in custody and 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, and in default of his giving such bail or security may order him to be detained in prison as a civil prisoner.

Court may pass decree against party refusing to give evidence.

20. Where 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 pronounce judgment against him or make such other order in relation to the action as the Court thinks fit, or may punish him for a contempt of Court.

This rule reproduces s. 132 of the old Code, with verbal amendments taken from r. 11 of O. 16 of the new Indian Code.

This rule reproduces s. 133 of the old Code, with verbal amendments taken from r. 12 of O. 16 of the new Indian Code.

This rule is new, and is taken from r. 13 of O. 16 of the new Indian Code.

This rule reproduces s. 134 of the old Code, with verbal amendments taken from r. 14 of O. 16 of the new Indian Code.

This rule reproduces s. 135 of the old Code, with verbal amendments from r. 15 of O. 16 of the new Indian Code.

Sub-rule (1) is based on s. 136 of the old Code, with amendments from r. 16 (1) of O. 16 of the new Indian Code.

Sub-rule (2) is new, and is taken from r. 16 (2) of O. 16 of the new Indian Code.

Sub-rule (1) is taken from r. 17 of O. 16 of the new Indian Code, and is substituted for the first paragraph of s. 137 of the old Code.

Sub-rule (2) reproduces the substance of the second paragraph of s. 137 of the old Code. See also s. 139.

This rule reproduces s. 138 of the old Code, with amendments taken from r. 18 of O. 16 of the new Indian Code.

This rule reproduces s. 140 of the old Code, with verbal amendments taken from r. 20 of O. 16 of the new Indian Code.

ORDER XVI.

Rules as to witnesses to apply to parties.

21. (1) Where any party to an action is required to give evidence or produce a document, the provisions in these rules as to witnesses shall apply to him so far as they are applicable. (2) Nothing in this Order contained shall be deemed in any way to contravene or affect the provisions of the Evidence Ordinance, 1895 (No. 14 of 1895), or Ordinance No. 12 of 1864, except in so far as the same may be hereby expressly repealed or modified.

ORDER XVII.

ADJOURNMENTS.

Court may grant time and adjourn hearing.

Costs.

1. (1) The Court may, if sufficient cause be shown, at any stage of the action grant time to the parties, or any of them, and may from time to time adjourn the hearing of the action. (2) In every such case 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, wherever it is practicable, be continued from day to day.

Procedure if parties fail to appear on day fixed.

Court may proceed notwithstanding either party fails to produce evidence, &c.

Payment of costs made condition of grant of adjournment.

2. Where 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 Order XI., or make such other order as it thinks fit. 3. Where 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. 4. Where a party has been granted time subject to the condition that the costs of the opposite party occasioned by the adjournment shall be paid before the next date of hearing, the Court may, if such costs have not been paid, and it is satisfied that a taxed bill of costs has been tendered to the party in default within a reasonable time before the date of hearing, enter judgment against such party.

ORDER XVIII.

TRANSFER OF ACTIONS.

Applications for transfers of actions.

Stamp duty.

1. (1) Any of the parties to an action 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 the manner prescribed by section 46 of the Courts Ordinance, 1889 (No. 1 of 1889), for the transfer of such action for trial to any other Court of competent jurisdiction. (2) The Supreme Court may, on such application after hearing such of the parties as desire to be heard, and on being satisfied that such transfer is desirable for any of the reasons given in that section, so transfer any such action for trial to any other such Court as aforesaid, upon any terms that the Supreme Court shall think fit. (3) 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 transfer to one of the alternative Courts. 2. In no case in which any action is transferred under rule 1 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.

NOTES.

This rule reproduces s. 141 of the old Code, with verbal amendments taken from r. 21 of O. 16 of the new Indian Code. Ordinance No. 9 of 1852 referred to in s. 141 was repealed by the Evidence Ordinance. Ordinance No. 12 of 1864 deals with the proof of public documents in Courts of Justice by certified copies.

Section 142 of the old Code, conferring on witnesses privilege from arrest in civil actions on their way to and from Court, is dealt with in s. 64 of the Ordinance.

This rule reproduces s. 143 of the old Code, with verbal amendments taken from r. 1 of O. 17 of the new Indian Code.

Wherever it is practicable. It is impossible in practice to carry out in every case the requirement of s. 143 of the old Code that the trial of cases should proceed de die in diem. The rule has, therefore, been relaxed, but relaxed only in such a form as to show clearly that the provisions of the old Code on this point are to be departed from only in cases of absolute necessity.

This rule reproduces s. 144 of the old Code, with verbal amendments from r. 2 of O. 17 of the new Indian Code.

This rule reproduces s. 145 of the old Code, with verbal amendments from r. 3 of O. 17 of the new Indian Code.

This rule is new, and is intended to give the Courts the power which, under existing conditions, they do not possess, to treat the failure by a party after an order making payment of certain costs a condition of the grant of an adjournment a ground on which judgment may be entered against such party as if he had made default in appearance.

This rule is based on the first and second paragraphs of s. 10 of the old Code.

This rule reproduces the last paragraph of s. 10 of the old Code.

ORDER XIX.

NOTES.

ISSUES.

Definition of issues.

- 1. (1) *Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.*
- (2) *Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.*
- (3) *Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.*
- (4) *Issues are of two kinds : (a) issues of fact, (b) issues of law.*

Framing of issues.

- 2. (1) *On the day fixed for the hearing of the action, or on any other day to which the hearing is adjourned, the Court shall ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues.*
- (2) *Nothing in sub-rule (1) shall require the Court to frame and record issues where the defendant makes no defence.*

Issues of law and fact.

3. *Where issues both of law and of fact arise in the same action, and the Court is of opinion that the case or any part thereof 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.*

Materials from which issues may be framed.

4. (1) *The Court may frame the issues from all or any of the following materials :—*

- (a) *Allegations made on oath by the parties, or by any persons present in their behalf, or made by the advocates or proctors of such parties ;*
- (b) *Allegations made in the pleadings or in answers to interrogatories delivered in the action ;*
- (c) *The contents of documents produced by either party.*

(2) *Where an issue not arising upon the pleadings is proposed by any party and accepted by the Court, the costs of any amendment of the pleadings or of any adjournment of the hearing of the action rendered necessary by the proposal and acceptance of such issue shall be in the discretion of the Court.*

Court may examine witnesses or documents before framing issues.

5. *Where 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, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.*

Power to amend and strike out issues.

6. (1) *The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.*

(2) *The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.*

This rule is new, and is taken from rule 1, sub-rules (1), (2), (3), (4) of O. 14 of the new Indian Code. Sub-rule (5) of that rule, dealing with the framing of issues, has been made into a separate rule (see r. 2 *infra*).

Issues were dealt with in the old Code under Chapter XIX., Of the Trial. It has been thought better to make them the subject of a separate Order.

Sub-rule (1) is based on the first paragraph of s. 146 of the old Code and on r. 1 (5) of O. 14 of the new Indian Code, omitting, however, the reference in that sub-rule to the materials from which the issues are to be framed—a subject dealt with in r. 4 *infra*. The provision in the first paragraph of s. 146 of the old Code, that “if the parties are agreed as to the questions of fact or law to be decided between them, they may state the same in the form of issues, and the Court shall proceed to determine the same,” has been omitted. The Court, while it is free to receive the suggestions of parties as to what the issues should be, is the sole judge of that question, unless in the case dealt with in r. 7 *infra*.

Sub-rule (2) reproduces the last paragraph of s. 146 of the old Code, with verbal amendments taken from r. 1 of sub-rule (6) of O. 14 of the new Indian Code.

This rule reproduces s. 147 of the old Ceylon Code, with verbal amendments taken from r. 2 of O. 14 of the new Indian Code.

Sub-rule (1) embodies the substance of the second paragraph of s. 146 of the old Code, and r. 3 of O. 14 of the new Indian Code.

Sub-rule (2) is new. It appears to be impossible to restrict the issues to “material propositions” arising upon the original pleadings. The present sub-rule, however, empowers the Court, where a new issue is proposed in the course of the hearing of an action, the material for which ought to have been pleaded, to deal with the costs of any necessary amendment of the pleadings or adjournment of the hearing as it thinks fit.

This rule reproduces s. 148 of the old Code, with verbal amendments taken from r. 4 of O. 14 of the new Indian Code.

This rule is based upon s. 149 of the old Code, and is taken from r. 5 of O. 14 of the new Indian Code.

ORDER XIX.

Questions of fact or law may by agreement be stated in form of issues.

7. Where the parties to an action are agreed as to the question of fact or law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue—

- (a) A sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement ;
- (b) Some property specified in the agreement and in dispute in the action shall be delivered by one of the parties to the other of them, or as that other may direct ; or
- (c) One or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

8. Where the Court is satisfied, after making such inquiry as it deems proper—

- (a) That the agreement was duly executed by the parties ;
- (b) That they have a substantial interest in the decision of such question as aforesaid ; and
- (c) That the same is fit to be tried and decided ;

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court ; and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement ; and upon the judgment so pronounced a decree shall follow.

ORDER XX.

HEARING OF THE ACTION AND EXAMINATION OF WITNESSES.

Right to begin.

1. The plaintiff has the right to begin, unless 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.

Statement and production of evidence.

2. (1) On the day fixed for the hearing of the action or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case, and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any), and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

NOTES.

This rule is new, and is taken from r. 6 of O. 14 of the new Indian Code. See notes to r. 2 (1) *supra*. It absorbs ss. 699 to 702, both included, of the old Code (Proceedings on Agreement of Parties).

This rule is new, and is taken from r. 7 of O. 14 of the new Indian Code ; compare also ss. 701 and 702 of the old Code.

This rule is *Explanation 1* to s. 150 of the old Code, with verbal amendments from r. 1 of O. 18 of the new Indian Code.

Sub-rule (1) is based on the first paragraphs of ss. 150 and 151 of the old Code, with amendments taken from r. 2, sub-rule(1), of O. 18 of the new Indian Code.

Sub-rule (2) and (3) are based on the first paragraph of s. 163 of the old Code, and are taken from r. 2, sub-rules (2) and (3), respectively, of O. 18 of the new Indian Code.

The wide powers of amendment given by O. 6, rr. 7 and 16, seem to render unnecessary *Explanation 2* to s. 150 of the old Code.

The minute directions in s. 152 and in the *Explanations* to ss. 151 and 153 as to the examination of witnesses have been omitted. All the material points in those sections are covered by the Evidence Ordinance. The following old sections have also been omitted as dealing with matters covered by the Evidence Ordinance : s. 176—Court may forbid indecent questions ; s. 177—Court may forbid insulting questions. See ss. 151 and 152 of the Evidence Ordinance. Sections 161, 162, and 168 of the old Code have been omitted as unnecessary. As to s. 161, see the Evidence Ordinance, s. 90 ; as to s. 162, see the Evidence Ordinance, ss. 61 *et seq.* ; and as to s. 168, see the Oaths Ordinance, No. 9 of 1895,

ORDER XX.

NOTES.

Evidence where several issues.

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may at his option either produce his evidence on those issues or reserve it by way of answer to the evidence adduced by the opposing party; and in the latter case the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning, but the party beginning will then be entitled to reply generally on the whole case.

This rule reproduces the second paragraph of s. 163 of the old Code, with verbal amendments taken from r. 3 of O. 18 of the new Indian Code.

Witnesses to be examined in open Court.

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

This rule reproduces s. 167 of the old Code, with verbal amendments taken from r. 4 of O. 18 of the new Indian Code.

How evidence shall be taken.

5. The evidence of each witness shall be taken down in writing in the English language by the Judge, or by such person as may be appointed to record such evidence under the personal supervision and direction of the Judge, not ordinarily in the form of question and answer, but in that of a narrative; and, when completed, shall be signed by the Judge.

This rule is based on s. 169 of the old Code, and r. 5 of O. 18 of the new Indian Code.

Or by such person, &c. This clause is intended to meet the case of a possible use of shorthand writers in the Courts of first instance.

Any particular question and answer may be taken down.

6. The Court may, of its own motion or on the application of any party or his advocate or proctor, take down or cause to be taken down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

This rule reproduces s. 170 of the old Code, with verbal amendments adapted from r. 10 of O. 18 of the new Indian Code.

Question objected to and allowed by the Court or disallowed.

7. Where any question put to a witness is objected to, and the Court allows or disallows the same, the Judge may, in his discretion, take down in writing the question, the answer (if any), the objection, and the name of the party making it, and shall record the decision of the Court on any objection so taken down.

This rule reproduces ss. 171 and 172 of the old Code, with verbal amendments partly taken from r. 11 of O. 18 of the new Indian Code, which, however, gives the Judge no discretion as to taking down a question objected to.

List of witnesses must be filed.

8. No witness other than a party to the action shall, except with the permission of the Court, 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 Order XVI., rule 1, sub-rule (2).

This rule reproduces, with verbal amendments, the substance of s. 175 of the old Code.

Tender of documents in evidence.

9. (1) Every document or writing which a party intends to use as evidence against his opponent shall 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. Where it is an original document already filed in the record of some action, or the deposition of a witness made therein, it shall previously be procured from that record by means of, and under an order from, the Court. Where such document 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.

This rule reproduces, with amendments, sub-rule (1) the first, sub-rule (2) the second, and sub-rule (3) the third paragraph of s. 154 (and see also s. 114) of the old Code.

In sub-rule (2) the word "lawful" has been substituted for "competent." The sub-rule is directed against the irregular manner in which at present documents are constantly admitted, e.g., "Documents put in." *Perera v. Avishamy*, (1908) 12 N. L. R. 26.

Sections 111, 112, and (paragraph 1) 113 of the old Code, dealing with the production of documents at the hearing to the Court, have been omitted. These sections were based on ss. 138, 139, and 140 of the old Indian Code (and see rr. 1, 2, 3 of O. 13 of the new Indian Code). But they are not acted on in practice, as no provision exists in our law corresponding to "the first hearing of a suit" in India.

Sub-rule (4) is new. It adopts the existing practice, although there is no express provision on the point in the old Code.

Records of other actions not to be admitted in bulk.

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

Documents admitted to be marked.

(3) When the document or writing has been admitted in evidence the Court, after initialling it and marking it with a distinguishing mark or letter by which it shall, when necessary, be thereafter referred to throughout the trial, shall cause it, or so much of it as the parties may desire, to be read aloud.

List of documents admitted.

(4) The documents which a party has produced shall be filed immediately, or within such time as the Court may allow, after their admission in evidence, together with a list thereof, in Form No. 17 in Appendix H.

Determination of question of admissibility of document.

10. (1) Where the opposing party does not, on the document being tendered in evidence, object to its being received, and the document is not such as is forbidden by law to be received in evidence, the Court shall admit it.

This rule reproduces, with verbal amendments, the Explanation to s. 154 of the old Code.

ORDER XX.

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(2) Where, on the document being tendered, the opposing party objects to its being admitted in evidence, the Court shall determine whether the document is authentic, and whether if authentic, it constitutes legally admissible evidence as against the party who is sought to be affected by it, and shall admit or refuse to admit the document in accordance with such determination.

(3) Whether the document is admitted or not, it shall be marked so soon as any witness makes a statement with regard to it, or, at latest, be marked when the Court decides as to its admissibility.

Rejection of irrelevant or inadmissible documents.

11. 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.

This rule reproduces the second paragraph of s. 113 of the old Code; and see r. 3 of O. 13 of the new Indian Code.

Endorsements on copies of admitted entries in books, accounts, and records.

12. (1) Save in so far as is otherwise provided by section 90 of the Evidence Ordinance, 1895 (No. 14 of 1895), where a document admitted in evidence in the action is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

This rule is new, and reproduces r. 5 of O. 13 of the new Indian Code.

For sub-rule (4) see O. 13, r. 7 (1) of the new Indian Code.

(2) Where such document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(a) Where the record, book, or account is produced on behalf of a party, then by that party; or

(b) Where the record, book, or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared, and certified in manner mentioned in rule 21, sub-rule (2), of Order VII., mark the entry and cause the book, account, or record in which it occurs to be returned to the person producing it.

(4) Every document which has been admitted in evidence, or a copy thereof, where the copy has been substituted for the original under sub-rule (3), shall form part of the record of the action.

Identification of document.

13. Before a witness is allowed to identify a document he shall be examined as to the grounds of his knowledge with regard to it by the party who is seeking to prove the document; and the opposing party, if he desires to do so, shall be allowed to cross-examine on this point before the document is shown to the witness.

This rule reproduces ss. 155 and 156 of the old Code. The Illustration has been omitted.

Court to see competency of witness tested.

14. Where a witness professes to be able to recognize or identify handwriting, the Court shall see that his capacity to do so is tested, unless the opposite party admits it.

This rule reproduces, with verbal amendments, s. 157 of the old Code.

Court to decide on his competency.

15. Where on the examination of a witness under rules 13 and 14 it appears to the Court that the witness was not in fact present at the time when the document was signed or the writing was made, or is not reasonably competent to identify the document or the handwriting, the Court shall not permit him to give evidence of identification in regard to such document or handwriting.

This rule reproduces, with verbal amendments, s. 158 of the old Code.

Signature by a mark how proved.

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

This rule reproduces, with verbal amendments, s. 159 of the old Code.

(2) This rule applies where the signature is a mark explained by the name written adjacent thereto.

Illiterate persons.

17. The signature or mark of a person who cannot read shall not be deemed to have been proved until proof has been given of the fact that at the time when his name was written on, or his mark put to, the document, he understood the contents of it.

This rule reproduces s. 160 of the old Code.

Provided that where the name of such 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 the 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.

ORDER XX.

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Remarks on demeanour of witness.

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

This rule reproduces s. 173 of the old Code ; and see r. 12 of O. 18 of the new Indian Code.

Witness may be kept out of Court.

19. (1) *The Court may, on the motion of any party, order that the witnesses on either side (except the witness immediately under examination) shall be kept out of Court and out of hearing during the trial of the action ; nor shall any witness who has remained in Court or within hearing after such order be permitted to give evidence unless the Court otherwise directs.*

This rule reproduces s. 174 of the old Code ; and see r. 12 of O. 18 of the new Indian Code.

(2) 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.

Power to examine witness immediately.

20. (1) *Where a witness is about to leave the jurisdiction of the Court, or 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 any party or of the witness, at any time after the institution of the action, take the evidence of such witness in manner hereinbefore provided.*

This rule reproduces s. 178 of the old Code, with amendments taken from r. 16 of O. 18 of the new Indian Code.

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

(3) *The evidence so taken shall be read over to the witness, and if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the action, provided that the witness cannot then be produced.*

Court may question witness.

21. The Court may at any time, whether before or during or after the examination of a witness by the respective parties, put such questions to the witness as it may consider necessary. And the answers to such questions shall be made to appear on the face of the record as having been given to the Court.

This rule reproduces, with verbal amendments, s. 164 of the old Code.

Court may recall and examine witness.

22. The Court may allow any witness who has already been examined to be recalled for further examination or cross-examination whenever it thinks it necessary, and may, if necessary, recall the witness for that purpose.

This rule reproduces s. 165 of the old Code, with amendments taken from r. 17 of O. 18 of the new Indian Code.

Powers of Court to inspect.

23. *The Court may at any stage of an action, in the presence of, or after reasonable notice to, the parties or their proctors, inspect any property or thing concerning which any question may arise.*

This rule is new, and is taken from r. 18 of O. 18 of the new Indian Code. It has been held in Ceylon that the Court has an inherent power of inspection. (Ram., 1877, 272.) But it may be desirable to affirm the existence of this power expressly.

In the presence of. This limitation of the power of inspection seems proper. In some cases objection has been taken in appeal to Judges of first instance recording impressions formed by them at inspections made in the absence of the parties or even in independent proceedings.

Court may permit a departure from above rules.

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

This rule reproduces s. 166 of the old Code.

ORDER XXI.

AFFIDAVITS.

Power to order any points to be proved by affidavit.

1. Any Court may at any time, for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing of the action, on such conditions as the Court shall think reasonable.

This rule reproduces s. 179 of the old Code, with amendments taken from r. 1 of O. 19 of the new Indian Code. Section 179 of the old Code dealt also with depositions taken on commission. These, however, seem to come more appropriately under O. 31.

Provided that where it appears to the Court that either party bona fide desires the production of a witness before the Court for cross-examination, and that such witness can be so produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

ORDER XXI.

NOTES.

Court may examine witnesses *vivâ voce* notwithstanding affidavit.

2. In the event of an order having been made for the proof of facts by affidavit, the Court may, nevertheless, at the instance of either party, order the attendance of the deponent at the hearing of the action for cross-examination, if he is in the Island and can be produced.

This rule reproduces s. 180 of the old Code, the reference to evidence on commission being omitted. See notes to r. 1; and compare r. 2 of O. 19 of the new Indian Code.

Matters to which affidavits shall be confined.

3. (1) Affidavits shall be confined to such facts as the *deponent* is able of his own knowledge to *prove*, except on interlocutory applications, on which *statements* of his belief may be admitted, provided that the grounds *thereof* are stated.

Sub-rule (1) reproduces s. 181 of the old Code, with verbal amendments taken from r. 3 (1) of O. 19 of the new Indian Code.

(2) *The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall, unless the Court otherwise directs, be paid by the party filing the same.*

Sub-rule (2) is new, and is taken from r. 3 (2) of the new Indian Code.

Section 182 of the old Code, which provided that a petition stating facts of observation will not be converted into an affidavit by the addition of a verifying clause, has been omitted as unnecessary.

Who may administer oaths.

4. In the case of any affidavit under this Order any Court, or Police Magistrate, *Unofficial Police Magistrate*, or Justice of the Peace may administer the oath to the *deponent*.

This rule is based on s. 183 of the old Code. The reference in that section to "any officer whom the Supreme Court may appoint for the purpose, and who shall be styled 'Commissioner for Oaths,'" has been omitted. No such appointments are made by the Supreme Court.

Affidavits to be duly entitled and to be signed by the *deponent*.

5. (1) Every affidavit shall be entitled as in the Court and action in which it is to be used, and shall be signed by the *deponent* in the presence of the Court, *Magistrate*, or Justice of the Peace before whom it is sworn or affirmed.

Sub-rule (1) reproduces, with verbal amendments, s. 438 of the old Code.

(2) The fact that an affidavit appears to be entitled in an action in a competent Court shall be a sufficient authority to any Court, *Magistrate*, or Justice of the Peace to administer the oath or affirmation.

Sub-rule (2) reproduces the concluding words of s. 437 of the old Code.

Case of blind or illiterate person.

6. (1) *Where the deponent is blind or illiterate, or not able to understand writing in the English language, the affidavit shall be read over or interpreted to him in his own language, and the jurat shall express that it was so read over or interpreted to him in the presence of the Court, Magistrate, or Justice of the Peace, and that he appeared to understand the contents; and also that he appeared to understand the contents; and also that he made his mark or wrote his signature in the presence of such Court, Magistrate, or Justice of the Peace.*

This rule reproduces, with verbal amendments, s. 439 of the old Code.

(2) *Where a mark is made instead of a signature, the person who writes the markman's name against the mark shall authenticate such name and mark by signing his own name and address thereunder in the presence of the Court, Magistrate, or Justice of the Peace.*

Alteration of affidavit.

7. (1) Every affidavit shall be written fairly, and *without* erasures, blotting, or blanks.

This rule reproduces, with verbal amendments, s. 440 of the old Code.

(2) *Where any alteration is necessary in an affidavit before it is sworn or affirmed to, every excision of a word, letter, or figure shall be made by so drawing a line through it as to leave the word, letter, or figure still legible; 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, Magistrate, or Justice of the Peace before whom the affidavit is affirmed or sworn.*

Who may make affidavit.

8. *In any proceeding under this Code, the Court may allow an affidavit to be made by—*

This rule extends to affidavits generally the provisions of ss. 655 and 829 A (3) of the old Code.

- (a) *Any officer of the Crown on behalf of the Attorney-General;*
- (b) *any principal officer of a corporation on behalf of such corporation;*
- (c) *The duly authorized attorney or recognized agent of any party or person on behalf of such party or person.*

ORDER XXII.

NOTES.

JUDGMENT AND DECREE.

Judgment when pronounced.

1. (1) The Court, after the *action has* been heard, shall, after consultation with the assessors (if any), pronounce judgment in open Court, either at once or on some future day, of which *due* notice shall be given to the parties or their proctors.

(2) *The Court may, in its discretion, pronounce judgment either by reading the whole judgment or by stating shortly the effect of the judgment as regards the disposal of the action and costs.*

Sub-rule (1) reproduces the first paragraph of s. 184 of the old Code, with verbal amendments taken from r. 1 of O. 20 of the new Indian Code.

The second paragraph of s. 184 of the old Code empowering the Court on "the future day" first fixed to appoint "a yet future day" for the delivery of judgment has been omitted as unnecessary. The matter is within the inherent powers of the Court.

Sub-rule (2) is new, and is intended to obviate the delays occasioned by the delivery of long judgments in the courts of first instance. The practice sanctioned by the sub-rule has been in force for several years in the Appeal Court.

Who may pronounce.

2. (1) A Judge may pronounce a judgment written but not pronounced by his predecessor.

(2) *This rule extends to judgments written by a Judge of any Court after he has ceased to be a Judge of that Court, provided that at the time of writing such judgment he is still in the public service of the Colony.*

Sub-rule (1) reproduces s. 185 of the old Code. The words "by his predecessor" have been transposed to the end of the rule, in accordance with r. 2 of O. 20 of the new Indian Code.

Sub-rule (2) is new, and has been introduced in consequence of the decision of the Supreme Court in *Tikiri Menika v. Deonis*, (1903) 7 N. L. R. 337; and compare, as to the Supreme Court, *Dabare v. Martelis Appu*, (1901) 5 N. L. R. 210.

Judgment to be signed.

3. The judgment shall be written in English, shall be dated and signed by the Judge in open Court at the time of pronouncing it, and when once signed, shall not afterwards be altered or added to, save as provided by section 19 of the Ordinance or on appeal.

This rule reproduces s. 186 of the old Code.

And when once, &c. These words are taken from r. 3 of O. 20 of the new Indian Code.

Requisites of judgment.

4. The judgment shall contain a concise statement of the case, the points for determination, the decision of the Court upon each separate issue, unless the decision upon any one or more of such issues is sufficient for the determination of the action, the reasons for such decision, the formal order of the Court as to costs, and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively.

This rule reproduces in substance s. 187 of the old Code.

The decision of the Court upon each separate issue. This clause is taken from r. 5 of O. 20 of the new Indian Code.

Decree.

5. (1) As soon as may be after the judgment is pronounced a formal decree bearing the date of the day on which the judgment was pronounced shall be drawn up in accordance with the judgment, and when the Judge has satisfied himself that the decree has been so drawn up he shall sign such decree.

(2) *The decree shall be in Form No. 1 in Appendix D, with such variations as circumstances may require.*

(3) *The decree shall specify clearly the relief granted or other determination of the action.*

(4) 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.

Sub-rules (1), (2), and (3) embody the substance of part of the first paragraph of s. 188 of the old Code, with amendments taken from rr. 6 and 7 of O. 20 of the new Indian Code. The provision in s. 188, that the decree shall be drawn up "by the Court," has been omitted. It seems sufficient that the Judge should satisfy himself as to the correctness of the decree.

Sub-rule (4) reproduces, without amendment (except that the provision as to the signing of the decree has been incorporated in substance into sub-rule (1)), the second paragraph of s. 188 of the old Code.

The amendment of decrees (s. 189) is dealt with in s. 19 of the Ordinance.

Procedure when Judge has vacated office before signing decree.

6. *Where a Judge has vacated office after pronouncing judgment, but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor.*

This rule is new, and is adapted from r. 8 of O. 20 of the new Indian Code. It gives effect to the decision in *Sidoris Silva v. Palaniappa Chetty*, (1902) 5 N. L. R. 289.

ORDER XXII.

Decree for recovery of immovable property.

Decree for delivery of movable property.

Where action is for payment of money, Court may allow interest.

For damages.

Decree may direct payment at a future time.

or by instalments.

Order after decree for payment by instalments.

7. Where the subject-matter of the action is immovable property; the decree shall contain a description of such property sufficient to identify the same; and where such property can be identified by boundaries or by numbers in a record of settlement or of survey, the decree shall specify such boundaries or numbers.

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

9. (1) Where the action is for the payment of money, the Court may in the decree order interest to be paid according to the rate (if any) 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 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.

(2) Where the 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.

10. (1) Where the action is for damages for breach of contract, and it appears 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 so performed.

(2) The Court may also, if it think fit, order that interest at a rate not exceeding nine per cent. shall be payable on such damages from the date of decree till the payment thereof.

11. (1) Where and in so far as a decree is for the payment of money, except money due on mortgage of movable or immovable property, the Court may for any sufficient reason, at the time of passing the decree, and notwithstanding anything contained in the contract under which the money is payable, order that payment of the amount decreed shall be postponed, or shall be made 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.

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor, and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments, on such terms as to the payment of interest, the taking of security from the judgment-debtor, or otherwise as it thinks fit.

(3) On failure to make the postponed payment or to pay the first or any other instalments under sub-rules (1) and (2), the whole amount or any balance then due, as the case may be, shall on such failure become immediately payable.

NOTES.

This rule is based on s. 190 of the old Code, and is taken from r. 9 of O. 20 of the new Indian Code.

This rule reproduces s. 191 of the old Code, with verbal amendments taken from r. 10 of O. 20 of the new Indian Code.

It was suggested in *Sihambarappillai v. Vinastamby*, (1895) 1 N. L. R. 114, and *Sheik Ali v. Carimjee Jafferjee*, (1895) 1 N. L. R. 117, that s. 191 was inconsistent with ss. 320 to 322 of the old Code (now O. 24, rr. 96 to 98), inasmuch as while s. 191 contemplated an alternative award of damages as part of the decree, s. 321 provided for seizure and sale of the judgment-debtor's property only on a subsequent application to the Court. This decision was questioned in *Appuhamy v. Appuhamy*, (1910) 14 N. L. R. 8. But the inconsistency, if any, has now been removed by rule 96, sub-rule (2), of Order XXIV.

This rule reproduces, with verbal amendments, s. 192 of the old Code.

Sub-rule (1) reproduces, with verbal amendments, s. 193 of the old Code.

Sub-rule (2) is new, and is intended to settle a question raised, but not decided, in *Smith v. Attorney-General* (unreported on this point), viz., whether interest could be allowed on damages (a) before or (b) after decree.

This rule is based on s. 194 of the old Code, with amendments partly suggested by r. 11 of O. 20 of the new Indian Code.

In sub-rule (1), the payment shall be postponed are new. The marginal note to s. 194 of the old Code provided for postponement of payment. But there was no corresponding provision in the section itself.

Sub-rule (2) has been adopted in consequence of the decisions in *Pieris v. Ranasinghe*, (1892) 1 S. C. R. 265, and *Carpen v. Nallan*, (1892) 2 C. L. R. 111, under s. 194 of the old Code, that a Court after passing final judgment for the whole amount cannot subsequently order payment by instalments.

ORDER XXII.

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(4) *Where a party ordered to make a postponed payment or to pay by instalments shall appeal against the decree, and the appeal shall be decided against him, his right to pay by instalment shall cease, and the whole amount shall be immediately payable, unless the Supreme Court give express directions to the contrary.*

(5) *No appeal shall lie against a refusal by the Court to make an order for postponed payment or for payment by instalments.*

Set off.

12. (1) *Where the defendant has been allowed a set off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any balance which appears to be due to either party.*

Reconvention.

(2) *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 have the same effect, and be subject to the same rules, as if such thing had been claimed by the defendant in a separate action against the plaintiff.*

Decree for possession and mesne profits.

13. (1) *Where the action is for the recovery of possession of immovable property, and for rent or mesne profits, the Court may pass a decree—*

- (a) *For the possession of the property ;*
- (b) *For the rent or mesne profits which have accrued on the property during a period prior to the institution of the action, or directing an inquiry as to such rent or mesne profits ;*
- (c) *Directing an inquiry as to rent or mesne profits from the institution of the action until—*
 - (i.) *The delivery of possession to the decree-holder ;*
 - (ii.) *The relinquishment of possession by the judgment-debtor.*

(2) *Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.*

(3) *Where the prayer of the plaint asks for damages in lieu of mesne profits or rent, the Court may provide in the decree for payment of money in respect of such damages, with interest thereon at such rate not exceeding nine per cent. as the Court thinks fit.*

Interlocutory order for accounts.

14. *Where the action is for an account of any property and for its administration under the decree of the Court, the Court, before passing 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.

15. (1) *Where the Court is administering the property of any deceased person, and such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to—*

- (a) *The respective rights of secured and unsecured creditors ;*
- (b) *Debts and liabilities provable ; and*
- (c) *The valuation of annuities and future and contingent liabilities respectively as may be in force for the time being with regard to the estates of persons adjudged insolvent.*

(2) *All persons who in any such case are entitled to be paid out of such property may come in and set up their legal claims under the decree for its administration.*

Decree in action for pre-emption, &c.

16. (1) *Where the Court decrees a right of pre-emption in respect of a particular sale of property, and the purchase money has not been paid into Court, the decree shall—*

- (a) *Specify a day on or before which the purchase money shall be so paid ; and*
- (b) *Direct that on payment into Court of such purchase money, together with the costs (if any) decreed against the plaintiff on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, but that if the purchase money and the costs (if any) are not so paid on or before such day or any extension thereof which the Court shall have allowed, the action shall be dismissed with costs.*

This rule reproduces, with verbal amendments, s. 195 of the old Code. Compare r. 19 of O. 20 of the new Indian Code.

This rule reproduces the substance of ss. 196 and 197 of the old Code, and is adapted from r. 12 of O. 20 of the new Indian Code. "Mesne profits" is defined in s. 2 of the Ordinance.

This rule reproduces s. 198 of the old Code, with verbal amendments. That section and section 199 have been held to refer to administration actions, and not to testamentary proceedings (*Hay v. Nunn*, (1906) 9 N. L. R. 161).

This rule reproduces s. 199 of the old Code, with verbal amendments. See notes to r. 14.

Sub-rule (1) reproduces, with verbal amendments partly taken from r. 14 (1) of O. 20 of the new Indian Code, s. 200 of the old Code.

Sub-rule (2) is new, and is taken from r. 14 (2) of O. 20 of the new Indian Code.

Section 201 of the old Code as to mortgage actions has been omitted here. The matter is dealt with in Part IV. of the Third Schedule.

ORDER XXII.

NOTES.

(2) Where the Court has adjudged upon rival claims to pre-emption, the decree shall direct—

- (a) If and in so far as the claims decreed are equal in degree that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property, including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect ; and
- (b) If and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

Decree in action for dissolution of partnership.

17. Where an action is for the dissolution of a partnership or the taking of partnership accounts, the Court before passing a final decree may make an interlocutory order declaring the proportionate shares of the partners, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

This rule reproduces s. 202 of the old Code, with verbal amendments partly taken from r. 15 of O. 20 of the new Indian Code.

Decree in action for account between principal and agent.

18. In an action for an account of pecuniary transactions between a principal and an agent, and in any other action 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 passing its final decree make an interlocutory order directing such accounts to be taken as it thinks fit.

This rule reproduces s. 203 of the old Code, with verbal amendments partly taken from r. 16 of O. 20 of the new Indian Code.

Special directions as to accounts.

19. The Court may, either by the decree directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or to be vouched, and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as prima facie evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objection thereto as they may be advised.

This rule is new, and is taken from r. 17 of O. 20 of the new Indian Code.

No separate Order to take the place of Chapter XXXVII. of the old Code has been drawn.

Rules 14 to 19 of this Order appear to contain adequate provisions in this respect.

Decree or order postponing hearing.

20. Where 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 fix boundaries, such decree shall specify the time at which the further hearing of the action shall be proceeded with.

This rule reproduces, with verbal amendments, s. 204 of the old Code.

Parties entitled to certified copies of decree and judgment.

21. On payment of the prescribed fee, 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 of 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.

This rule reproduces the substance of s. 205 of the old Code.

Decree or copy to be primary evidence of decision.

22. The decree or such certified copy thereof shall constitute the sole primary evidence of the decision or order passed or made by the Court.

This rule reproduces s. 206 of the old Code.

Res judicata (s. 207) is dealt with in the Ordinance, s. 9.

ORDER XXIII.

COSTS.

Court always to have power to give or reserve costs.

1. (1) When disposing of any application or action under this Code, whether of regular or of summary procedure, the Court may, unless elsewhere in this Code or in the Courts Ordinance, 1889 (No. 1 of 1889), otherwise directed, give to either party the costs of such application or action, or may reserve the consideration of such costs for any future stage of the proceedings.

The definition of costs embodied in s. 208 of the old Code is dealt with in s. 20 (1) of the Ordinance.

This rule reproduces, with verbal amendments, s. 209 of the old Code.

Courts Ordinance, 1889. See, e.g., s. 79 as to Courts of Requests.

By whom paid.

2. 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.

This rule reproduces, without amendment, s. 210 of the old Code.

Sections 211 and 213 of the old Code providing respectively that the Court may give or apportion costs even where it has no jurisdiction to try the case, and that the Court may award interests on costs, are dealt with in s. 21 of the Ordinance.

ORDER XXIII.

NOTES.

Set-off of costs.

3. (1) The Court may order that the costs payable to one party by another shall be set off as against any sum admitted or found in the action to be due from the former to the latter.

(2) No such order shall effect the lien of any proctor upon the amount decreed in respect of the costs payable to him under the decree.

Several defendants retaining the same proctor.

4. Where several plaintiffs or defendants jointly retain and are jointly represented by the same proctor, each of such defendants shall, as between proctor and client, be chargeable only with his proportion of the general costs of the proceedings taken on behalf of all.

Bills of costs.

5. (1) All bills of costs, whether between party and party or between proctor and client, shall be taxed by the Registrar of the Supreme Court, the secretary of the District Court, or the chief clerk of the Court of Requests, as the case may be.

(2) Such bills of costs shall be in Form No. 19 (1) or 19 (2) or 19 (3) in Appendix H, according as the bill is to be taxed in the Supreme Court, District Court, or Court of Requests, with such variations therefrom as circumstances may require.

(3) On the presentation of a bill of costs for taxation the taxing officer shall fix a date for the taxation.

(4) Such date shall be endorsed and initialled by the taxing officer on the bill of costs, and notice thereof shall be given by the party presenting the bill or by his proctor to the party or to the proctor of the party against whom the bill is to be taxed.

(5) Where a proctor is taxing a bill of costs against his own client, the notice prescribed by sub-rule (1) shall be given by such proctor to the client against whom the bill is to be taxed.

Procedure on taxation.

6. (1) On the day fixed for the taxation, or on any subsequent day to which the taxing officer may adjourn the taxation, the taxing officer, after hearing proctors for the parties, if they are present and desire so to be heard, shall tax the bill of costs in accordance with the rates specified in Appendix J.

(2) The taxing officer may call for an explanation in writing from, or, if necessary, require the personal attendance at the taxation of, the proctor for any party presenting, or objecting to, a bill of costs, to explain any item or items therein, and may adjourn the taxation in order to enable such explanation to be furnished or such proctor to be present.

(3) Where, after reasonable notice, any proctor fails to furnish an explanation in writing of, or to attend the taxation to explain, any item or items in the bill of costs or any item or items objected to, when required so to do under sub-rule (2), the taxing officer may, in his discretion, disallow any such item or items.

Reconsideration by taxing officer of taxation of bill of costs.

7. (1) Where either party is dissatisfied with the taxation of any bill of costs, he may, within seven days from the completion of such taxation, file an application, of which reasonable notice shall be given to the other party, with the taxing officer to reconsider the taxation in whole or in part.

(2) Every such application shall be in Form No. 20 in Appendix H, with such variations as circumstances may require, and shall state the ground or grounds on which a reconsideration of the taxation is applied for.

(3) Applications for reconsideration of taxation shall be disposed of by the taxing officer as nearly as may be in accordance with rules 4 and 5 of this Order, and on the hearing of any such application the taxing officer shall have full power to adhere to, modify, or set aside his original taxation in whole or in part.

Review by Court.

8. (1) Where either party is dissatisfied with the decision of the taxing officer on an application for reconsideration of taxation, such party may, within seven days from the decision of the taxing officer thereon—

(a) In the District Court, or Court of Requests, apply in writing to the taxing officer to refer, and the taxing officer shall thereupon refer, the taxation to the District Judge, or Commissioner of Requests, whose determination on such reference shall be subject to an appeal to the Supreme Court within a period of seven days from the date of such determination; and

(b) In the case of a taxation by the Registrar of the Supreme Court, apply in writing to the Registrar to refer, and the Registrar shall thereupon refer, the taxation for final determination to the Supreme Court, and the Supreme Court shall finally determine the matter accordingly.

This rule reproduces, with verbal amendments, s. 212 of the old Code.

This rule is new, and embodies the effect of the Supreme Court decisions in *Abdul Rahiman v. Amerasekera*, (1911) 14 N. L. R. 226, and *Wijesuriya v. Mepi Nona*, (1912) 15 N. L. R. 158.

This rule is based on the first paragraph of s. 214 of the old Code.

Sub-rules (2), (3), (4), and (5) are new. The object of this and the following rules is to provide a regular procedure in connection with the taxation of bills of costs.

This rule is new. See notes to r. 4.

This rule is new. It introduces the rule of English practice [see R. S. C., O. 65, r. 27 (39)] as to review of taxation by the taxing officer himself.

This rule is new, and introduces the English practice. See R. S. C., O. 65, r. 27 (41).

ORDER XXIII.

(2) Every such application shall be in Form No. 21 in Appendix H, with such variations as circumstances may require, and shall state the ground or grounds on which a review of the taxation is applied for.

Disallowance where bill reduced by one-sixth.

9. Where, on the taxation of a bill of costs, the amount of the professional charges and disbursements contained in the bill is reduced by more than one-sixth part, no costs shall be allowed to the proctor presenting the bill for taxation for drawing or copying it, nor for attending the taxation.

ORDER XXIV.

EXECUTION.

Classification of decrees.

- 1. (1) A decree or order of Court—
 - (i.) May command the person against whom it operates, *herein after called the judgment-debtor*—
 - (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
 - (ii.) May enjoin *the judgment-debtor*—
 - (f) Not to do a specified act, or to abstain from specified conduct or behaviour ; or
 - (iii.) May, without affording any substantive relief or remedy—
 - (g) Declare a right or status.

(2) The party to the action in whose favour the decree or order is made, hereinafter called the decree-holder or judgment-creditor, shall, if necessary, enforce satisfaction or execution of the decree in the manner provided in this Order, and not by a separate action on the decree.

Application for execution.

- 2. The application for execution of the decree shall be in writing, signed by the applicant or his proctor, *shall be in Form No. 1 in Appendix E*, and shall contain the following particulars :
 - (a) The number of the action ;
 - (b) The names of the parties ;
 - (c) The date of the decree ;
 - (d) Whether any appeal has been preferred from the decree ;
 - (e) Whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree ;
 - (f) Whether any, and (if any) what, previous applications have been made for execution of the decree, the dates of such applications, and their results ;
 - (g) The amount, with interest, if any, due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed ;
 - (h) The amount of the costs, if any, awarded, and of prospective costs that may properly be recovered by the execution ;
 - (i) The name of the person against whom execution of the decree is sought ;
 - (j) The mode in which the assistance of the Court is required, whether—
 - (i.) By the delivery of any property specifically decreed ;
 - (ii.) By the seizure and sale of any property ;
 - (iii.) By the arrest and imprisonment of any person ;
 - (iv.) Otherwise as the nature of the relief granted may require.

(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.

3. Where the decree is for the payment of money and is unsatisfied the judgment-creditor may, save as regards property excepted from seizure or sale by section 21 of the Ordinance, or by any other law for the time being in force, seize and sell by the hands of the Fiscal 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 such property be held by or in the name of the judgment-debtor or by another person in trust for him or on his behalf.

NOTES.

This rule is based on s. 216 of the old Code, and is adapted from the English R. S. C., O. 65, r. 27 (38b).

Section 215 of the old Code, requiring a proctor to deliver his bill of costs to the party charged one month before action brought thereon, has been transferred to s. 20 of the Ordinance.

This rule reproduces, with amendments, s. 217 of the old Code.

And not by, &c. These words give effect to the decision in *Ramen Chetty v. Frederick Appuhami*, (1906) 9 N. L. R. 133.

This rule reproduces s. 224 of the old Code, with amendments mostly taken from r. 11 (2) of O. 21 of the new Indian Code.

Any prospective costs. This clause is new, and gives effect to the decision of the Supreme Court in *Dias v. Von Possner*, (1908) 4 Bal. 29.

This rule reproduces, with verbal amendments, the first paragraph of s. 218 of the old Code. It has been thought better that the classes of excepted property should be declared by the Ordinance. (See s. 21.)

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

4. (1) The decree-holder may apply to the Court for an order that—

- (a) The judgment-debtor, or
- (b) In the case of a corporation, an officer thereof, or
- (c) Any other person—

be orally examined before the Court, on oath or affirmation, as to whether any or what debts are owing to him, and whether he has any and what other property or means of satisfying the decree.

(2) Any such application may be made by motion ex parte and without any affidavit of the applicant's belief that any debts are owing to the judgment-debtor, or that he has any other property or means of satisfying the decree.

(3) The Court may, on such application, make an order for the attendance and examination on oath or affirmation of, and for the production of any books or document by, such judgment-debtor, officer, or other person.

(4) The examination of a judgment-debtor, officer of a corporation, or other person under sub-rule (3) shall be deemed to be a judicial proceeding within the meaning of section 12 of the Oaths Ordinance, 1895 (No. 9 of 1895), without prejudice to the liability of such judgment-debtor, officer, or other person to be proceeded against under any other law for the punishment of false evidence.

(5) The costs of any such application and of any proceedings arising therefrom or incidental thereto shall be in the discretion of the Court.

Execution of decree against legal representative of a deceased person.

5. (1) Where the decree is against a party as the legal representative of a deceased person, and is for the payment of money out of the property of the deceased, it may be executed by the seizure and sale of any such property in the hands or under the control of the party against whom the decree has passed.

(2) Where no such property can be found, and the judgment-debtor fails to satisfy the Court that he has duly applied to the payment of the debt of the deceased 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 so applied in the same manner as if the decree had been against him personally.

Seizure and sale to be effected under order of Court.

6. Seizure and sale of property in execution of a judgment-debt shall be effected by the Fiscal on the order of the Court which passed the decree sought to be executed.

Procedure on receiving application for execution of decree.

7. 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 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 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.

If the Court is satisfied in the respects above indicated, it shall direct a writ of execution to issue to the Fiscal in Form No. 2 in Appendix E.

Duties of Fiscal.

8. (1) On receiving the writ, the Fiscal or his Deputy or other officer shall, within forty-eight hours thereafter where the judgment-debtor resides within five miles from the office of the Fiscal or Deputy Fiscal, or where the judgment-debtor resides more than five miles from such office within an additional forty-eight hours for every five miles or part thereof, repair to his dwelling-house or place of residence and there require him, if present, to pay the amount of the writ.

(2) Where by reason of the judgment-debtor's absence no demand for the payment is made, or where such demand when made is not complied with, the Fiscal, Deputy Fiscal, or other officer shall forthwith proceed to seize and sell, in the manner

This rule is based on ss. 219, 220, and 221 of the old Code, with verbal amendments.

Sub-rules (1) and (3) are taken from the first and second paragraphs of s. 219. Sub-rule (2) is s. 220, sub-rule (5) s. 221. As to sub-rules (1) and (3), see r. 41 of O. 21 of the new Indian Code.

Sub-rule (4) is new, and is intended to provide for the summary punishment of false evidence given by a judgment-debtor on his examination as to property.

Sub-rule (5) reproduces s. 221 of the old Code.

This rule reproduces, with verbal amendments, s. 222 of the old Code.

This rule is based on s. 223 of the old Code.

This rule reproduces, with verbal amendments, s. 226 of the old Code.

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indicated in rules 9 and following of this Order, such unclaimed property of the judgment-debtor as may be pointed out 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.

Provided that *where the judgment-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.*

MODE OF SEIZURE.

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

9. (1) *Where the property sought to be seized and sold in satisfaction of the decree is movable property in the possession of the judgment-debtor other than the property mentioned in section 21 of the Ordinance, the seizure shall, except in the case mentioned in rule 8, be manual.*

(2) *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 may, on the necessary expenses thereof being advanced or secured to him by the judgment-debtor or the writ-holder, keep the property in his own custody or in the custody of one of his subordinates, or cause it to be removed to some fit place of security.*

(3) *Where 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 seized.*

(4) *The expenses of keeping the property in such custody or of removing the same shall be certified by the Fiscal, Deputy Fiscal, or other officer, and shall, if not paid by the judgment-debtor, be a first charge on the proceeds of the property seized. Provided that the Court may, if it thinks fit, reduce the amount of such expenses.*

Provided also that where the property seized is subject to speedy and natural decay, or where the expense of keeping it in custody will exceed its value, the Fiscal, Deputy Fiscal, or other officer may sell it at once.

Seizure of negotiable instrument.

10. *Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the instrument shall be seized and brought into Court and held subject to the further orders of the Court.*

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

11. (1) *In the case of—*

(a) *A debt not secured by a negotiable instrument;*

(b) *A share in the capital of a 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 seizure shall be made by a written notice signed by the Fiscal prohibiting—

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

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

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

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

(3) *A debtor prohibited under sub-rule (1), clause (a), of this rule may, on receiving the notice of prohibition, forthwith pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.*

This rule reproduces, with amendments in drafting, s. 227 of the old Code.

This rule reproduces s. 228 of the old Code, with verbal amendments.

This rule reproduces s. 229 of the old Code, with verbal amendments taken from r. 46 of O. 21 of the new Indian Code.

Sub-rule (3) is new, and is adapted from sub-rule (3) of r. 46 of O. 21 of the new Indian Code.

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

12. (1) A debtor who has been prohibited under rule 11, sub-rule (1), and who has not paid the amount of the debt into Court under rule 11, sub-rule (3), 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.

(2) Where 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 where he does not appear, 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.

(3) The costs of any application under this rule and of any proceedings arising therefrom or incidental thereto shall be in the discretion of the Court.

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

13. Payment made by, or execution levied upon, such debtor in the manner provided in rule 12 shall be a valid discharge to him as against the judgment-debtor to the amount paid or levied, although such proceedings 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.

14. (1) Where the property to be seized 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 issues.

Provided that, where 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, seizure, or otherwise, shall be determined by such Court.

(2) On 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 rule, money deposited in, or in the custody of, the Court in which the action is.

Notice by Fiscal.

15. The notice necessary to effect seizure under rules 11 and 14 may be signed and served by the Fiscal under the authority of the writ of execution alone.

Seizure of a money decree.

16. (1) Where the property to be seized is a decree for the payment of money passed in favour of the judgment-debtor, the seizure shall be made—

(a) If the decrees were made by the same Court, then by order of such Court; and

(b) If the decree sought to be seized was passed by another Court, then by the issue to such Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree, unless and until—

(i.) The Court which passed the decree sought to be executed cancels the notice; or

(ii.) The holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1) or receives an application under sub-head (ii.) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has seized the decree, or his judgment-debtor, proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the seizure of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the decree seized, and to be entitled to execute such decree in any manner lawful for the holder thereof.

This rule reproduces, with an amendment necessitated by r. 11, sub-rule (3), and also with amendments in drafting, s. 230 of the old Code.

This rule reproduces s. 231 of the old Code.

This rule reproduces s. 232 of the old Code, with verbal amendments taken from r. 52 of O. 21 of the new Indian Code.

This rule reproduces, with a verbal amendment, s. 233 of the old Code.

This rule reproduces the substance of ss. 234 and 235 of the old Code, with extensive amendments adapted from r. 53 of O. 21 of the new Indian Code.

Sections 236 and 238 of the old Code, avoiding alienations of movable and immovable property respectively by a debtor subsequent to seizure as against claims enforceable under the seizure, enact substantive law, and are dealt with in ss. 22 and 23 of the Ordinance.

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Seizure of any other decrees.

(4) Where the property to be seized in the execution of a decree is a decree other than one of the nature referred to in sub-rule (1), 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 where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be seized until such notice is cancelled by the Court from which it was sent.

(5) Every Court receiving such notice shall give effect to the same until it is so cancelled.

(6) The holder of a decree seized under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(7) On the application of the holder of a decree sought to be executed by the seizure of another decree, the Court making such order of seizure under this rule shall give notice of such order to the judgment-debtor bound by the decree seized; and no payment or adjustment of the seized decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the seizure remains in force.

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

17. (1) Where 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 taking any benefit from any such transfer or charge.

(2) The notice shall specify the parties to the action, the judgment-debtor, the dates of judgment and seizure, and the name, situation, and boundaries of the land seized, and shall be proclaimed at some place on or adjacent to such property by beat of tom-tom or other customary mode of publication, and a copy of the notice shall be affixed by the Fiscal, Deputy Fiscal, or other officer appointed by the Fiscal in that behalf to a conspicuous part of the property, of the Court-house, and of the Fiscal's office.

(3) On 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.

(4) Where the seizure is removed or the property seized is sold, and the Fiscal grants a conveyance thereof to the purchaser under rule 67, sub-rule (2), the Fiscal shall, upon payment of a fee of fifty cents by any person at whose instance or for whose benefit such removal of seizure is made, or by the person in whose favour such conveyance is granted, certify such removal or sale to the Registrar of Lands of the district in which the land is situate, who shall forthwith register such removal or sale in the book provided for by sub-rule (3).

(5) The book provided for by sub-rule (3) shall be open to the inspection of any person on written application on that behalf and on payment of a fee of twenty-five cents.

(6) In no case shall the Fiscal enter upon the actual possession of the immovable property seized under this rule, or receive the rents and profits thereof, unless expressly directed so to do by order made under Order XLIII.

Registration of seizures.

When seizure must be ordered to be withdrawn.

18. Where—

(a) The amount decreed with costs and all charges and expenses resulting from the seizure of any property are paid into Court, or

(b) Satisfaction of the decree is otherwise made through the Court, or certified to the Court, or

(c) The decree is set aside or reversed,

the seizure shall be deemed to be withdrawn, and in the case of immovable property, such withdrawal shall, if the judgment-debtor so desires, be published at his expense, and a copy of the publication shall be affixed in the manner prescribed by rule 17.

List to be made of property seized.

19. So 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 such Fiscal, Deputy Fiscal, or other officer, 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.

This rule reproduces the substance of s. 237 of the old Code, with amendments partly taken from r. 54 of O. 21 of the new Indian Code.

This rule reproduces the substance of s. 239 of the old Code, with amendments taken from r. 55 of O. 21 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 240 of the old Code.

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INVESTIGATION OF CLAIMS AND OBJECTIONS.

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

20. (1) Where any claim is preferred to or any objection is made to the seizure or sale of any immovable or movable property seized in execution of a decree or under any order passed before decree, on the ground that such property is not liable to be sold, the Fiscal or Deputy Fiscal shall, so soon as such claim is preferred or objection made, as the case may be, report the same to the Court which passed such decree or order.

(2) The Court shall thereupon proceed in a summary manner to investigate the 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.

(3) The claim or objection, as the case may be, shall be preferred or made at the earliest opportunity; and no investigation shall be made into any such claim or objection where the Court considers that it was designedly or unnecessarily delayed.

Postponement of sale.

(4) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Claims to property seized outside local limits of jurisdiction of Court.

21. (1) Where any claim or objection is preferred or made with respect to any property 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.

(2) The proceedings on such report and investigation with the order thereon shall be forwarded forthwith 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 that in every such case the Court to which such report is made shall be nearer to the place of seizure than, and shall be of co-ordinate jurisdiction with, the Court which passed the decree or order.

Claimant to adduce evidence.

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

Discretion of Court to release the property claimed.

23. Where 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 make an order releasing the property, wholly or to such extent as it thinks fit, from seizure, and may make such order as to the payment of fees and charges already due to or incurred by the Fiscal as it may deem fit.

Disallowance of claim to property seized.

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

Court may continue seizure notwithstanding incumbrance.

25. Where 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 seizure, it may do so subject to such mortgage or lien.

Action by party claiming right.

26. The party against whom an order under rules 23, 24, and 25 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; but subject to the result of such action, if any, the order shall be conclusive,

This rule reproduces, with amendments in drafting partly taken from r. 58 of O. 21 of the new Indian Code, ss. 241 (first paragraph) and 242 of the old Code.

The question of the substitution for claim proceedings of a procedure adapted from ss. 325, 327 to 330 of the old Code, by which the claim or objection would be made the plaintiff in an action between the claimant or objector and the judgment-creditor, and the necessity for both the claim inquiry and an action under s. 247 would thus be obviated, has been considered. But the general feeling among the Judges of the courts of first instance seems to be against the change. It is said that in a large proportion of claim inquiries the parties are satisfied with the result of the inquiry, which is summary and inexpensive, and no action is brought under s. 247.

This rule reproduces the proviso to s. 241 of the old Code. The clause in that proviso, "At the expiry of the appealable time if no appeal has at that time been taken therefrom, but if an appeal has been taken, immediately upon the receipt by such Court of the judgment or order on appeal," was clearly inserted per incuriam, and has been omitted in accordance with the judgment of the Full Court in *De Silva v. Fernando*, (1891) 9 S. C. C. 134.

This rule reproduces s. 243 of the old Code; and see r. 59 of O. 21 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 244 of the old Code; and see r. 60 of O. 21 of the new Indian Code.

This rule reproduces, with verbal amendments taken from r. 61 of O. 21 of the new Indian Code, s. 245 of the old Code.

This rule reproduces, with verbal amendments, s. 246 of the old Code; and see r. 62 of O. 21 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 247 of the old Code; and see r. 63 of O. 21 of the new Indian Code.

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

27. Whenever it shall appear to the Court in any action instituted under rule 26 by or against any person claiming any property seized in execution that such claim is groundless and wilfully preferred only to defeat or delay the execution, the Court may impose upon the claimant, in addition to his liability to pay costs and damages, a fine not exceeding Rs. 50, and such fine shall be recovered as a fine imposed by a Court in a criminal case.

This rule reproduces, with verbal amendments, s. 248 of the old Code.

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

28. Where property belonging to a partnership, before or after its dissolution, has been seized upon a writ of execution against the interest therein of any partner, 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 for an order directing the Fiscal to release the property and to deliver it to the applicant.

This rule reproduces, with verbal amendments, s. 249 of the old Code.

(2) Every such application shall be supported by an affidavit of the applicant stating the facts.

Undertaking to be given by applicant.

29. (1) On every such application the applicant shall 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 found due upon the accounting, not exceeding a sum specified in the undertaking.

This rule reproduces, with verbal amendments, s. 250 of the old Code.

(2) Such sum shall be not less than the value of the interest of the judgment-debtor in the property seized as fixed by the Judge.

Undertaking to whose benefit it enures.

30. Where property of a partnership has been released from seizure under rules 28 and 29, and 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 shall enure to the benefit of each judgment-creditor of the same judgment-debtor who then has an execution in the hands of the Fiscal, with authority to levy upon such interest, as if such undertaking had been given to obtain a release from a seizure made by virtue of such an execution.

This rule reproduces, with verbal amendments, s. 251 of the old Code.

Interest of judgment-debtor may be sold.

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

This rule reproduces, with verbal amendments, s. 252 of the old Code.

SALE AND DISPOSITION OF PROPERTY SEIZED.

(A) Sales Generally.

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

32. Where the property seized is current coin or currency notes the Fiscal shall deal with it in the manner prescribed by this Order in respect of money received by him on the sale of property sold at the execution sale.

This rule reproduces, with verbal amendments, s. 253 of the old Code.

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

33. Where 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 an assignment as of the date of the seizure by the person against whom the writ of execution is being executed so far as that person's interests extends, and may realize the decree in the manner prescribed by this Order for the execution of a decree by an assignee thereof.

This rule reproduces, with verbal amendments, s. 254 of the old Code.

In all other cases Fiscal to sell.

34. In the case of all other property seized by the Fiscal, the sale shall be conducted in accordance with rules 35 and following of this Order.

This rule reproduces, with verbal amendments, the first paragraph of s. 255 of the old Code.

Notice of sale for movable property.

35. (1) Where the property to be sold is movable, the Fiscal, Deputy Fiscal, or other officer appointed by the Fiscal in this behalf shall cause notice of the intended sale to be given by beat of tomtom or in such other manner as to secure publicity thereto, both at the place of sale and also at the place of seizure.

This rule reproduces, with many verbal amendments, the second paragraph of s. 255 of the old Code.

(2) Such notice shall not be less than three nor, unless the time be enlarged by any order of Court, more than fourteen days before the day of sale, and shall specify, as fairly and accurately as possible—

- (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 for the recovery of which the sale is ordered.

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Notice of sale for immovable property.

36. (1) Where the property to be sold is immovable the like notice of sale as is required by rule 35 shall be given, and the Fiscal, Deputy Fiscal, or other officer aforesaid shall also cause to be made four copies of such notice in English and four in the native language prevailing within the district.

(2) One of each of such copies shall be posted at the Fiscal's office, at the Court-house of the Court from which the execution issued, in some conspicuous part of the town or village in which the property is situate, and on some conspicuous spot on such property at least ten days before the sale.

Advertisement where property exceeds Rs. 1,000 in value.

37. (1) Where the property seized under one writ shall exceed the value of Rs. 1,000, the Fiscal, Deputy Fiscal, or other officer shall, in addition to the notice of sale required by rules 35 and 36, advertise the sale in the Government Gazette.

(2) Such advertisement shall specify, as accurately as possible, the nature and situation of the property to be sold and the place, day, and hour of sale.

(3) No such sale shall take place unless it shall have been so advertised once at least twenty days prior to the sale.

(4) The execution-creditor or judgment-debtor may require the publication of such sale to be made in any newspaper to be named by him; and all costs and charges attending such advertisement, particulars of which shall be 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.

38. The Fiscal, Deputy Fiscal, or other officer may at the request of both parties, or either of them, on payment by the applicant of all costs or expenses attending the publication, advertise any sale of movable or immovable property in the manner hereinbefore mentioned, although such property does not exceed the value of Rs. 1,000.

Sale by whom to be conducted.

39. Every sale shall be conducted by an officer of the Fiscal, or some other person duly authorized by the Fiscal or Deputy Fiscal by writing under his hand.

Fiscals' fees.

40. (1) Where the proceeds of sale do not exceed the sum of Rs. 7,500, 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 re-sale of movable property, and two per cent. on the proceeds of sale of immovable property belonging to the judgment-debtor.

(2) Where the proceeds of the sale, whether of movable or immovable property, exceed the sum of Rs. 7,500, the Fiscal or Deputy Fiscal shall recover a fee of Rs. 150, and of Rs. 5 for every Rs. 1,000 of the proceeds over and above the said sum.

(3) Where, after the seizure of property and publication of sale thereof, the sale shall be 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 fees above mentioned on the estimated value of such property from the party at whose instance the writ shall be so stayed, and in default of immediate payment thereof the Fiscal shall certify the amount of such fees to the Court from which the execution issued.

Provided, however, that such fee shall in no case exceed Rs. 50 or the actual expenditure already incurred by the Fiscal towards carrying out the sale, whichever sum shall be the greater.

(4) Any fees recovered under this rule 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.

(5) Nothing in this rule shall entitle the Fiscal or Deputy Fiscal to more than one fee in respect of the seizure of distinct properties on the same writ.

Court may in certain cases postpone sale.

41. (1) Where at any time prior to the sale of immovable property the judgment-debtor satisfies 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 by such mortgage, lease, or private sale as aforesaid, and shall make such order as to the payment of fees and charges due to the Fiscal as it may deem fit.

This rule reproduces, with many verbal alterations, the third paragraph of s. 255 of the old Code.

This rule reproduces, with many verbal alterations, s. 256 of the old Code.

In sub-rule (4), for the words "such advertisements" in s. 256 have been substituted "such advertisement," in order to make it clear that the costs and charges referred to are those of advertisement not in the Government Gazette but in the newspaper, see *Rosenberg v. Silva*, (1904) 8 N. L. R. 110.

This rule reproduces, with verbal amendments, s. 257 of the old Code.

This rule is the first clause of s. 258 of the old Code, with verbal amendments.

Sub-rules (1) to (4) reproduce the second and concluding portion of s. 258 of the old Code. Sub-rule (5) is new, and gives effect to the decision of the Supreme Court in *Maclaren v. Samsudeen*, (1902) 3 Bro. 84.

This rule reproduces, with verbal amendments, s. 259 of the old Code. See also r. 83 of O. 21 of the new Indian Code.

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(2) In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 22 of the Ordinance, 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 rule shall become absolute until it has been confirmed by the Court.

Deposit by purchaser.

42. (1) On every sale of immovable property under this Order the person declared to be the purchaser shall pay, immediately after such declaration—

(a) Where the price does not exceed Rs. 100, the full amount of the purchase money; and

(b) In every other case a deposit of twenty-five per cent. on such amount—

to the officer conducting the sale.

(2) In default of such payment or deposit the property shall forthwith be put up again for sale.

Payment of balance.

43. (1) Where the price exceeds Rs. 100, 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 working day after such thirtieth day.

(2) In default of payment within the period mentioned in sub-rule (1)—

(a) 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;

(b) The property shall be re-sold; and

(c) The defaulting purchaser shall forfeit all claim to the property and to any part of the sum for which it may be re-sold.

Fresh notification on re-sale.

44. Every re-sale of immovable property in default of payment of the purchase money within the period allowed for such payment shall be made after notice of the intended re-sale has been given in the manner and for the period hereinbefore prescribed for the original sale, and shall be conducted in the same manner as such sale.

Bid by a co-sharer.

45. Where 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, bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of such co-sharer.

Fiscal may require payment of deposit.

46. The Fiscal, Deputy Fiscal, or other officer conducting any sale of immovable property 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 if not so satisfied may refuse to accept any such bid, and shall continue the sale as if no such bid had been made.

Defaulting purchaser answerable for loss on re-sale.

47. (1) Any deficiency of price resulting on a re-sale by reason of the default of the purchaser at the original sale or any sale preceding the re-sale and all expenses attending such re-sale shall be recoverable by the Fiscal from the defaulting purchaser and his sureties (if any).

(2) On non-payment of such deficiency by the defaulting purchaser or his sureties (if any) within one week after demand therefor in writing has been made by the Fiscal upon him or them respectively, the Fiscal shall certify the amount so demanded to the Court from which the execution issued, and such amount shall be recoverable from such defaulting purchaser or sureties under the provisions of this Order relating to the execution of a decree for the payment of money.

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

48. (1) Where 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 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 give security as aforesaid; and in the same manner the other bidders in rotation.

(2) Every bidder failing to make such deposit and to give such security as aforesaid may be held liable to pay the whole difference between his own highest bid and the price at which the property may finally be re-sold.

This rule reproduces, with verbal amendments, s. 260 of the old Code. See also r. 84 of O. 21 of the new Indian Code.

This rule reproduces, with verbal amendments, ss. 261 and 262 of the old Code. See also rr. 85 and 86 of O. 21 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 263 of the old Code.

And shall be conducted, &c. These words embody the substance of the first clause of s. 266 of the old Code.

This rule reproduces s. 264 of the old Code, with verbal amendments taken from r. 88 of O. 21 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 265 of the old Code.

This rule is based on s. 266 of the old Code, and is adapted from r. 71 of O. 21 of the new Indian Code.

This rule re-drafts s. 267 of the old Code.

Whole difference re-sold. These words give effect to the decision of the Supreme Court in 143 D. C. Galle, 9,517 (S. C. Mins., Nov. 4 1910).

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(3) On non-payment thereof by *any such bidder* within one week after demand therefor in writing has been made upon him by the Fiscal, the Fiscal shall certify the amount of the said difference in each case to the Court from which the execution issued.

(4) In case of default of the highest bidder, the Fiscal, Deputy Fiscal, or other officer, instead of declaring the next highest bidder to be the purchaser, may forthwith put up the property for re-sale or adjourn the sale.

(5) Where the sale is adjourned under the provisions of sub-rule (4), notice of the intended re-sale shall be given in the manner hereinbefore directed.

Forfeiture of deposit.

49. Where 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, the money deposited by the purchaser at the first and other sales preceding 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.

This rule reproduces s. 268 of the old Code, with verbal alterations.

Differences realized to augment the purchase money.

50. The differences between the *highest bids* of any person failing to make the deposit and give the security required by rule 48 and the sum finally settled at any such sale and between the amount realized at the final sale and the amounts realized at 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.

This rule reproduces s. 269 of the old Code, with verbal alterations.

The amount of Fiscal's certificates to be recovered as by execution of decree.

51. The amount certified by the Fiscal to be payable to him for half fees under the provisions of rule 40, sub-rule (3), and the amounts of the differences certified, by the Fiscal and directed to be reported to the Court by rule 47 and 48 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 of either the Fiscal, or the judgment-creditor, or the judgment-debtor, be recoverable from the persons declared in those rules 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.

This rule reproduces the first part of s. 270 of the old Code, with verbal amendments.

Costs of notice, publication, or proclamation.

52. The costs of any notice or publication required under any of the provisions of these rules to be given or made by the Fiscal by beat of tom-tom or in any other manner whatsoever shall be fixed by the Court, and shall, 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.

This rule reproduces the second part of s. 270 of the old Code, with verbal alterations.

No officer conducting sale to bid.

53. No officer or other person having any duty to perform in connection with any sale shall either directly or indirectly bid for, acquire, or attempt to acquire any interest in the property sold.

This rule reproduces, with amendments taken from r. 73 of O. 21 of the new Indian Code, s. 271 of the old Code.

Holder of decree may bid or purchase.

54. (1) No holder of a decree in execution of which property is sold shall, unless with the previous express sanction of the Court, and subject to such terms as to credit being given him by the Fiscal and otherwise as the Court may impose, bid for or purchase the property.

Sub-rules (1) and (2) reproduce the substance of s. 272 of the old Code, with amendments suggested by r. 72 (1) and (2) of O. 21 of the new Indian Code.

And purchase money may be set off against decree.

(2) Where a decree-holder purchases with such sanction, 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, shall enter up satisfaction of the decree in whole or in part accordingly.

The language of sub-rule (1) has been altered so as to make it clear that the previous sanction of the Court is necessary before the decree-holder can purchase. See *Chellappa v. Selvadurat*, (1912) 15 N. L. R. 139, overruling *Silva v. Uparis*, (1894) 3 C. L. R. 75.

(3) Where a decree-holder purchases, by himself or another, without such sanction, the Court may, if it thinks fit, on the application of the judgment-debtor, or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order and any deficiency of price which may result on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

Sub-rule (3) is new, and is adapted from sub-rule (3) of r. 72 of O. 21 of the new Indian Code.

Place of sale of immovable property.

55. 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 Deputy Fiscal the parties shall consent to its being conducted elsewhere.

This rule reproduces s. 273 of the old Code, with verbal amendments.

(B) Sale of Movable Property.

Negotiable instruments and shares in corporation.

56. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market rate of the day of sale.

This rule reproduces s. 274 of the old Code, with amendments taken from r. 76 of O. 21 of the new Indian Code.

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Sale of other movable property.

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

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

Irregularity not to vitiate sale, but any person injured may sue.

58. No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute an action against him for damages, or (if such other person is the purchaser) for the recovery of the specific property and for damages in default of such recovery.

Delivery of movable property, debts, and shares.

59. (1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the judgment-debtor, 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.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a certificate of sale in favour of the purchaser signed by the Fiscal or Deputy 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 shall prohibit 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 corporation from permitting any such transfer or making any such payment to any person except the purchaser.

Transfer of negotiable instruments and shares.

60. (1) Where the execution of a document or endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge, or such officer as he may appoint in this behalf, may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:

“ A. B. by C. D., Judge of the District Court or Court of Requests of _____ (or as the case may be), in an action by E. F. against A. B.”

(3) Until the transfer of such negotiable 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 receipt signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

Vesting order in case of other property.

61. In the case of any movable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser, or as he may direct; and such property shall vest accordingly.

(c) Sale of Immovable Property.

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

62. (1) The Fiscal shall report to the Court every sale of immovable property made by him or under his direction within ten days after the same shall have been made.

(2) No sale of immovable property shall become absolute until (a) thirty days have elapsed subsequent to the receipt of such report, and (b) such sale has been confirmed by the Court.

May be set aside for material irregularity.

63. (1) The decree-holder, or any person whose immovable property has been sold in execution, or any person whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity, or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud, and unless the grounds of such irregularity or fraud shall have been notified to the Court within thirty days of the receipt of the Fiscal's report.

(3) Every application shall be made by petition, and the purchaser shall be made respondent to such petition.

This rule reproduces, with verbal amendments, s. 275 of the old Code.

This rule is based on s. 276 of the old Code. But irregularity in conducting a sale of movable property will under the new rule only be a ground of action for damages or recovery of the property irregularly sold. See r. 78 of O. 21 of the new Indian Code. See also *Muttiah v. Fernando*, (1893) 2 A. C. R. 86.

This rule reproduces the substance of ss. 277, 278, 279 of the old Code, with amendments taken from r. 79 of O. 21 of the new Indian Code.

Deputy Fiscal. These words are new, and are added to meet the decision in 405 C. R. Galle, 6,086 (S. C. Mins., Dec. 7, 1910), that only the Fiscal could act under s. 279 of the old Code.

This rule reproduces s. 280 of the old Code with verbal amendments taken from r. 80 of O. 21 of the new Indian Code.

Court of Requests. These words are new.

This rule reproduces s. 281 of the old Code; and see r. 81 of O. 21 of the new Indian Code.

The words in s. 281, “and execute such document as may be necessary,” are omitted.

This rule reproduces the first paragraph of s. 282 of the old Code, with verbal amendments.

This rule is based on the second and third paragraphs of s. 282 of the old Code, with amendments partly taken from r. 90 of O. 21 of the new Indian Code.

Or fraud. These words are new.

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When purchaser may apply to set aside sale.

64. (1) The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold, and the Court may, on such application, make such order as it thinks fit.

(2) Every such application shall be made by petition in accordance with the provisions of Order XXVI., and both the judgment-debtor and decree-holder shall be made respondents to such petition.

Sale when to be absolute or set aside.

65. (1) Where no such application as is mentioned in rules 63 and 64 is made, or where such application is made and disallowed, the Court shall pass an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed the Court shall make an order setting aside the sale.

(3) No order under sub-rule (1) shall be made if it shall appear to the Court that the judgment-debt was satisfied at the time that the writ of execution issued.

(4) No order under sub-rule (1) or sub-rule (2) shall be made unless notice of the application has been given to all persons affected thereby.

(5) No action to set aside an order made under this rule shall be brought by any person against whom such order is made.

Return of purchase money in certain cases.

66. (1) Where a sale of immovable property is set aside under rule 65 the purchaser shall be entitled to an order for repayment of his purchase money, with or without interest as the Court may direct, against any person to whom it has been paid, and such order may be enforced against such person under the rules provided by this Order for the execution of a decree for money.

(2) No order shall be made unless the person against whom the order is directed shall have been made a respondent to the application.

Conveyance to purchaser.

67. (1) Where a sale of immovable property has become absolute the purchaser shall supply the Fiscal or Deputy Fiscal, at the time of making payment of the full amount of the purchase money, with stamps of the value required by law for the conveyance of the land sold to him.

(2) Where the sale was not effected in execution of a decree specifically directing the sale, the Fiscal or Deputy Fiscal shall forthwith execute a conveyance in duplicate of the property according to Form No. 13 in Appendix E, with such variations, if any, as may be necessary.

(3) No conveyance provided for in sub-rule (2) shall be notarially executed, but every such conveyance shall be as valid in all respects as if it had been so executed.

(4) The Fiscal or Deputy Fiscal shall deliver the original conveyance 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.

(5) The Fiscal or Deputy Fiscal shall be entitled to recover for such conveyance when the amount of the purchase money shall be under Rs. 30 a fee of 50 cents, when it shall exceed Rs. 100 a fee of Re. 1-50, when it shall exceed Rs. 200 a fee of Rs. 2-50, and when it shall exceed Rs. 500 a fee of Rs. 3-75, and no more.

(6) Such fees shall be brought to account and appropriated in such manner as the Governor shall direct.

Conveyance to be in conformity with directions of Court.

68. (1) Where the sale was effected in execution of a decree specifically directing the sale, the conveyance shall be made in conformity with the directions of the Court contained in the decree.

Map.

(2) There shall be annexed to every such conveyance a sufficient map exhibiting, when possible, some permanent physical feature of the ground, unless a diagram or map of the land conveyed shall have been appended to a title deed thereof delivered to the purchaser.

(3) The purchaser shall pay in advance the expense of preparing such map in addition to the fee prescribed for the conveyance.

(4) Such map shall be prepared by a competent surveyor licensed by the Fiscal or Deputy Fiscal for that purpose, and such surveyor shall be an officer of the Fiscal within the meaning of rule 102, and shall for the purposes of the Ceylon Penal Code be deemed to be a public servant.

Delivery of property in occupancy of judgment-debtor.

69. (1) Where 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 rule 67, the Court shall, on the application of the purchaser under rule 67, the Court shall, on the application of the purchaser, order delivery to be made by putting such 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.

This rule reproduces s. 284 of the old Code, with amendments taken from r. 91 of O. 21 of the new Indian Code.

This rule is based on s. 283 of the old Code, with amendments chiefly taken from r. 92 of O. 21 of the new Indian Code.

This rule is based on s. 285 of the old Code, re-drafted in order to secure greater simplicity and clearness. See also r. 93 of O. 21 of the new Indian Code.

This rule reproduces the first paragraph of s. 286 of the old Code, completely re-drafted.

This rule reproduces the second paragraph of s. 286 of the old Code, completely re-drafted.

This rule reproduces s. 287 of the old Code, with verbal amendments taken from r. 95 of O. 21 of the new Indian Code.

ORDER XXIV.

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Order how to be enforced.

(2) An order for delivery of possession made under sub-rule (1) may be enforced as an order falling under sub-head (c) of rule 1, the purchaser being considered as judgment-creditor.

Delivery of property in occupancy of tenant.

70. (1) Where 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 rule 67 or rule 68, the Court shall, on the application of the purchaser, 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 other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Fiscal may enter.

(2) The costs of such proclamation shall be fixed by the Court, and shall in every case be prepaid by the purchaser.

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

Person in possession may use and enjoy until confirmation.

72. The Fiscal, Deputy Fiscal, or other person in possession of immovable property under rule 71 may, until the confirmation of the sale by the Court and the execution of the Fiscal's conveyance, without being chargeable with committing waste—

- (1) Use and enjoy the property in like manner and for the like purposes as it was used and enjoyed before the sale, provided that no permanent injury is caused to the property by such user and enjoyment.
- (2) Make the necessary repairs to any building or other erection on such property. Provided that nothing in this sub-head shall authorize the making of any alteration in the form or structure of such building or other erection.
- (3) Use and improve the land in the ordinary course of husbandry, and collect, gather, harvest, and store the crops and produce thereof.
- (4) Apply any wood or timber on the land to the necessary repairs authorized by sub-head (2) of this rule.

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

73. The Fiscal, Deputy Fiscal, or other person in possession of the immovable property sold shall—

- (a) Where the sale is confirmed by the Court, and the Fiscal's conveyance is executed in pursuance of the sale, 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.
- (b) Where the sale is not so confirmed and the Fiscal's conveyance is not so executed, forthwith 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 under sub-head (3) of rule 72.

Judgment-debtor may be restrained from waste.

74. (1) Where at any time before the execution of the Fiscal's conveyance the judgment-debtor or (save as is otherwise provided in rule 72) 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, on the application of the purchaser or his proctor or recognized agent on his behalf, and on proof by affidavit of the facts grant, without notice, an order restraining the commission of such waste upon the property.

(2) Such order shall be served forthwith on such judgment-debtor or other person.

Punishment for committing waste.

75. Where the person against whom such an order is granted commits waste in contravention of such order after service thereof upon him, he shall be guilty of contempt of Court, and the Court, on proof of the facts by affidavit, may order him to show cause, at a time and place specified in the order, why he should not be punished for such contempt.

And for disobeying order.

76. Where upon the return of the order to show cause it satisfactorily appears that the person required to show cause has been guilty of such contempt, the Court may punish him in manner provided by law for the punishment of contempts of Court.

This rule reproduces s. 288 of the old Code, with verbal amendments chiefly taken from r. 96 of O. 21 of the new Indian Code.

Section 289 of the old Code—the divesting of the judgment-debtor's title—is substantive law and is dealt with in s. 26 of the Ordinance.

This rule reproduces s. 290 of the old Code, with verbal amendments.

This rule reproduces, with verbal amendments, s. 291 of the old Code.

This rule reproduces s. 292 of the old Code, with verbal amendments.

This rule reproduces s. 293 of the old Code, with verbal amendments.

The words "save as is otherwise," &c., in sub-rule (1) are necessary because of the powers given to the Fiscal under r. 72, the exercise of which is not to make him chargeable for waste. Sub-rule (2) is new.

This rule reproduces, with verbal amendments, s. 294 of the old Code.

This rule reproduces, with verbal amendments, s. 295 of the old Code.

ORDER XXIV.

NOTES.

PAYMENTS TO AND BY FISCALS.

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

77. Payments to Fiscals, and by Fiscals' officers, shall be made in the manner following, and not otherwise :

- (i.) *Wherever any sum or sums of money shall, save as in sub-head (iv.) provided, be payable by any person, whether the original judgment-debtor or a purchaser of property sold in execution, to the Fiscal or Deputy Fiscal, such Fiscal or Deputy Fiscal shall, on the application of such person, supply him with the note prescribed by Form No. 15 in Appendix E to the Government Agent or Assistant Government Agent.*
- (ii.) *The person to whom the note is so supplied shall deliver it at the office of the Government Agent or Assistant Government Agent, to the shroff or receiver of such office, and shall pay to him therewith the amount stated in the note.*
- (iii.) *The receipt of the amount so paid shall be acknowledged by the signature of the Government Agent or Assistant Government Agent on the part of the note reserved therefor, which part shall be detached and delivered to the person making the payment, the remaining part being retained as the authority for receiving the payment.*
- (iv.) *Where the payment to be made is a payment of ready money, whether under the provisions of rule 57 or otherwise, or a partial payment of the purchase money of immovable property under the provisions of rule 42, the Fiscal or Deputy Fiscal shall give a receipt therefor, on the stamps for such receipt being supplied by the purchaser.*
- (v.) *The Fiscals' officers shall make payment of all deposits and ready money received and payable 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, and shall be furnished for that purpose with copies of the Form prescribed by sub-head (i.) of this rule.*
- (vi.) *A register of such notes in Form No. 16 in Appendix E, or in such other Form (if any) as the Governor may from time to time prescribe, shall be kept by the Fiscal, and shall be liable to be called for by Government at any time.*
- (vii.) *Wherever a payment shall have been made under sub-head (ii.) or sub-head (v.), the Government Agent or the Assistant Government Agent shall within forty-eight hours thereafter forward a receipt for such payment to the Fiscal or Deputy Fiscal.*

Moneys paid
into
Government
Agent's office
to be subject
to order of
Court.

78. All moneys which may be paid into the office of any Government Agent or Assistant Government Agent shall be retained in such office until disposed of by order of the Court from which the execution shall have issued.

Provided always that nothing herein contained shall affect the powers vested by law in the Commissioners of the Loan Board.

ARREST AND IMPRISONMENT.

When
judgment-debtor
may be arrested
in execution.

79. (1) *Where the Fiscal returns to the writ of execution that he is unable to find any property of the judgment-debtor, movable or immovable, or where before the return to the writ of execution is made the Court is satisfied, on the application of the judgment-creditor, that the judgment-debtor—*

- (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 of the Court ; or*
- (d) *With the like intent has disposed of or removed from the reach of the Fiscal his property or any part thereof ; or*
- (e) *Is about to leave the Island under circumstances affording a 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.

This rule reproduces s. 296 of the old Code, with verbal amendments.

This rule reproduces, with verbal amendments, s. 297 of the old Code.

This rule reproduces, with amendments, s. 298 of the old Code.

The proviso prescribing the lawful hours of arrest has been omitted. It would seem to have been unnecessary even under the old Code, in view of the provisions of s. 635 as to the execution of process. It is covered now by s. 30 of the Ordinance.

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(2) *The application mentioned in sub-rule (1) shall be made by petition, and it shall not be necessary that the judgment-debtor should be made a party to such petition.*

(3) *It shall not be lawful for the Court to issue a warrant for the arrest or imprisonment of a woman in execution of a decree for the payment of money.*

(4) *Under a warrant issued under sub-rule (1) the judgment-debtor may, subject to the provisions of section 28 of the Ordinance, be arrested at any hour, and on any day, and in any place, and shall thereupon, as soon as practicable, be brought before the Court.*

(5) *Where the judgment-debtor, on his arrest, shall pay 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 from custody.*

No arrest for sum under Rs. 200.

80. (1) *Notwithstanding anything in rule 79 contained, no warrant for the arrest of a judgment-debtor shall, save as in sub-rule (2) otherwise provided, issue in execution of a decree for the payment of money wherein the sum awarded, inclusive of interest, if any, up to the date of the decree, but exclusive of any further interest, shall not amount to Rs. 200 or upwards.*

Exception in case of fraud.

(2) *Where at any time it shall appear to the Court before which any action shall have been tried that the defendant, in incurring the debt or liability which is the subject of a decree for the payment of money in such action, has—*

- (a) *Obtained credit from the plaintiff under false pretences, or with a fraudulent intent ; or*
- (b) *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*
- (c) *Made or caused to be made any gift, delivery, or transfer of any property ; or*
- (d) *Removed or concealed any property with an intent to defraud his creditors or any of them—*

it shall be lawful for the Court in the decree to order that such defendant be detained in prison as a civil prisoner for any time not exceeding six months, and whether or not execution against his property shall be issued in virtue of the decree.

(3) *A decree for the payment of costs shall be deemed to be a decree for the payment of money within the meaning of this rule.*

(4) *Where the sum for which a decree is passed amounts to Rs. 200 or upwards, the judgment-debtor shall not be exempted from liability to arrest, or entitled to be discharged from imprisonment, in execution of the decree, by reason of the reduction of such sum to an amount below Rs. 200 by execution against his property.*

Warrant for arrest to direct judgment-debtor to be brought up.

81. *Every warrant for the arrest of a 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.*

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 prison.

82. (1) *Where the judgment-debtor on being brought before the Court under such warrant of arrest—*

- (a) *Pays the amount of the decree and the costs of the arrest into Court ; or*
- (b) *Gives security for the payment of the same to the satisfaction of the Court ; or*
- (c) *Satisfies the Court either that he has no saleable 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,*

the Court shall release him from arrest.

(2) *If not so satisfied, the Court shall commit the judgment-debtor to prison as a civil prisoner in execution of the decree by warrant in Form No. 18 in Appendix B, with such variations as circumstances may require.*

Subsistence allowance.

83. (1) *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.*

This rule is based on s. 299 of the old Code.

The words "for the payment of money" have been inserted in sub-rule (1) to give effect to the decision of the Supreme Court in *Soysa v. Soysa*, (1892) 1 S. C. R. 28, that no execution against the person can be allowed on a specific decree for movable or immovable property.

Sub-rules (3) and (4) are new, and give effect to the decision of the Supreme Court in *Soysa v. Soysa*, (1892) 1 S. C. R. 28, as regards a decree for costs, and *Silva v. Sella Umma*, (1893) 3 C. L. R. 41, as regards reduction of a judgment-debt below two hundred rupees by execution against property.

This rule reproduces the first paragraph of s. 305 of the old Code, with verbal amendments. See also r. 38 of O. 21 of the new Indian Code.

This rule reproduces the second paragraph of s. 305 of the old Code, with verbal amendments. It prescribes the circumstances under which a judgment-debtor on his first being brought before the Court is entitled to be released. Rule 83 deals with cases in which, on so being brought before the Court, he may be released. Rule 85 *et seq.* are concerned with release after arrest and imprisonment in pursuance of such arrest. The order of the original section as to arrest of debtors has been freely re-arranged.

This rule reproduces the substance of ss. 313, 314, 315, and 316 of the old Code. Compare r. 39 of O. 21 of the new Indian Code.

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(2) Where a judgment-debtor is committed to prison 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.

(3) The monthly allowance fixed by the Court shall be supplied to the Fiscal by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

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

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in prison shall be deemed to be costs in the action.

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

Where debtor is unable to pay Court may order release.

84. (1) Where a judgment-debtor after being arrested in execution of a decree for the payment of money is brought before the Court, and it appears to the Court that such 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.

This rule reproduces, with necessary verbal amendments partly taken from r. 40 of O. 21 of the new Indian Code, ss. 300 to 304, both terminals included, of the old Code.

But may take certain matters into consideration.

(2) Before making an order under sub-rule (1), the Court may take into consideration and satisfy itself as to the truth of any allegation by the decree-holder touching the following matters :

- (a) The decree being for a sum for which the judgment-debtor was bound in any 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 passed 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) Refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or some part thereof where he has, or since the date of the decree has had, the means of paying it ;
- (e) The likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect mentioned in sub-head (b).

And pending decision may imprison or release on security.

(3) While any of the matters mentioned in sub-rule (2) are being considered, the Court may, as it shall see fit, order the judgment-debtor either to be detained in prison as a civil prisoner or to be released on his furnishing security to the satisfaction of the Court for his appearance when required by the Court.

Re-arrest.

(4) A judgment-debtor released under sub-rule (1) or sub-rule (3) may be re-arrested.

Committal.

(5) Where the Court does not make an order under sub-rule (1) it shall, subject to the other provisions of the Code, commit the judgment-debtor to prison as a civil prisoner.

Judgment-debtor in custody may at any time apply for discharge.

85. Any judgment-debtor arrested or imprisoned in execution of a decree for the payment of money may apply by petition under Order XXVI. 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.

This rule reproduces, with verbal amendments, s. 306 of the old Code.

Affidavit in support of petition for discharge.

86. The affidavit by which such petition is supported shall state—

This rule reproduces, with verbal amendments, s. 307 of the old Code.

- (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 such property ;
- (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.

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Procedure on petition for discharge.

87. On any such application so supported being made, the Court shall make an order thereon in the alternative (b) of rule 5, sub-rule (1), of Order XXVI., provided the petitioner pays the costs of serving such 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.

This rule reproduces, with verbal amendments, s. 308 of the old Code.

Court may commit or release on security pending the hearing.

88. Where the petitioner is under arrest but has not yet been committed to prison, the Court may commit him to prison as a civil prisoner until the day appointed for the hearing of the petition, or until any day to which the hearing may be from time to time adjourned ; or may release him on his furnishing security to the satisfaction of the Court that he will appear when required by the Court.

This rule reproduces, with verbal amendments, s. 309 of the old Code.

Examination of petitioner.

89. 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, where all the parties are present, or where it is satisfied that notice of such 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 petitioner's discharge, and may, if it thinks fit, postpone the hearing to allow the respondents to adduce evidence.

This rule reproduces, with verbal amendments, s. 310 of the old Code.

When Court may discharge petitioner.

90. (1) Where at such hearing the Court is satisfied—
(a) That the statements in the affidavit are substantially true ; and
(b) That the petitioner 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 was passed ; and
(c) That the petitioner has not committed any act of bad faith regarding the matter of his petition,

This rule reproduces s. 311 of the old Code, with amendments.

it shall order his discharge : Provided that no inquiry shall be held under this sub-rule into the circumstances under which the original debt of the judgment-debtor was contracted.

In sub-rule (1), sub-head (a), the word "and," and in sub-rule (2) the words "as to each of the conditions," &c., have been added for the purpose of making it clear that these conditions are cumulative.

(2) Where the Court is not satisfied as to each of the conditions mentioned in sub-rule (1), it shall commit the petitioner to prison as a civil prisoner, or shall refuse to discharge him from prison, as the case may be.

Provided that, &c. These words give effect to the decision of the Supreme Court in Vallappa v. Pieries, (1897) 3 N. L. R. 31.

Effect of discharge.

91. A judgment-debtor who has been discharged from arrest or imprisonment in execution of a decree under rule 90 shall not be again arrested in execution of the same decree.

This rule reproduces, with verbal amendment, s. 312 of the old Code.

When judgment-debtor entitled to be discharged from prison.

92. (1) The judgment-debtor shall be discharged from prison—

This rule reproduces, with verbal amendments, s. 317 of the old Code.

- (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 subsistence 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 rule 93 is fulfilled.

(2) The judgment-debtor shall not be discharged under sub-rule (1), sub-head (a), (b), (c), or (d) without the order of the Court.

(3) A judgment-debtor discharged under this rule shall not be thereby discharged from his debt, but shall not be liable to be re-arrested under the same decree.

Limit of imprisonment.

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

This rule reproduces, with verbal amendments, s. 318 of the old Code.

Endorsement on the warrant.

94. The Fiscal shall endorse upon the warrant of arrest—

This rule reproduces, with verbal amendments, s. 319 of the old Code.

- (a) Where such warrant was executed, the day on which and the manner in which it was so executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason for such delay ; and
- (b) Where the warrant was not executed, the reason for its non-execution ;

and shall return the warrant with such endorsement to the Court.

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(B) Decrees for Delivery of Movable Property.

Decree for specific movable property.

95. (1) *Where 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 the execution of decrees for the payment of a sum of money under head (A) of this Order, so far as the same are applicable.*

Form of writ.

(2) *Where 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 against the property, and may, if it thinks fit, also direct a writ of execution against the person of the judgment-debtor to issue to the Fiscal, in Form No. 19 in Appendix E.*

Fiscal to procure delivery thereunder.

96. (1) *On receipt of the writ the Fiscal or his officer shall, as soon as reasonably may be, proceed to the dwelling house or place of residence of the judgment-debtor, show him the writ, and demand delivery of the movable or, if practicable, the share thereof specified therein.*

(2) *Where the judgment-debtor fails to comply with such demand, the Fiscal or his officer shall—*

(a) *Seize the specific movable or share thereof, and deliver the same to the judgment-creditor or to such person as he appoints to receive delivery on his behalf; or*

(b) *Where delivery of the specific movable or share thereof cannot be had, seize and sell the property of the judgment-debtor under the writ of execution against property; or where no saleable property can be found and a writ of execution against the person has been issued by the Court under rule 95, sub-rule (2), execute such writ by the arrest of the judgment-debtor.*

Amount to be levied and manner of execution.

97. (1) *Out of the proceeds of any property seized and sold under rule 96, sub-rule (2) (b), the Court may award to the decree-holder the amount which has been fixed by the decree to be paid as an alternative to the delivery of any specific movable or share therein, and shall pay the balance, if any, to the judgment-debtor on his application.*

(2) *The execution of the writ or writs provided for by rule 95, sub-rule (2), shall be effected according and subject to the rules prescribed for writs of execution against property and person issued for the enforcement of decrees falling under head (A) of this Order.*

(C) Decrees for Possession of Immovable Property.

Decree for possession of immovable property, how to be made.

98. (1) *Where the decree is for the recovery of possession of immovable property or any share thereof by the judgment-creditor, or 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 the execution of decrees under head (A) of this Order so far as the same are applicable.*

Form of writ.

(2) *Where 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 Form No. 20 in Appendix E.*

Fiscal how to proceed thereunder.

99. *On receipt of the writ the Fiscal or his officer shall, as soon as reasonably may be, proceed to the ground, and there deliver over possession of the property described in the writ to the judgment-creditor or to such person as he may appoint to receive delivery on his behalf, and if necessary by removing any person bound by the decree who refuses to vacate the property.*

Joint possession of immovable property.

100. *Where a decree is for joint possession of immovable property, such possession shall be delivered by affixing a copy of the writ in some conspicuous place on the property and proclaiming by beat of tom-tom, or other customary mode, at some convenient place, the substance of the decree.*

Delivery of immovable property in occupancy of tenant or other person.

101. (1) *Where the decree is for the delivery of any immovable property 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 other customary mode, at some convenient place, the substance of the decree in regard to the property.*

This rule reproduces, with verbal amendments, s. 320 of the old Code.

As to the alleged inconsistency between ss. 320 and s. 191 of the old Code, see Notes to O. 22, r. 8. The difficulty is removed by sub-rule (2) of this rule, which enables the Court to issue writs of execution against person and property in the first instance.

This rule reproduces s. 321 of the old Code, with verbal amendments and amendments intended to remove the difficulty pointed out in the Notes to O. 22, r. 8.

This rule is based on s. 322 of the old Code, which has been completely re-drafted.

Sub-rule (1) is new, and is adapted from r. 31, sub-rule (2), of O. 21 of the new Indian Code. See Notes to r. 96 and also to O. 22, r. 8.

This rule reproduces s. 323 of the old Code, with verbal amendments.

This rule reproduces, with verbal amendments, the first paragraph of s. 324 of the old Code; and see r. 35, sub-rule (1), of O. 21 of the new Indian Code.

This rule is new, and is adapted from r. 35, sub-rule (2), of O. 21 of the new Indian Code.

This rule reproduces, with verbal amendments, the latter portion of s. 324 of the old Code.

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(2) Where the occupant can be found, a notice in writing containing the substance of such decree shall be served upon him, and in such case the proclamation prescribed by sub-rule (1) shall not be made.

(3) The costs of every proclamation prescribed by sub-rule (1) shall be fixed by the Court, and shall be prepaid by the judgment-creditor.

RESISTANCE TO EXECUTION OF DECREES.

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

102. (1) Where in the execution of a decree for the possession of property under heads (B) and (C) of this Order the officer charged with the execution of the writ is resisted or obstructed by any person, or where after the officer has delivered possession the judgment-creditor is obstructed 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.

(2) Such complaint shall be made by petition under Order XXVI., and the judgment-debtor and the person resisting or obstructing shall be made respondents to the petition.

(3) Every such petition shall be dealt with by the Court in accordance with the alternative (b) of rule 5, sub-rule (1), of Order XXVI.

Judgment-debtor or person acting on behalf of judgment-debtor.

103. Where on the hearing of the matter of the petition the Court is satisfied that the obstruction or resistance complained of was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, the Court may commit the judgment-debtor or such other person to prison for a term not exceeding thirty days, and shall direct that the petitioner be put into possession of the property.

Resistance or obstruction by bona fide claimant.

104. (1) Where the Court is satisfied that the resistance or obstruction was 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 if it were a plaint in an action between the decree-holder as plaintiff and the claimant as defendant.

(2) The Court shall, as soon thereafter as is reasonably practicable without prejudice to any proceedings to which the claimant may be liable for the punishment of such resistance or obstruction, proceed to investigate the claim, and shall, after such investigation, pass such order as it thinks fit for executing or staying execution of the decree.

Dispossession by decree-holder or purchaser.

105. (1) Where any person other than the judgment-debtor is dispossessed of any property by the holder of a decree for the possession of such property, or where such property has been sold in execution of a decree by the purchaser thereof, the person so dispossessed may make an application to the Court complaining of such dispossession on the ground—

- (a) That the property was bona 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
(b) That, if it was comprised in the decree, he was not a party to the action in which the decree was passed.

(2) Every such application shall be by petition, which shall be dealt with by the Court in accordance with the alternative (b) of rule 5, sub-rule (1), of Order XXVI., and to which the decree-holder or purchaser, as the case may be, shall be made a respondent.

(3) Where, on the day for the determination of the matter of the petition, the Court is satisfied that the material facts alleged by the applicant are prima facie established, the petition shall be numbered and registered as if it were 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, and shall pass such order as it thinks fit for executing or staying execution of the decree or restoring the applicant to possession.

(4) In hearing an application under this rule the Court shall confine itself to the grounds of dispute specified in sub-heads (a) and (b) of sub-rule (1).

This rule reproduces, with verbal amendments, s. 325 of the old Code.

This rule reproduces, with verbal amendments, s. 326 of the old Code.

Without any just cause. These words are new, and are taken from r. 98 of O. 21 of the new Indian Code.

This rule reproduces, with amendments, s. 327 of the old Code.

The words "as if it were" have been added in sub-rule (1), and the clause in s. 327 "in the same manner and with the like power as if an action for the property has been instituted by the decree-holder against the claimant" have been omitted in sub-rule (2), since the Court at this stage of the inquiry under the Ceylon procedure can only make an order for the execution, or for a stay of the execution, of the decree.

This rule is based on the first, second, and third paragraphs of s. 328 of the old Code, with numerous amendments, verbal and otherwise.

In sub-rule (1), dispossession by a purchaser has been added in accordance with r. 100 (1) of O. 21 of the new Indian Code.

Sub-rule (2) is new.

Sub-rule (3) amends the second paragraph of s. 328, qualifying the reference to a plaint and omitting the clause investing the Court with the same powers as it would have had in an ordinary action—a provision inconsistent both with the limited order which can be made on the petition and with sub-rule (4). Questions of title cannot be gone into under this rule. See Rosahamy v. Diago, (1898) 3 N. L. R. 203; and see sub-rule (4).

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Rules not applicable to transferee lite pendente.

106. Nothing in rules 104 and 105 shall apply to resistance or obstruction by any person to whom the judgment-debtor has transferred the property after the institution of the action in which the decree was passed or to the dispossession of any such person.

This rule reproduces the fourth paragraph of s. 328 of the old Code, with verbal amendments partly taken from r. 102 of O. 21 of the new Indian Code.

Resistance or obstruction to obtaining possession of undivided share.

107. Where the property which the judgment-creditor is obstructed in obtaining possession of is an undivided share, the Court shall cause all the shareholders to be made parties to the proceedings under rule 104 or rule 105.

This rule reproduces, with verbal amendments, the last paragraph of s. 328 of the old Code.

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

108. Where on the hearing of the judgment-creditor's complaint the Court is satisfied that the resistance or obstruction was occasioned by some 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.

This rule reproduces, with verbal amendments, the first paragraph of s. 330 of the old Code.

Orders conclusive subject to regular action.

109. (1) Any party not being a judgment-debtor against whom an order is made under rule 103, rule 104, or rule 105 may within one month after the date of such order 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 conclusive.

Sub-rule (1) reproduces the second paragraph of s. 330, and sub-rule (2) the substance of s. 329 of the old Code, with amendments partly taken from r. 103 of O. 21 of the new Indian Code.

(2) Every order under rule 103, rule 104, or rule 105 shall be subject to the same conditions as to appeals as a decree in a regular action.

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

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

110. (1) Where 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 to have the said draft served on the judgment-debtor.

This rule is based on ss. 331, 332, and 333 of the old Code, completely re-drafted.

(2) Every such application shall be by petition, to which it shall not be necessary that the judgment-debtor or any other person should be made a respondent.

Service of the draft conveyance on judgment-debtor.

(3) The Court shall thereupon cause the draft conveyance and a copy of the petition to be served on the judgment-debtor in the manner provided by Order V. for the service of a summons, together with a notice in writing requiring the judgment-debtor to file in Court his objections, if any, to the decree-holder's petition or draft conveyance, within such time as the Court shall fix in such notice, and stating that the Court will consider such objections, if any, on a day named in the notice in that behalf.

(4) The decree-holder shall also tender to the Court for execution a duplicate of the draft conveyance, supplying therewith a stamp of the proper amount where a stamp is required by law.

(5) On the day appointed for the consideration of objections, and on proof of the service prescribed by sub-rule (3) the Court, or such other officer as it appoints in this behalf—

(a) Where no objections have been filed as aforesaid, may proceed to execute the duplicate so tendered, with such alterations, if any, as may be necessary so as to bring it into accordance with the terms of the decree, and execute the decree so altered.

(b) Where objections have been filed as aforesaid, the Court, shall proceed to hear and determine such objections, and shall thereupon pass such order as it thinks fit.

(6) The execution of a conveyance or the endorsement of a negotiable instrument by the Court under this rule may be in the following form:—"C. D., Judge of the District Court or Commissioner of Requests of _____ (as the case may be), for A. B., in an action by E. F. against A. B.," or in such other form as may from time to time be prescribed, 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.

(7) No conveyance executed under this rule shall require notarial execution, but every such conveyance shall be of as full force and avail in law as if it had been so executed.

(8) The Court shall deliver the original of such conveyance to the decree-holder and transmit the duplicate to the Registrar of Lands for the district in which the property is situate, in like manner as now is or shall be required to be done by notaries in respect of deeds executed before them.

ORDER XXIV.

NOTES.

(E), (F) Mandatory and Restraining Decrees.

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

111. (1) *Where* a decree or order falling under either head (E) or head (F) of *this Order* has been passed or made, and the judgment-debtor has wilfully failed to *comply with such decree or order*, the judgment-creditor may *apply* to the Court for *its* execution or enforcement.

(2) *Every such application shall be made* by petition, to which the judgment-debtor shall be made respondent, and which shall *state the facts* and the *damages*, if any, *claimed by* the judgment-creditor by *reason of the non-compliance* of the judgment-debtor with the decree or order.

(3) *Where* the Court, on the hearing of such application, is satisfied that the judgment-creditor is entitled to obtain execution or enforcement of the decree or order, it shall direct a writ of execution by seizure and sale of the judgment-debtor's property, or a warrant for the arrest of the judgment-debtor, or both, to issue to the Fiscal.

Amount to be levied under writ.

(4) *Where a writ of execution against property is issued under sub-rule (3) the damages payable thereunder to the judgment-creditor shall be fixed by the Court and stated in the writ.*

(5) The execution of *every writ and warrant* of arrest issuing under *sub-rule (3)* shall be effected according and subject to the rules prescribed for the *writs* of execution and *warrants* of arrest falling under head (A) of *this Order*.

GENERAL PROVISIONS.

Simultaneous execution.

112. The Court may in its discretion refuse execution at the same time against the person and property of the judgment debtor.

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

113. (1) *Where* an application to execute a decree for the payment of money or delivery of other property has been made under *this Order* and granted, no subsequent application to execute the same decree shall be granted—

(i.) Unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree, or that execution was stayed by the decree-holder at the request of the judgment-debtor ; or

(ii.) After the expiration of ten years from—

(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 *such payment or delivery*.

(2) Nothing in *sub-rule (1)* 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 *the ten years immediately preceding* the date of the application.

Application by joint decree-holders for execution.

114. (1) *Where* 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, *unless the decree imposes any condition to the contrary*, 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 *the legal representatives of the deceased*.

(2) *Every application under sub-rule (1)* shall be made by petition, to which the *joint* decree-holders or their *legal* representatives as well as the judgment-debtor shall be respondents.

(3) *Where* the Court sees sufficient cause for allowing the decree to be executed on an application made *under this rule*, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Meaning of term "legal representative."

115. (1) For the purposes of *this Order* the term "legal representative" shall *have the meaning assigned to it in the Second Schedule of this Code*.

(2) *Where* any dispute *arises under this Order* as to who is the legal representative of *any person*, the provisions of *rule 5 of Order XXVII* shall, *so far as may be practicable*, apply.

This rule reproduces ss. 334 and 335 of the old Code, almost entirely re-drafted.

In sub-rule (4) the statement contained in s. 335 of the old Code of the measure of damages has been omitted. The damages, if any, must be fixed by the Court in view of the whole circumstances and in accordance with the ordinary substantive law.

This rule reproduces s. 336 of the old Code, with verbal amendments taken from r. 21 of O. 21 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 337 of the old Code.

This rule reproduces, with verbal amendments, the first and second paragraphs of s. 338 of the old Code. See also r. 15 of O. 21 of the new Indian Code.

This rule is based on the last paragraph of s. 338 of the old Code.

ORDER XXIV.

Application for execution by assignee of decree.

116. (1) *Where a decree, or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder, has been transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and if on such 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.*

(2) *Every application under sub-rule (1) shall be made by petition, to which, subject to the provisions of sub-rule (3), all the parties to the action or their legal representatives shall be made respondents.*

(3) *Provided that where the decree has been transferred by operation of law it shall not be necessary that the transferor should be made respondent to the petition.*

(4) *Where a decree against several persons has been transferred to one of them, it shall not be executed against the others.*

Seizure of one decree in execution of another.

117. *Where one decree is seized in execution of another, the judgment-creditor under such second decree shall be deemed to be the assignee of the judgment-creditor under the former decree so seized in execution, provided that such last-mentioned judgment-creditor is judgment-debtor under the decree in execution of which the seizure is made.*

Transferee bound by equities.

118: *Every transferee of a decree shall hold the same subject to the equities, if any, and whether arising or not in the action in which the decree has been passed, which the judgment-debtor might have enforced against the original decree-holder.*

Legal representative of deceased debtor, how made liable.

119. (1) *Where the judgment-debtor dies before the decree has been fully executed, the decree-holder may apply to the Court which passed it to execute the decree against the legal representatives of such judgment-debtor.*

(2) *The Court so executing the decree may on the application of the decree-holder compel the legal representatives of the deceased judgment-debtor to produce such accounts as it thinks fit.*

Execution in cases of cross decrees.

120. (1) *Where applications are made to a Court for the execution of cross decrees in separate actions for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—*

(a) *If the two sums are equal, satisfaction shall be entered upon both decrees; and*

(b) *If the two sums are unequal, execution may be taken out only by the holder of the 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 large sum, as well as satisfaction on the decree for the smaller sum.*

(2) *This rule shall be deemed to apply 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.*

(3) *This rule shall not be deemed to 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.*

(4) *The holder of a decree passed against several persons jointly and severally may treat it as a cross decree in relation to a decree passed against him singly in favour of one or more of such persons.*

Illustrations.

(a) *A holds a decree against B for Rs. 1,000; B holds a decree against A for the payment of Rs. 1,000 in cash; A fails to deliver certain goods at a future day. B cannot treat this decree as a cross decree under this rule.*

(b) *A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C; C obtains a decree for Rs. 1,000 against B. C cannot treat this decree as a cross decree under this rule.*

NOTES.

This rule reproduces, with verbal amendments, the first, second, and third paragraphs of s. 339 of the old Code. See also r. 16 of O. 21 of the new Indian Code. It was held in *Idroos Lebbe v. Tamby Maricar*, (1907) 10 N. L. R. 206, affirmed in review in *Muttiah Chetty v. Maricar et al.*, 11 N. L. R. 50, that the subject-matter of sub-rule (4) is substantive law. But it seems sufficiently connected with procedure to deserve retention, like the corresponding sub-rule in the Indian Code in the rules.

This rule reproduces, with verbal amendments, the last paragraph of s. 339 of the old Code.

This rule re-enacts, with a single amendment, s. 340 of the old Code.

And whether, &c. This clause gives effect to the decision of the Supreme Court in *Virasingam v. Kathiravelu*, (1897) 2 N. L. R. 358.

This rule reproduces, with verbal amendments, s. 341 of the old Code. The clause in the second paragraph of that section defining the extent of the liability of the legal representatives of a deceased judgment-debtor is pure substantive law and has been omitted.

This rule reproduces the substance of ss. 345 and 346 of the old Code, amended in accordance with r. 18 of O. 21 of the new Indian Code.

ORDER XXIV.

NOTES.

(c) A obtains a decree against B for Rs. 1,000; C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross decree under this rule.

(d) A, B, C, D, and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F; A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint decree is being executed. F may treat his joint decree as a cross decree under this rule.

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

121. All questions *legally* 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.

This rule reproduces, with amendments, s. 344 of the old Code.

Legally. This word has been added in order to give effect to the decision of the Supreme Court in *Goonetilleka v. Goonetilleka*, (1912) 15 N. L. R. 272; that s. 344 only regulates the procedure by which questions as to the validity of a sale arising under other heads of the common law or statute law are to be determined.

Proceedings where one year has elapsed from date of decree.

122. Where more than one year has elapsed between the date of the decree and a *petition* for its execution in which no respondent was named, the Court shall cause the petition to be served on the judgment-debtor, and shall proceed thereon as if he had been originally named respondent therein.

This rule reproduces, with verbal amendments, s. 347 of the old Code.

Provided that no such service shall be necessary where the application is 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 made against the party against whom execution is applied for, on any previous application for execution.

Execution against surety.

123. (1) Where before the passing of a decree in an action any person shall have become liable as surety for the judgment-debtor in the matter of such action, the decree may, on the application of the judgment-creditor to the Court in which such decree was passed, 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.

This rule reproduces, with verbal amendments, s. 348 of the old Code.

(2) Every application under sub-rule (1) shall be made by petition and the person sought to be made liable as surety shall be named respondent to such petition.

Decree-holder to certify.

124. (1) Where 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, the decree-holder shall, and the judgment-debtor may, certify such payment or adjustment to the Court executing the decree.

This rule reproduces s. 349 of the old Code, with amendments. Compare r. 2 of O. 21 of the new Indian Code.

(2) The Court may, on the application of any judgment-debtor certifying any such payment or adjustment as aforesaid, 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, where the decree-holder has not himself certified the payment or adjustment.

Affidavit. This provision gives effect to the decision of the Supreme Court in *Kannappa Chetty v. Croos*, (1894) 3 C. L. R. 69.

(3) Every application under sub-rule (2) shall be made by petition and shall be verified on affidavit by the judgment-debtor.

(4) Where 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.

(5) 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.

125. (1) Money which in the course of an action or in satisfaction of a decree or order has been paid into 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 such person on his *ex parte* application.

This rule reproduces, with verbal amendments, s. 350 of the old Code.

(2) 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.

ORDER XXIV.

NOTES.

(3) Where 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.

(4) Such notice shall be in Form No. 23 in Appendix E, with such variations as circumstances may require.

(5) On the day fixed by the notice, or on any other day to which the Court may adjourn the hearing, the Court shall proceed to hear and adjudicate upon the claims and make such order as the justice of the case may require.

(6) Where in the opinion of the Court any of such claims cannot be conveniently heard and adjudicated upon under this rule, the Court may refer the parties to a separate action.

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

126. 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 made to the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first seized.

This rule re-enacts s. 351 of the old Code.

Section 352 of the old Code as to the rateable distribution of assets is substantive law, and as such is dealt with in s. 27 of the Ordinance.

Order for payment of money enforced as a decree.

127. 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 the terms of such order shall be enforceable upon the application of the party at whose instance it was made in like manner as a decree for money.

This rule reproduces, with verbal amendments, s. 353 of the old Code.

Fine imposed by Civil Court how to be levied.

128. Where any order is made by any Court under the provisions of this Code for the payment of a fine, and such fine shall not be paid into Court at the time appointed therefor by the order, the amount of the 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.

This rule reproduces, with verbal amendments, s. 354 of the old Code.

Fiscal may adjourn sale.

129. (1) The Fiscal may in his discretion adjourn any sale in execution.

This rule reproduces, with verbal amendments, s. 342 of the old Code.

(2) The date to which the sale is so adjourned shall be published in the same manner as the original notice of sale; and the Fiscal shall report to the Court forthwith, or in any case in his return to the writ of execution, the cause of such adjournment.

Stay of proceedings and adjournment of sale by Court.

130. (1) The Court may for sufficient cause, either on the application of any party or of its own motion, stay execution proceedings at any stage thereof, and make an order for the adjournment of a sale.

This rule reproduces, with verbal amendments, s. 343 of the old Code.

(2) Every application to the Court for an order under sub-rule (1) 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.

ORDER XXV.

SERVICE OF PROCESS.

Writs or warrants issued for execution.

1. Writs or warrants in execution against property or person may be issued—

This rule reproduces, with verbal amendments, s. 355 of the old Code.

(a) To the Fiscal of the province or district in which the Court issuing the writ or warrant is situate, or to any headman, constable, or officer of police empowered to act within such province or district.

(b) 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, to the Fiscal of any province or district within which such party does actually and voluntarily so reside or carry on business, or personally work for gain, or is possessed of property as aforesaid.

ORDER XXV.

NOTES.

Service of other process.

2. (1) All other process of Court, and all notices and orders required by this Code 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 process or such notices or orders is situate, under a precept of that Court, as is hereinbefore provided for by Order V. in the case of the summons to the defendant in an action.

This rule reproduces, with verbal amendments, s. 356 of the old Code.

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

(2) The provisions of Order V. relative to the service of summons on the defendant shall apply, so far as is practicable, to the service of process, notices, and orders under this Order.

Sub-rule (1) reproduces, with verbal amendments, s. 357 of the old Code, and sub-rule (2) s. 358 with similar amendments.

Proceedings against Fiscal for contempt, &c.

3. (1) The Fiscal on receiving any writ, process, notice, or order issued to him by any Court shall by himself or by his officers execute or serve the same as directed by the Court.

(2) 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 the neglect or refusal related to its own process or orders or directions.

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

4. (1) Every headman, constable, or officer of police, on receiving any process, notice, or order issued to him by any Court, shall execute and serve such process, notice, or order as directed by the Court in any place within the district or division in which such headman, constable, or officer is empowered to act.

This rule is based on s. 359 of the old Code. Sub-rule (2) is new. There was nothing in s. 359 of the old Code to support the word "only" in the marginal note.

(2) No process, notice, or order shall be executed or served, as the case may be, by any headman, constable, or officer of police at any place beyond the local limits of such district or division as aforesaid.

Endorsement of process by Fiscal.

5. The Fiscal to whom any process, notice, or order has been issued under rule 1, rule 2, or rule 3, and any Fiscal's officer to whom the same may have been entrusted for execution or service, may endorse thereon the name of any headman, constable, or officer of police empowered to act within the province or district of such Fiscal, or the name of any other Fiscal; and such endorsement shall operate—

This rule reproduces, with verbal amendments, s. 360 of the old Code.

(a) In the case of a headman, constable, or officer of police, to constitute the person whose name is so endorsed an officer of the Fiscal for the purpose of executing or serving the process, notice, or order.

(b) In the case of a Fiscal, to impose upon the Fiscal whose name is so endorsed the like duty of executing or serving the same as he would be subject to by virtue of rule 3 if the process, notice, or order were issued to him directly.

Duty of every Fiscal to assist execution of service of process.

6. 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 authorized and directed, under this Order, to execute or serve any process, notice, or order of Court.

This rule reproduces, with verbal amendments, s. 361 of the old Code.

Sections 362 and 363, relating to the liability and protection of officers executing process, enact substantive law, and are dealt with in ss. 28 and 29 of the Ordinance.

Forms of precept.

7. Save as is otherwise in these rules provided, the precept of a Court to the Fiscal directing the service of any process, order, notice, or other document, not being 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 Form No. 3 in Appendix B, with such variations as circumstances may require.

This rule reproduces, with verbal amendments, s. 364 of the old Code.

Sections 365 (as to when process may not be served), 366 (as to breaking open the outer door), and 367 (as to opening the inner door) have been transferred to the Ordinance. See ss. 30, 31, and 32.

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

8. (1) The person employed in carrying into effect any process of execution against either person or property shall have with him at all times while so employed the original of such process, or a copy of the same authenticated by the Fiscal or Deputy Fiscal.

This rule reproduces, with verbal amendments, s. 368 of the old Code. Section 369 (as to what constitutes arrest) has been transferred to the Ordinance. See s. 33.

(2) Such process or copy as aforesaid shall, on the demand of the party against whom or against whose property it is sought to be put in force, be produced and shown to such party.

ORDER XXV.

NOTES.

Fiscal's return.

9. (1) Every Fiscal or Deputy Fiscal shall, on the receipt of any process, note thereon *the date of such receipt*, and, on the service or execution thereof, the date and mode of such service or execution.

(2) When the *process* has been carried into effect, or on the day appointed in *such process* for the return thereof, whichever date shall first occur, the Fiscal or Deputy Fiscal shall return the *process* to the Court from which it issued with his report of what has been done *thereunder*.

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

10. (1) The report of the Fiscal or Deputy Fiscal constituting his return to *such process as aforesaid* shall be fair written, shall state concisely the mode of *service*, or the steps taken to effect service, and shall be accompanied by an affidavit made by the officer charged with the duty of executing the process.

(2) *Such affidavit may be sworn to before* the Fiscal, Deputy Fiscal, or other person specially appointed by the Governor in that behalf, *who shall have power to administer to the deponent the oath or affirmation requisite thereto, and shall set out the facts as to the service effected, or the endeavour made to effect service.*

(3) 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.

(4) *The provisions of rule 14 of Order V., as to the examination by the Court of servers of process under that Order, shall apply to officers serving process under this Order.*

Letters of request from foreign Courts.

11. (1) *Where in any civil or commercial matter pending before a Court or tribunal of a foreign country a letter of request from such Court or tribunal for service on any person in Ceylon of any process or citation in such matter is transmitted to the Supreme Court by the Secretary of State for the Colonies through the Colonial Secretary or otherwise with an intimation that it is desirable that effect should be given to the same, the following procedure shall be adopted :*

- (a) *The letter of request for service shall be accompanied by a translation thereof in the English language, and by two copies of the process or citation to be served, and two copies thereof in the English language.*
- (b) *Service of process or citation shall, unless the Supreme Court otherwise directs, be effected by the Fiscal of the province or district in which the party desired to be served usually resides, or has his or her place of business.*
- (c) *Such service shall be effected by delivering to and leaving with the person to be served one copy of the process to be served, and one copy of the translation thereof, in accordance with the provisions of Order V. so far as these provisions shall be applicable.*
- (d) *After service has been effected, the Fiscal or other person by whom service has been effected shall return to the Registrar of the Supreme Court one copy of the process, together with the evidence of service verified by notarial certificate and particulars of charges for the costs of effecting such service.*
- (e) *The particulars of charges for the cost of effecting service shall be submitted to the Registrar of the Supreme Court, who shall certify thereon the correctness of the charges, or such other amount as shall be properly payable for the cost of effecting service. A copy of such charges, certified as aforesaid, shall be forwarded to the Colonial Secretary, together with the documents specified in the sub-head next following.*
- (f) *The Registrar of the Supreme Court shall forward to the Colonial Secretary the letter of request for service received from the foreign country, together with the evidence of service, with a certificate appended thereto duly sealed with the seal of the Supreme Court. Such certificate shall be in Form No. 11 in Appendix B.*

(2) *The Supreme Court, or any Judge thereof in Chambers, may make all such orders for substituted service or otherwise as may be necessary to give effect to this rule.*

This rule reproduces, with verbal amendments, s. 370 of the old Code.

This rule is based on ss. 371 and 372 of the old Code, completely re-drafted. See O. 5, r. 14, and notes thereto.

This rule is new, and embodies the Rule of 1911 for the Service of Foreign Process.

ORDER XXVI.

NOTES.

PROCEDURE ON INCIDENTAL APPLICATIONS.

Procedure to be by petition.

1. (1) *Wherever it is provided that any application shall be made under, or in accordance with, the provisions of this order, such application shall be instituted by petition, and the petitioner and any person made a respondent thereto shall be deemed to be the parties to such application.*

(2) *Such petition—*

(a) *In the District Court shall be in writing, and shall be presented to the Court or to such officer as the Court shall appoint in this behalf; and*

(b) *In the Court of Requests may be either in writing as aforesaid or made vivâ voce by the applicant in person to the chief clerk or such other officer as the Commissioner shall appoint in this behalf.*

(c) *Every petition in writing shall be duly stamped on presentation, and, in any case, before its acceptance by the Court, chief clerk, or other officer aforesaid.*

(d) *Where an applicant makes his petition vivâ voce as provided for by sub-head (b), he shall supply to the chief clerk or other officer aforesaid such a stamp as would be required for a written petition in respect of the same subject-matter, and upon such stamp being supplied, the chief clerk or other officer shall record the applicant's statement in writing and affix the stamp to such writing.*

(e) *A petition so recorded and stamped shall for all purposes be deemed to be a petition in writing.*

Form of petition.

2. The petition 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 to which the petition is presented, and the date of such presentation.*

(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, set forth where necessary in duly numbered paragraphs, of the facts constituting the ground of the application and its circumstances, and of the petitioner's right to make it.*

(e) *A prayer for the relief claimed.*

(f) *A statement of the value of the subject-matter of the application for the purposes of jurisdiction and of stamp duty, so far as the case admits.*

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

3. (1) *Where a petition is presented under this Order in the course of, or as incidental to, an action pending in the Court to which the petition is so presented, whether of regular or summary procedure, such petition shall be headed with a reference to the number of the action, and the names of the parties thereto, and shall be filed as part of the record thereof.*

(2) *All proceedings taken and orders made on any such petition shall be duly entered in the journal provided for by rule 4 of Order IV.*

(3) *Where a petition is presented under this Order not in the course of, or as incidental to, a pending action, the Court shall commence and keep a journal entitled as of the matter of such petition, in accordance with the provisions of rule 4 of Order V., and the journal so kept shall be the record of the application.*

Affidavits and exhibits to be attached to petition.

4. (1) *With the petition, and, so far as conveniently can be attached thereto, shall be exhibited such affidavits and other documentary evidence as may be requisite to furnish *prima facie* proof of the material facts alleged in the petition.*

(2) *The Court, in its discretion, may permit or direct the petitioner to adduce, in addition to any such documentary evidence, oral evidence before it in support of his application.*

(3) *Any oral evidence adduced under sub-rule (2) shall be recorded by the Judge, or by such person as may be appointed to record evidence under the personal supervision and direction of the Judge.*

The title of this order has been altered from "Summary Procedure" into "Procedure on Incidental Applications," and the reference to "actions" has been omitted. The only actions of summary procedure are those on negotiable instruments, &c., which are dealt with in Order XXI.

This rule is based on ss. 373 and 390 of the old Code, entirely re-drafted on the lines of r. 1 of O. 5.

And the petitioner application. This clause reproduces the substance of s. 390.

This rule reproduces, with verbal amendments, s. 374 of the old Code.

Sub-head (f) is new.

Sub-rules (1) and (2) reproduce s. 375, sub-rule (3) reproduces s. 391, of the old Code, with verbal alterations.

This rule reproduces, with verbal amendments, s. 376 of the old Code.

Or by such person, &c. As to this clause, see notes to r. 5 of O. 20.

ORDER XXVI.

NOTES.

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

5. (1) *Where* the Court is satisfied on the evidence exhibited or adduced *under rule 4* that *prima facie* the material facts of the petition are established and the petitioner is entitled to relief, then the Court shall make either—

- (a) An order *nisi granting such relief*, 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.

(2) *An order nisi under sub-head (a) of sub-rule (1)* may comprise an order against the respondent, or any of the respondents, to pay the costs of the petitioner.

Form of order.

6. (1) *An order under rule 5* shall be in *Form No. 2 in Appendix F*.

Service on respondent.

(2) *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 prescribed by Order V. for the service of the summons in a regular action.*

Where grounds are insufficient, petition to be refused.

7. *Where* the Court is not satisfied on the evidence exhibited or adduced that *prima facie* the material facts of the petition are established, or that the petitioner is not entitled to relief, then in either case the Court shall refuse the petition.

Petition and order thereon to be filed.

8. The petition, with its exhibits, evidence adduced, *whether documentary or vivâ voce evidence recorded by the Court, and any order made thereon under rule 5 or rule 7, shall be filed in Court.*

Non-appearance of petitioner on day appointed.

9. *Where on the day appointed in an order made under rule 5 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.*

Powers of Court.

10. (1) *Where on such day the petitioner appears, and the respondent does not appear, and the Court is satisfied by the affidavit of the process server, or by oral evidence, that the order has been duly served upon the respondent within a time reasonably sufficient to enable him to appear, then—*

- (i.) *If the order is an order nisi, the Court shall make such order absolute, and shall make no other order on the petition except as to costs adverse to the respondents.*
- (ii.) *If the order is an interlocutory order, the Court shall make such order within the prayer of the petition as it shall think right.*
- (iii.) *Whether the order is an order nisi or an interlocutory order, the Court may dismiss the petition, where it sees reason to think that such order should not have been made in the first instance.*

(2) *The costs of, and incidental to, proceedings under rule 9 and this rule shall be in the discretion of the Court.*

Proceedings where both parties appear.

11. (1) *Where on the day appointed for the determination of a petition, both the petitioner and the respondent appear, the respondent, in person or by his proctor, shall state his objections, if any, to the petitioner's application, and, subject to the provisions of sub-rules (2) and (3), may adduce evidence in support of such objections.*

(2) *No affidavit or other documentary evidence shall be adduced by the respondent without the express leave of the Court, unless a copy of such evidence shall have been served on the petitioner or his proctor at least forty-eight hours before the day fixed for the determination of the matter of the petition.*

(3) *Oral evidence shall not be adduced by the respondent without the leave of the Court, and any such evidence so admitted shall be recorded by the Judge, or by such person as may be appointed to record evidence under the personal supervision and direction of the Judge.*

Right to reply.

(4) *After the respondent's evidence, if any, shall have been given, the petitioner shall have the right of reply upon the respondent's case, or, with the express leave of the Court, to call evidence in rebuttal.*

This rule reproduces, with verbal amendments, ss. 377 and 378 of the old Code.

This rule reproduces, with verbal amendments, s. 379 of the old Code.

This rule reproduces, with verbal amendments, s. 380 of the old Code.

This rule reproduces, with verbal amendments, s. 381 of the old Code.

This rule reproduces, with the substitution of "rule 5" for "section 377," s. 382 of the old Code.

Sub-rule (1) is based on s. 383 of the old Code, re-drafted. Sub-rule (2) is new. In s. 383 there was no provision as to costs in the case of orders *nisi*. As regards interlocutory orders, costs were to be allowed only when prayed for in the petition and it was otherwise fit that they should be given. There seems no reason why the whole matter should not be left in the discretion of the Court.

This rule is based on ss. 384, 385, and 386 of the old Code, completely re-drafted.

As to the clause "*or by such person,*" &c., in sub-rule (3), see notes to O. 20, r. 5.

ORDER XXVI.

NOTES.

(5) The Court may, on the request of the petitioner, adjourn the proceedings in order to enable such additional evidence to be adduced ; or, if it thinks necessary, may at any stage frame issues of fact between the petitioner and respondent, and adjourn the proceedings for the trial of such issues.

(6) On the day to which the proceedings were so adjourned, the additional evidence shall be adduced and the issues, if any, tried, as nearly as may be, in conformity with the rules hereinbefore prescribed for the trial of a regular action.

Final order.

12. (1) After the evidence has been duly taken as aforesaid and the parties have been heard, either in person or by their respective proctors or recognized agents, the Court 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.

(2) The final order so pronounced may be endorsed on the order nisi or on the interlocutory order, as the case may be.

(3) In the case of the order nisi, the final order, if so endorsed shall consist simply of the words "order discharged" or "order made absolute."

Provided that—

(a) Where an order nisi consists of severable parts, such order may be discharged in part and made absolute in part ; and

(b) Nothing in this sub-rule shall prevent any order from being made on the order nisi by consent of the parties.

(4) In the case of the interlocutory order, the Court may make such order within the prayer of the petition as it shall think fit.

(5) The costs of, and incidental to, proceedings under rule 11 and this rule shall be in the discretion of the Court.

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

13. (1) No appeal shall lie against any final order, on any order nisi, or interlocutory order made by the Court on default of appearance by either petitioner or respondent, but either party may, within a reasonable time after the making of any such order, apply to the Court by motion to set it aside, and if he satisfies the Court that there was sufficient cause for his non-appearance, the Court may set aside the order, on such terms as to costs and otherwise as it thinks fit, and fix a day for proceeding with the hearing of the matter of the petition as from the point at which the order so set aside was made.

(2) No order shall be made under sub-rule (1) unless notice of the application has been served on the opposite party.

Affidavits.

14. The provisions of Order XXI. shall apply, so far as is practicable, to affidavits made under this Order.

This rule reproduces, with verbal amendments, ss. 387 and 388 of the old Code.

As to sub-rule (5), see notes to rule 10.

This rule is based on s. 389 of the old Code, completely re-drafted and made applicable to default of appearance by either party.

By motion. These words have been introduced in consequence of the decision in D. C. Galle, 3,074, S. C. Mins., November 18, 1889, that the application had to be by way of summary procedure.

This rule is new.

ORDER XXVII.

DEATH, MARRIAGE, AND INSOLVENCY OF PARTIES.

No abatement by party's death if right to sue survives.

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

This rule reproduces s. 392 of the old Code, amended in accordance with r. 1 of O. 22 of the new Indian Code. The words "on the cause of action," which followed "right to sue" in s. 392, have been omitted, as in, the new Indian Code. Compare the English R. S. C., O. 17, r. 1.

Procedure where one of several plaintiffs or defendants dies and right to sue survives.

2. Where there are more plaintiffs or defendants than one and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall, on an application in accordance with the provisions of Order XXVI. cause an entry to that effect to be made on the record, and the action shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

This rule reproduces s. 393 of the old Code, amended so as to bring it into conformity with r. 2 of O. 22 of the new Indian Code.

Procedure in case of death of one of several plaintiffs or of sole plaintiff.

3. (1) Where one of two or more plaintiffs dies, and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies, and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party, and shall proceed with the action.

This rule reproduces the substance of the first paragraph of s. 394 and ss. 395 and 396 of the old Code, amended in accordance with r. 3 of O. 22 of the new Indian Code.

The second paragraph of s. 394, defining legal representative, has been carried forward to rule 6.

ORDER XXVII.

NOTES.

(2) Where no application is made under sub-rule (1), the action shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the action, to be recovered from the estate of the deceased plaintiff.

Procedure in case of death of one of several defendants or of sole defendant.

4. (1) Where one of two or more defendants dies, and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies, and the right to sue survives, the Court, on an application made in that behalf, may cause the legal representative of the deceased defendant to be made a party, and shall proceed with the action.

This rule reproduces, with numerous amendments, verbal and otherwise, s. 398 of the old Code. Compare r. 4 of O. 22 of the new Indian Code.

In sub-rule (1) the application is not restricted, as under the first paragraph of s. 398, to the plaintiff. The necessity for a separate sub-rule enabling the legal representative to apply is done away with, and the last paragraph of s. 398 can be omitted.

(2) No order shall be made under sub-rule (1) unless and until the person alleged to be the legal representative of the deceased defendant has had an opportunity of showing cause against it.

Sub-rule (2) is intended to obviate the delays which take place at present in the substitution of legal representatives for deceased defendants. So long as the legal representative has an opportunity of showing cause against the order, the procedure by which he is brought before the Court need not be laid down.

(3) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(4) Where no application is made under sub-rule (1), the action shall abate as against the deceased defendant.

Determination of question as to legal representative.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

This rule is based on s. 397 of the old Code, and is taken from r. 5 of O. 22 of the new Indian Code. Section 397 empowered the Court to stay the action till the question had been determined in another action. It seems much better that it should be decided by the Court in which it arises.

Who is a legal representative.

6. For the purposes of this Order the term "legal representative" shall mean an executor or administrator, or, in the case of an estate below the value of Rs. 1,000, the next of kin who adiated the inheritance.

This rule reproduces, with verbal amendments, the second paragraph of s. 394 of the old Code.

No abatement by reason of death after hearing.

7. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death, and shall have the same force and effect as if it had been pronounced before the death took place.

This rule is new, and is taken from r. 6 of O. 22 of the new Indian Code.

Action not abated by marriage of female party.

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

This rule reproduces, with verbal amendments taken from r. 7 of O. 22 of the new Indian Code, s. 399 of the old Code.

(2) Where 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.

When plaintiff's insolvency bars action.

9. (1) The insolvency of a plaintiff in any action which the assignee might maintain for the benefit of his creditors shall not cause the action to abate, unless such assignee declines to continue the action or (unless for any special reason the Court otherwise directs) to give security for the costs thereof, within such time as the Court may order.

Sub-rule (1) reproduces s. 400 and sub-rule (2) reproduces s. 401 of the old Code, with amendments taken from r. 8 of O. 22 of the new Indian Code.

(2) Where 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 insolvency, and the Court may make an order dismissing the action and awarding to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

ORDER XXVII.

When Court itself may order action to abate.

10. Where for a period exceeding *six* months in the case of a District Court, or *three* months in a Court of Requests, subsequently to the date of the last entry of an order or proceeding in the record the plaintiff has taken no step necessary, where any step is necessary to the prosecution of the action, the Court, either on the application of any party in this behalf, or of its own motion and without notice to any party, may make an order that the action shall abate,

Effect of abatement or dismissal.

11. (1) Where an action abates or is dismissed under this Order no fresh action shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff, or the assignee in the case of an insolvent plaintiff, may, within such period of time as may seem to the Court to be reasonable, apply for an order to set aside the order for abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from taking any step necessary to the prosecution of the action or from continuing the action, as the case may be, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Procedure in case of assignment before final order in action.

12. (1) In other cases of an assignment, creation, or devolution of any interest pending the action, the action may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The leave of the Court under sub-rule (1) shall, unless given with the consent of all parties, be given only after every party not consenting or objecting thereto has had an opportunity of showing cause against it.

(3) The seizure of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such seizure to the benefit of sub-rule (1).

Applications under this Order how to be made.

13. Applications under rule 3 and rule 4 of this Order may be made *ex parte*, but in the case of all other applications for the exercise of the discretion of the Court under this Order, all the parties to the action, not being the applicants, or such of them as may be affected by the order sought, shall be made respondents on the face of the application.

Application of Order to proceedings in execution.

14. Nothing in rules 3, 4, and 9 shall apply to proceedings in execution of a decree or order.

ORDER XXVIII.

WITHDRAWAL AND ADJUSTMENT OF ACTION.

Withdrawal of action, and abandonment of part of claim.

1. (1) At any time after the institution of an action, the plaintiff may, as against all or any of the defendants, withdraw his action or abandon part of his claim.

(2) Where the Court is satisfied—

(a) That the action must fail by reason of some formal defect ; or

(b) That there are other sufficient grounds for allowing the plaintiff to institute a fresh action for the subject-matter of an action, or part of a claim,

the Court may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such action or abandon such part of a claim, with liberty to institute a fresh action in respect of the subject-matter of such action or such part of a claim.

NOTES.

This rule reproduces s. 402 of the old Code materially amended.

The cause lists of the courts of first instance in Ceylon are clogged with cases in which no step has been taken for long periods, and in which no order can be made under s. 402 because of the decisions of the Supreme Court in *Fernando v. Pieris*, (1897) 3 N. L. R. 77, and *Cave & Co. v. Erskine*, (1902) 6 N. L. R. 338, that no order could be made under s. 402 *ex mero motu*. Rule 10 over-rides these decisions, and also shortens the periods after which an order of abatement may be made. No notice of the intended order is necessary. Cases of hardship can be dealt with under rule 11. It is essential to the proper administration of justice in the Colony that proctors and litigants should be compelled to keep in touch with each other and with the Courts.

This rule reproduces s. 403 of the old Code, with amendments partly taken from r. 9 of O. 22 of the new Indian Code.

In sub-rule (2) the words "taking any step," &c., are added, so as to make it clear that the remedy created by the sub-rule extends to cases of hardship under rule 10.

This rule reproduces s. 404 of the old Code, with amendments chiefly adapted from r. 10 of O. 22 of the new Indian Code.

This rule reproduces, with amendments, s. 405 of the old Code.

Rule 3. This reference has been added because of the decision of the Supreme Court in *Abeyawardene v. Marikar and another*, (1892) 1 S. C. R. 192, that s. 405 applies only in cases where the Court has a discretion.

This rule is new, and is taken from r. 12 of O. 21 of the new Indian Code.

This rule is based on s. 406 of the old Code, amended in accordance with r. 1 of O. 23 of the new Indian Code.

ORDER XXVIII.

NOTES.

(3) Where the plaintiff withdraws from an action, or abandons part of a claim without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award, and shall be precluded from instituting any fresh action in respect of such subject-matter or such part of a claim.

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

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

3. (1) Where it is proved to the satisfaction of the Court that an action has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the action, the Court shall order such agreement, compromise, or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the action.

(2) Every such decree shall be final as regards the subject-matter of the agreement, compromise, or satisfaction.

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

This rule reproduces, with verbal amendments taken from r. 2 of O. 23 of the new Indian Code, s. 407 of the old Code.

This rule is based on s. 408 of the old Code, which has been completely re-drafted. Compare r. 3 of O. 23 of the new Indian Code. The provision in sub-rule (1)—“Where it is proved,” &c.—obviates the necessity of the provisions in s. 408 that the application should be by motion, and that notice should be given to all the parties concerned. Such matters are better left in the hands of the Court. Sub-rule (2) reproduces the substance of the last clause of s. 408.

This rule is new, and is taken from r. 4 of O. 23 of the new Indian Code.

ORDER XXIX.

PAYMENT INTO COURT.

1. The defendant in any action to recover a debt or damages may, at any stage of the action, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

2. Notice 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 to the plaintiff on his application.

3. 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 is in full of the claim or falls short thereof.

4. (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his action for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall 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.

(2) Where 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 pronounce 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.

This rule reproduces, with verbal amendments taken from r. 1 of O. 24 of the new Indian Code, s. 409 of the old Code.

This rule reproduces, with amendments taken from r. 2 of O. 24 of the new Indian Code, s. 410 of the old Code. That section required the notice to be in writing. But that requirement seems unnecessary, and has now been omitted.

This rule reproduces, with verbal amendments taken from r. 3 of O. 24 of the new Indian Code, s. 411 of the old Code.

This rule reproduces, with verbal amendments taken from r. 4 of O. 24 of the new Indian Code, ss. 412 and 413 of the old Code.

Illustrations.

(a) A owes B Rs. 100. 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.

Permission to bring fresh action not to affect prescription.

Compromise of action.

Proceedings in execution of decrees not affected.

Deposit by defendant of amount in satisfaction of claim.

Notice of deposit.

Interest on deposit not allowed to plaintiff after notice.

Procedure where plaintiff accepts deposit as satisfaction in part.

Procedure where he accepts as satisfaction in full.

ORDER XXIX.

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(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 Rs. 100, and is willing to pay him that sum without action. B claims Rs. 150, and sues A for that amount. On the plaint being filed, A pays Rs. 100 into Court, and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

Money must be actually paid.

5. Where a defendant by his answer purports to pay money into Court, or where a defendant by his answer sets up a tender of any sum of money before action brought, the answer shall not be received or filed by the Court unless either the sum of money purported to have been paid into Court, or alleged to have been tendered, is actually paid into Court, or the requisite steps in that behalf are taken by the defendant.

This rule reproduces, with verbal amendments, s. 414 of the old Code.

Order applies to payment into Court by any party.

6. The provisions of this Order shall apply, so far as they can be made applicable, to any payment into Court by any party to an action in satisfaction of the claim of any other party.

This rule reproduces, with verbal amendments, s. 415 of the old Code.

ORDER XXX.

SECURITY FOR COSTS.

When security may be required from plaintiff.

1. (1) Where, at any stage of an action, it appears to the Court that a sole plaintiff is, or (where there are more plaintiffs than one) that all the plaintiffs are, residing out of the Colony, Court, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred by any defendant.

Sub-rules (1) and (2) reproduce, with verbal amendments, ss. 416 and 417 of the old Code, and see r. 1 of O. 25 of the new Indian Code.

When security may be required from non-resident defendant.

(2) Where, at any 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, either of its own motion or on the application of such defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by such defendant.

Sub-rule (3) has been introduced in order to make it quite clear that the Court has power to order further security to be given either by a plaintiff or by a defendant.

Further security.

(3) Where at any time it appears to the Court that security given under sub-rule (1) or sub-rule (2) is insufficient, the Court may order such further security to be given by the plaintiff or the defendant, as the case may be, as it may think fit.

Effect of failure to furnish security.

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the action, unless--

This rule reproduces the substance of s. 418 of the old Code, with amendments partly taken from r. 2 of O. 25 of the new Indian Code.

(a) The plaintiff or plaintiffs are permitted to withdraw therefrom under the provisions of Order XXVIII; or

(b) The time for furnishing such security shall be extended by the Court.

(2) Where an action is dismissed under sub-rule (1), the plaintiff may within thirty days 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.

(3) The dismissal shall not be set aside, unless notice of such application has been served on the defendant.

What amounts to non-residence.

3. 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 rule 1.

This rule reproduces, with verbal amendments, s. 419 of the old Code; and see r. 1 (2) of O. 25 of the new Indian Code.

ORDER XXXI.

NOTES.

COMMISSIONS.

Commissions to examine Witnesses.

Cases in which Court may issue commission to examine witness.

1. Any Court may in any action issue a commission for the examination on interrogatories or otherwise of *any person* resident within the local limits of its jurisdiction *who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.*

This rule reproduces s. 420 of the old Code, with verbal and other amendments.

The provision in s. 420, that the examination shall be on oath or affirmation, has been omitted as unnecessary. Compare rr. 1 and 4 of O. 26 of the new Indian Code; and as to exempted classes see r. 5 *infra*.

This rule is new, and is taken from r. 2 of O. 26 of the new Indian Code.

Order for commission.

2. *An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the action or of the witness to be examined.*

This rule is new, and is taken from the English R. S. C., O. 37, r. 6.

Forms of order for commission and of commission.

3. *An order for a commission to examine witnesses shall be in Form No. 25 in Appendix H, and the commission shall be in Form No. 26 in Appendix H, with such variations as circumstances may require.*

This rule reproduces, with verbal amendments, s. 421 of the old Ceylon Code. Compare r. 3 of O. 26 of the new Indian Code.

Where witness resides within Court's jurisdiction.

4. A 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.

Persons for whose examination commission may issue.

5. (1) Any Court may in any action issue a commission for the examination of—

- (a) Any person resident beyond the local limits of its jurisdiction ;
- (b) Any person who *is* about to leave such limits before the date on which *he is* required to be examined in Court ; and
- (c) Any civil, naval, or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service ; and
- (d) Women who, according to the custom and manners of the country, ought not to be compelled to appear in public.

(2) Such commission *may* be issued to any Court, except the Supreme Court, within the local limits of whose jurisdiction such person resides, or to any advocate or other person whom the Court issuing the commission *may* appoint.

This rule reproduces s. 422 of the old Code, with verbal amendments based on r. 4 of O. 26 of the new Indian Code.

Commission or letter of request to examine witness not residing within the Colony.

6. (1) *Where* 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 *the* evidence of such person is necessary, the Court may issue such commission or a letter of request.

(2) *Such* commission and letter of request shall be in the Forms Nos. 28 and 29 in Appendix H, with such variations as circumstances may require.

(3) *Every* letter of request shall be accompanied by a list of the questions to be put to the witness or witnesses to be examined thereunder, and, when necessary, by a translation of such questions into the language of the country in which the letter of request is to be executed.

Sub-rule (1) of this rule corresponds to s. 423 of the old Code. Compare the English R. S. C., r. 64 of O. 37.

Letters of request are necessary for the purpose of obtaining evidence on commission in Germany and Spain and several other countries, and are frequently issued in England to Colonial and Indian Courts.

As to letters of request from foreign Courts and tribunals for the taking of evidence in Ceylon, see rr. 11-17 *infra*.

Sub-rule (3) reproduces the substance of a rule of Court dated November 8, 1910, and published in the "Ceylon Government Gazette" No. 6,422 of January 27, 1911.

Court to examine witnesses pursuant to commission.

7. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

This rule reproduces, with verbal amendments taken from r. 6 of O. 26 of the new Indian Code, s. 424 of the old Code.

Return of commission with depositions of witnesses.

8. *Where* a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was 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 rule) form part of the record of the action.

This rule reproduces, with verbal amendments taken from r. 7 of O. 26 of the new Indian Code, s. 425 of the old Code.

ORDER XXXI.

NOTES.

When deposition may be read in evidence.

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

- (a) The person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or is a person exempted by rule 5 from personal appearance in Court; or
- (b) The Court in its discretion dispenses with the proof of any of the circumstances mentioned in sub-head (a) and authorizes the evidence of any person to be read as evidence in the action, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of the same being read.

This rule reproduces, with verbal amendments partly taken from r. 8 of O. 26 of the new Indian Code, s. 426 of the old Code.

Foreign Courts to which provisions of this Order apply.

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

- (a) Courts situate within the limits of British India, and established by the authority of His 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 His Majesty.

This rule reproduces, with verbal amendments, s. 427 of the old Code.

Evidence taken on request of Foreign Tribunals.

Court on request of foreign tribunals may make order for taking evidence.

11. Where under the Foreign Tribunals Evidence Act, 1856, or the Extradition Act, 1870, section 24, any civil or commercial matter or any criminal matter is pending before a Court or tribunal of a foreign country, and it is made to appear to the Supreme Court by Commission Rogatoire, or letter of request, or other evidence as hereinafter provided, that such Court or tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction, the Supreme Court may, on the ex parte application of any person shown to be duly authorized to make the application on behalf of such foreign Court or tribunal, and on production of the Commission Rogatoire, or letter of request, or of a certificate signed in the manner and certifying to the effect mentioned in section 2 of the Foreign Tribunals Evidence Act, 1856, or such other evidence as the Court may require, make such order or orders as may be necessary to give effect to the intention of the Acts above mentioned in conformity with section 1 of the Foreign Tribunals Evidence Act, 1856.

This rule and rules 11 to 17, both included, are new, and embody the rules of November 12, 1908, under the Foreign Tribunals Evidence Act, 1856, with verbal amendments and one material amendment, viz., the omission of the provision in r. 8 of the old rules that Court should mean "the Supreme Court or any Judge thereof." That provision, which was obviously taken from the corresponding rules under the English practice (R. S. C., O. 37, rr. 54-60), is inapplicable in Ceylon, where the Judges do not sit in Chambers for the transaction of judicial business.

19 & 20 Vict. c. 113. 33 & 34 Vict. c. 52.

19 & 20 Vict. c. 113.

19 & 20 Vict. c. 113.

Form of order.

12. An order made under the preceding rule shall be in Form No. 30 in Appendix H, with such variations as circumstances may require.

Before whom the examination may be taken.

13. The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before such qualified person as to the Supreme Court may seem fit.

Depositions, how to be dealt with.

14. Unless otherwise provided in the order for examination, the examiner before whom the examination is taken shall, on its completion, forward it to the Registrar of the Supreme Court, and on receipt thereof the Registrar shall append thereto a certificate, in Form No. 31 in Appendix H, with such variations as circumstances may require, duly sealed with the seal of the said Court, and shall forward the depositions so certified, and the Commission Rogatoire, or letter of request, if any, to the Colonial Secretary for transmission to the foreign Court or tribunal requiring the same.

Manner of taking the examination.

15. An order made under rule 11 may, if the Supreme Court shall think fit, direct the said examination to be taken in such manner as may be requested by the Commission Rogatoire, or letter of request, from the foreign Court, or therein signified to be in accordance with the practice or requirements of such Court or tribunal, or which may, for the same reason, be requested by the applicant for such order. But in the absence of any such special directions being given in the order for examination, the same shall be taken in the manner prescribed in this Order.

Taking evidence on request of British tribunal out of the jurisdiction. 22 Vict. c. 20.

16. Rules 11 to 15 shall apply, as far as may be, to applications under the Evidence by Commission Act, 1859, for the purpose of giving effect to any commission or letter of request from any British tribunal out of the jurisdiction.

ORDER XXXI.

NOTES.

Compliance with request of foreign tribunal without application of parties.

17. Where a Commission Rogatoire, or letter of request, as mentioned in rule 11, is transmitted to the Supreme Court by the Colonial Secretary, with an intimation that it is desirable that effect should be given to the same without requiring an application to be made to the Court by the agents in Ceylon of any of the parties to the action or matter in the foreign country, the Registrar shall transmit the same to the Attorney-General, who may thereupon make such applications and take such steps as may be necessary to give effect to such Commission Rogatoire, or letter of request, in accordance with rules 11 to 15.

Commissions for Local Investigations.

Commissions to make local investigations.

18. In any action 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 nett profits, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court.

Procedure of Commissioner.

19. (1) 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, signed by him to the Court.

Report and deposition to be evidence in action. Commissioner may be examined in person.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the action, and shall form part of the record, 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 his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Commissions to examine Accounts.

Commission to examine or adjust accounts.

20. 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 or adjustment.

Court to give Commissioner necessary instructions.

21. (1) The Court shall furnish the Commissioner with such part of the proceedings and such 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.

(2) The proceedings and report (if any) of the Commissioners shall be evidence in the action, but when the Court has reason to be dissatisfied with them, it may direct such further inquiry as it may think fit.

General Provisions.

Expenses of Commissioner to be paid into Court.

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

Powers of Commissioners.

23. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment—

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

This rule reproduces, with amendments taken from r. 9 of O. 26 of the new Indian Code, s. 428 of the old Code.

This rule is based on s. 429 of the old Code, with amendments taken from r. 10 of O. 26 of the new Indian Code. The report of the Commissioner is evidence in the action, and should be considered by the Court even if he is not personally examined. 134-135 D. C. F. Chilaw, 4,299 (S. C. Mins., July 4, 1912).

Sub-rule (2) corresponds with the second paragraph of s. 432. Sub-rule (3) is new.

This rule reproduces, with verbal amendments taken from r. 11 of O. 26 of the new Indian Code, s. 430 of the old Code.

Sub-rule (1) reproduces, with verbal amendments taken from r. 12 (1) of O. 26 of the new Indian Code, s. 431 of the old Code.

Sub-rule (2) is new, and is taken from sub-rule (2) of rule 12 of O. 26 of the new Indian Code.

This rule reproduces, with verbal amendments taken from r. 15 of O. 26 of the new Indian Code, s. 433 of the old Code.

The first paragraph of section 432, dealing with the filing of the evidence taken on commission and proceedings thereafter, has been omitted as unnecessary. Specific provision has been made for these matters in the above rules as regards each of the classes of commissions with which they deal.

This rule reproduces s. 434 of the old Code, with the omission of the clause rendered unnecessary by the Oaths Ordinance, 1895, and by r. 24 of this Order empowering Commissioners to administer oaths and affirmations.

ORDER XXXI.

Attendance and examination of witnesses before Commissioners.

24. (1) The provisions of this Code relating to the summoning, attendance, and examination of witnesses, and to the remuneration, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order, 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.

(2) A Commissioner may apply to any Court, within the local limits of whose jurisdiction a witness resides, for the issue of any process which he may find it necessary to issue to or against any witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

Parties to appear before Commissioner.

25. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the action shall appear before the Commissioner in person or by their recognized agents or proctors.

(2) Where all or any of the parties do not appear, the Commissioner may proceed in their absence.

NOTES.

Sub-rule (1) reproduces, with verbal amendments taken from r. 17 (1) of O. 26 of the new Indian Code, s. 435 of the old Code. Sub-rule (2) is new, and is taken from r. 17 (2) of O. 26 of the new Indian Code.

This rule reproduces s. 436 of the old Code, with verbal amendments taken from r. 18 of O. 26 of the new Indian Code.

ORDER XXXII.

ACTIONS BY OR AGAINST THE CROWN OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY.

Actions by or against the Crown.

1. (1) All actions by or against the Crown shall be instituted by or against the Attorney-General.

Provided that, in Courts of Requests, any person duly appointed under Order II., rule 2, sub-head (d), may institute an action for and in the name of the Crown as party plaintiff.

(2) 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 "Attorney-General."

(3) "Attorney-General" does not in this rule include the Solicitor-General or any Crown Counsel.

Service of process

2. In any action to which the Crown is a party, all processes of Court against the Crown shall be served upon the Attorney-General.

This rule reproduces, with verbal amendments, s. 456 of the old Code. Compare rr. 1, 2, 3 of O. 27 of the new Indian Code.

The order of the series of chapters in the old Code dealing with actions by and against various parties has been entirely re-arranged.

This rule is based on s. 457 of the old Code. The provision in that section for service of any process after summons on "the Crown Counsel having jurisdiction in the district where the Court is situate" has been omitted, as Crown Counsel are no longer appointed to act in particular districts, but have jurisdiction throughout the Island.

Attorney-General to have reasonable time to appear.

3. The Court, in fixing the day for the Attorney-General to answer to the plaint, may allow a reasonable time for necessary communication with the Government through the proper channels.

This rule reproduces s. 458 of the old Code, with verbal amendments. Compare r. 5 of O. 27 of the new Indian Code.

The power to extend the time has been omitted in view of s. 69 of the Ordinance.

Extension of time to enable public officer to make reference to Government.

4. (1) Where an action is instituted against a public officer, and such 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.

This rule reproduces s. 460 of the old Code, with verbal amendments taken from r. 7 of O. 27 of the new Indian Code.

(2) Upon such application the Court may extend the time for so long as appears to it to be necessary.

Procedure in actions against public officers.

5. (1) Where the Government undertakes 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 the party defendant in the action.

This rule reproduces, with verbal amendments, ss. 463 and 464 of the old Code. Compare r. 8 of O. 27 of the new Indian Code.

ORDER XXXII.

(2) Where no application under sub-rule (1) is 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.

Provided that the defendant shall not be liable to arrest, nor his property to seizure and sale, otherwise than in execution of a decree.

Public officer need not appear in person.

6. In an action against a public officer to which the provisions of this Order apply, the Court shall exempt the defendant from appearing in person if satisfied that he cannot absent himself from his duty without detriment to the public service.

NOTES.

Sections 461 and 462 of the old Code respectively, entitling the Attorney-General and a public officer to one month's notice of action, and providing that no writ of execution against person or property shall issue against the Attorney-General in any action against the Crown, have been transferred to that part of the Ordinance in which the position of the Crown as regards process is dealt with. See ss. 32 and 33.

This rule reproduces, with verbal amendments, s. 465 of the old Code.

ORDER XXXIII.

ACTIONS BY AND AGAINST NAVAL AND MILITARY MEN IN SERVICE.

Officers, sailors, or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

1. (1) Where any officer, sailor, or soldier actually serving the Government in a naval or military capacity is a party to an action, and cannot obtain leave of absence for the purpose of prosecuting or defending the action in person, he may authorize any person to sue or defend in his stead.

(2) The authority shall be in writing, and shall be signed by the party in the presence of—

(a) His commanding officer, or the next subordinate officer if the party is himself the commanding officer; or

(b) Where the officer, sailor, or soldier is serving in naval or military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed, the counter signature shall be sufficient proof that the authority was duly executed, and that the officer, sailor, or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the action in person.

Explanation.—In this Order the expression "commanding officer" means the officer in actual command for the time being of any ship, regiment, corps, detachment, or naval or military depôt to which the officer, sailor, or soldier belongs.

Person so authorized may act personally or appoint proctor.

2. Any person authorized under rule 1 by an officer, sailor, or soldier to prosecute or defend an action in his stead may prosecute or defend in person in the same manner as such officer, sailor, or soldier could do if present; or he may appoint a proctor to prosecute or defend the action on behalf of such officer, sailor, or soldier.

This rule reproduces, with verbal amendments, s. 504 of the old Code. Compare the new Indian Code, O. 28, r. 2.

Service on person so authorized or on his proctor to be good service.

3. Processes served upon any person authorized by any officer, sailor, or soldier under rule 1, or upon any proctor appointed as aforesaid by such person, shall be as effectual as if they had been served on the party in person or on his proctor; and no process in the action shall be served upon such party personally without express order of court.

This rule reproduces, with verbal amendments, s. 505 of the old Code. Compare the new Indian Code, O. 28, r. 3.

Warrant of arrest may likewise be delivered for execution.

4. (1) Where, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, or naval or military station, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

This rule reproduces, with verbal amendments, s. 507 of the old Code.

For s. 506 see O. 5, r. 19.

(2) The commanding officer shall, if the person named therein is by law liable to arrest, back the warrant or other process with his signature, and shall in the case of a warrant of arrest cause such person, if under his command, to be arrested and delivered to the officer charged with the execution of such warrant or process.

ORDER XXXIV.

NOTES.

ACTIONS BY OR AGAINST CORPORATIONS.

Signature of pleadings.

1. In actions by or against a corporation any pleading may be signed on behalf of the corporation by any director or other principal officer of the corporation who is able to depose to the facts of the case, or by a proctor duly appointed to represent such corporation.

This rule reproduces the substance of s. 470 of the old Code with amendments mainly taken from r. 1 of O. 29 of the new Indian Code.

Service on corporation.

2. Subject to any statutory provision regulating service of process, where the action is against a corporation the summons may be served—

This rule reproduces the first part of s. 471 of the old Code, with verbal amendments taken from r. 2 of O. 29 of the new Indian Code.

(a) On the secretary or any director or other principal officer of the corporation ; or

(b) By leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office, then at the place where the corporation carries on business.

Court may require personal attendance of officer of corporation.

3. The Court may at any stage of the action require the personal appearance of the secretary or of any director or other principal officer of the corporation who may be able to answer material questions relating to the action.

This rule reproduces the second paragraph of s. 471 of the old Code, with amendments taken from r. 3 of O. 29 of the new Indian Code.

In s. 471 the requisition was to be made in the summons or by special order. It seems better, as in the rule, to leave the Court free to make it at any time and in any form.

ORDER XXXV.

ACTIONS BY OR AGAINST PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

Suing of partners in name of firm.

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in the Colony may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to an action may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

This Order is new, and is adapted from O. 30, r. 1 of the new Indian Code, and the English R. S. C., O. 48 A.

(2) Where persons sue or are sued as partners in the name of their firm, under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed by the plaintiff or the defendant, suffice if such pleading or other document is signed by any one of such persons.

Disclosure of partners' names.

2. (1) Where an action is instituted by partners in the name of their firm, the plaintiffs or their proctor shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is instituted.

Compare r. 2, O. 30 of the new Indian Code and r. 2 of O. 48 A of the English R. S. C.

(2) Where the plaintiffs or their proctor fail to comply with any demand made under sub-rule (1), all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as plaintiffs in the plaint.

Provided that all the proceedings shall nevertheless continue in the name of the firm.

Service.

3. Where persons are sued as partners in the name of their firm, the summons shall be served either—

Compare r. 3 of O. 30 of the new Indian Code and r. 3 of O. 48 A of the English R. S. C.

(a) Upon any one or more of the partners ; or

(b) At the principal place at which the partnership business is carried on within the Colony upon any person having, at the time of the service, the control or management of the partnership business there,

as the Court may direct ; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without the Colony.

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the action, the summons shall be served upon every person within the Colony whom it is sought to make liable.

ORDER XXXV.

Right of action on death of partner.

4. (1) *Where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any action, it shall not be necessary to join the legal representative of the deceased as a party to the action.*

(2) *Nothing in sub-rule (1) shall limit or otherwise affect any right with the legal representative of the deceased may have—*

- (a) *To apply to be made a party to the action ; or*
- (b) *To enforce any claim against the survivor or survivors.*

Notice in what capacity served.

5. *Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.*

Appearance of partners.

6. *Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.*

No appearance except by partners.

7. *Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.*

Appearance under protest.

8. *Any person served with summons as a partner under rule 3 may appear under protest denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.*

Actions between co-partners.

9. *This Order shall apply to actions between a firm and one or more of the partners therein, and to actions between firms having one or more partners in common ; but no execution shall be issued in such actions except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.*

Action against person carrying on business in name other than his own.

10. *Any person carrying on business in a name or style other than his own may be sued in such name or style as if it were a firm name ; and, so far as the nature of the case will permit, all rules under this Order shall apply.*

ORDER XXXVI.

ACTIONS BY AND AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

Representation of beneficiaries in actions concerning property vested in trustees, &c.

1. *In all actions concerning property vested in a trustee, executor, or administrator where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent the person 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 parties.*

Joinder of trustees, executors, and administrators.

2. *Where there are several trustees, executors, or administrators, they shall all be made parties to an action by or against one or more of them.*

Provided that the executors who have not proved their testator's will, and trustees, executors, and administrators outside the Colony need not be made parties.

NOTES.

Compare r. 4 of O. 30 of the new Indian Code.

Compare r. 5 of O. 30 of the new Indian Code and r. 4 of O. 48 A of the English R. S. C.

Compare r. 6 of O. 30 of the new Indian Code and r. 5 of O. 48 A of the English R. S. C.

Compare r. 7 of O. 30 of the new Indian Code and r. 6 of O. 48 A of the English R. S. C.

Compare r. 8 of O. 30 of the new Indian Code and r. 7 of O. 48 A of the English R. S. C.

Compare r. 9 of O. 30 of the new Indian Code and r. 10 of O. 48 A of the English R. S. C.

Compare r. 10 of O. 30 of the new Indian Code, and r. 11 of O. 48 A of the English R. S. C. Execution against partnership property and attachment of debts due to partners—the subject-matter of rr. 8 and 9 respectively of O. 48 A of the English R. S. C.—are dealt with in O. 24, rr. 28-31.

This rule reproduces s. 472 of the old Code with verbal amendments taken from r. 1 of O. 31 of the new Indian Code.

This rule reproduces, with amendments, verbal and otherwise, s. 473 of the old Code. Compare r. 2 of O. 31 of the new Indian Code.

Outside the Colony. These words are substituted for "beyond the local limits of the jurisdiction of the Court" in s. 473. There is no reason why trustees, &c., beyond such limits if resident within the Colony should not be made parties.

This Order may require to be considered as to executors and administrators in the light of the Administration Ordinance. An Order dealing with actions by or against trustees would, however, be necessary, even if the substantive law as to trustees were embodied, as in England, in a special enactment.

ORDER XXXVI.

Executors and administrators liable in costs.

3. In every action brought by an executor or administrator in right of his testator or intestate, such executor or administrator shall, unless the Court 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.

Husband of executrix not to be made party.

4. Unless the Court directs otherwise, the husband of a married trustee, executrix, or administratrix shall not as such be a party to an action by or against her in her representative capacity.

NOTES.

This rule re-enacts, with verbal amendments, s. 474 of the old Code.

This rule reproduces, with verbal amendments taken from r. 3 of O. 31 of the new Indian Code, s. 475 of the old Code.

ORDER XXXVII.

ACTIONS BY AND AGAINST MINORS, PERSONS OF UNSOUND MIND, AND MARRIED WOMEN.

Minor to sue by next friend.

1. (1) Every action by a minor, whether resident or non-resident in the Colony, shall be instituted in his name by a person, who, in such action, shall be called the next friend of the minor.

Procedure for appointment of next friend.

(2) An application for the appointment of any person as next friend of a minor shall be made by petition under Order XXVI., supported by an affidavit showing the fitness of the person proposed as next friend, and also that he has no interest adverse to the minor. To every such petition the defendant shall be made respondent.

Minor to be present in Court.

(3) On the hearing of any application under sub-rule (2), the minor, unless prevented by good cause, shall appear personally in Court.

Sub-rule (1) reproduces the substance of s. 476 of the old Code, amended in accordance with r. 1 of O. 32 of the new Indian Code.

A person. The words in s. 476 "an adult," are unnecessary, because under rule 4 of this Order only an adult can be a next friend.

The last clause in s. 476, providing that a next friend may be ordered personally to pay costs, has, as under the new Indian practice, been omitted. The general powers of the Court as to costs are sufficient to enable such order to be made.

Sub-rules (2) and (3) reproduce the latter portion of s. 481 of the old Code.

This rule reproduces, with verbal amendments taken from r. 2 of O. 32 of the new Indian Code, s. 478 of the old Code.

Procedure where action instituted without next friend.

2. (1) Where an action is instituted 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.

(2) Such application shall be made by the defendant in accordance with the provisions of Order XXVI., 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.

3. (1) Where the defendant 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.

(2) An order for appointment of a guardian for the action may be obtained upon application in the action in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the action adverse to that of the minor, and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except—

(a) Upon notice to the minor and to any guardian of the minor appointed under the provisions of Part II. of the Third Schedule to this Code, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or natural guardian, to the person in whose care the minor is ; and

(b) Upon hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

Sub-rule (1) reproduces s. 479 with amendments taken from r. 3, sub-rule (1), of O. 32 of the new Indian Code. The words in s. 479, "and generally to act on his behalf in the conduct of the case," are unnecessary, and have now been omitted.

Sub-rules (2) and (3) reproduce the first part of s. 493 of the old Code, with amendments taken from O. 32, r. 3 (2) and (3) of the new Indian Code. Sub-rule (4) has been adopted from sub-rule (4) of the same Indian rule.

Who may act as next friend or be appointed guardian for the action.

4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the action.

Provided that the interest of such person is not adverse to that of the minor, and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the action, a plaintiff.

Sub-rule (1) re-enacts the first paragraph of s. 481 of the old Code, extending the provisions of that section to guardians ad litem. Compare r. 4, sub-rule (1), of O. 32 of the new Indian Code.

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(2) Where a minor has a guardian appointed under the provisions of Part II. of the Third Schedule to this Code, no person other than such guardian shall act as the next friend of the minor, or be appointed his guardian for the action, unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the action.

(4) Where there is no other person fit and willing to act as guardian for the action, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties, or by any one or more of the parties, to the action, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

5. (1) Every application to the Court on behalf of a minor, other than an application under rule 12 (2) of this Order, shall be made in his name by his next friend or by his guardian for the action, and shall be expressed to be so made in the application.

(2) 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 in accordance with the provisions of Order XXVI. for that purpose; and, where the proctor of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, may be so discharged with costs to be paid by such proctor personally.

6. (1) A next friend or guardian for the action shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either—

- (a) By way of compromise before decree or order; or
(b) Under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the action has not been appointed or declared under Part II. of the Third Schedule to this Code to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other movable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

7. (1) No next friend or guardian for the action shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the action in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be made in accordance with the provisions of Order XXVI., and shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

(3) The defendant shall be made respondent to every such application.

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor, or where 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 where he does not do his duty, or, during the pendency of the action, ceases to reside within the Colony, or for any other sufficient cause, application may be made in accordance with the provisions of Order XXVI. 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, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared under Part II. of the Third Schedule to this Code, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall

Sub-rules (2), (3), and (4) are new, and are adapted from sub-rules (2), (3), and (4) of r. 4 of O. 32 of the new Indian Code.

Section 481 of the old Code dealt also with the procedure on the appointment of a next friend. That procedure is governed by rule 1 (2) and (3). This rule absorbs ss. 493, 494, and 495 of the old Code.

This rule reproduces, with verbal amendments taken from r. 5 of O. 32 of the new Indian Code, ss. 477 and 480 of the old Code.

This rule is based on s. 499 of the old Code, amended in accordance with r. 6 of O. 32 of the new Indian Code.

As under the new Indian Code security will not be required from a guardian so appointed or declared by competent authority, and not under any disability.

This rule reproduces s. 500 of the old Code, amended in accordance with r. 7 of O. 32 of the new Indian Code. The words "expressly recorded," &c., in sub-rule (1), and "so recorded" in sub-rule (2), give effect to the decision of the Supreme Court in Silindu v. Akura, (1907) 10 N. L. R. 193.

This rule reproduces, with verbal amendments, s. 483 of the old Code. Compare r. 8 of O. 32 of the new Indian Code.

Sub-rule (1) reproduces s. 482 of the old Code, with amendments taken from r. 9 (1) of O. 32 of the new Indian Code.

Sub-rule (2) is new, and is taken from r. 9 (2) of O. 32 of the new Indian Code.

Representation of minor by next friend or guardian for the action. No order to affect minor not represented.

Receipt by next friend or guardian for the action of property under decree for minor.

Agreement or compromise by next friend or guardian for the action.

Retirement of next friend.

Removal of next friend.

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remove the next friend, unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the action as it thinks fit.

Stay of proceedings on removal of next friend.

10. (1) On the retirement, removal, or death of the next friend of a minor further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the proctor of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

(3) Every application under sub-rule (2) shall be made in accordance with the provisions of Order XXVI., and the defendant shall be made a respondent to such application.

Retirement, death, or removal of guardian for the action.

11. (1) Where the guardian for the action desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may remove such guardian and may make such order as to costs as it thinks fit.

(2) Where the guardian for the action retires, dies, or is removed during the pendency of the action, the Court shall appoint a new guardian in his place.

Course to be followed by minor plaintiff or applicant on attaining majority.

12. (1) A minor plaintiff, or a minor not a party to an action on whose behalf an application is pending, shall on attaining majority elect whether he will proceed with the action or application.

(2) Where he elects to proceed with the action or application, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

(3) The title of the action or application shall in such case be corrected so as to read thenceforth thus: "A. B., late a minor, by C. D., his next friend, but now having attained majority."

(4) Where he elects to abandon the action or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the action or application on repayment of the costs incurred by the defendant, or opposite party, or which may have been paid by his next friend.

(5) Any application under this rule may be made ex parte; but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

Where minor co-plaintiff attaining majority desires to repudiate action.

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the action, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the action on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff, and on any defendant.

(3) 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.

(4) Where the applicant is a necessary party to the action, the Court may direct him to be made a defendant.

Unreasonable or improper action.

14. (1) A minor on attaining majority may, if a sole plaintiff, apply under the provisions of Order XXVI. to have an action instituted in his name by a next friend dismissed, on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned, 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, or make such other order as it thinks fit.

Procedure for execution of decree against minor heir.

15. (1) Where application is made for the enforcement of a decree or order against the heir or representative, being a minor, of a deceased party, a guardian for the action of such minor shall be appointed by the Court.

(2) Every such application shall be made in accordance with the provisions of Order XXVI., and the decree-holder shall serve notice thereof on the proposed guardian.

This rule reproduces ss. 484 and 485 of the old Code, with amendments partly taken from r. 10 of O. 32 of the new Indian Code.

This rule reproduces ss. 496 and 497 of the old Code, amended in accordance with r. 11 of O. 32 of the new Indian Code.

This rule reproduces ss. 486, 487, 488, and 489 of the old Ceylon Code, with amendments taken from r. 12 of O. 32 of the new Indian Code.

Section 485 required the application to be supported by affidavit. Notice to the next friend renders this unnecessary.

This rule reproduces s. 490 of the old Code, with amendments taken from r. 13 of O. 32 of the new Indian Code.

Sub-rule (2), as to notice, renders unnecessary the requirement contained in s. 490 that the fact of the attaining of majority should be proved by affidavit.

This rule reproduces s. 491 of the old Code, amended so as to bring it into conformity with r. 14 of O. 32 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 498 of the old Code.

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Minor may in person sue for wages.

16. Nothing in this Order 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 had attained majority.

This rule reproduces, with verbal amendments, s. 492 of the old Code.

Compulsory judicial settlement of accounts in case of minors.

17. (1) A petition praying for the judicial settlement of the account of—

This rule reproduces, with verbal amendments, those of the provisions of s. 745 of the old Code that relate to next friends and guardians for the action of minors.

- (a) The next friend of a minor plaintiff ;
(b) 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 provided for the judicial settlement of the account of an executor or administrator by any of the following persons, respectively, viz. :

By the minor after he has attained majority, or by the executor or administrator of a deceased minor ;

And in any case by the successor of any such next friend or guardian for the action.

(2) On such petition proof shall 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 minors.

18. (1) 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 either of the persons described under sub-heads (a) and (b) of the last preceding section in any case where a petition for a judicial settlement of his account may be presented thereunder by any other person.

This rule reproduces, with verbal amendments, those of the provisions of s. 746 of the old Code that relate to next friends and guardians for the action of minors.

(2) Every such petition shall contain a prayer that every person who might have so presented a petition may be cited to attend the settlement.

Procedure.

19. (1) Upon the presentation of any petition, as mentioned in rules 17 and 18, the Court shall issue a citation accordingly.

This rule reproduces, with verbal amendments, those of the provisions of s. 747 of the old Code that relate to next friends and guardians for the action of minors.

(2) The practice and procedure upon a petition praying for the judicial settlement of the account of an executor or administrator shall apply, so far as is practicable, to all proceedings under rules 17 and 18 and under this rule.

(3) The accounting party shall annex to every account produced and filed by him an affidavit verifying the account.

Appeal.

20. Every order or decree made under the provisions of rule 17 to 19 shall be subject to an appeal to the Supreme Court.

This rule reproduces, with verbal amendments, those of the provisions of s. 748 of the old Code that relate to next friends and guardians for the action of minors.

Requisites of petitions relating to minors.

21. (1) Every petition by which an application is made to a District Court for the exercise of its powers over or in respect of minors shall state expressly that the petitioner does not know of any person interested in the subject of the petition, or in the minor, who is likely to entertain any objection thereto other than those who are named as respondents in the petition.

This rule reproduces, with verbal amendments, those of the provisions of ss. 749 and 750 of the old Code that relate to minors.

Citations.

(2) 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.

This Order to apply to persons of unsound mind.

22. The provisions contained in this Order shall, so far as they are applicable, extend to actions by or against persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

This rule reproduces s. 501 of the old Code, amended in accordance with r. 15 of O. 32 of the new Indian Code.

Majority, what is.

23. For the purposes of this Order a minor shall be deemed to have attained majority on his attaining the age of twenty-one years, or on marriage, where under any law in force in the Colony marriage confers majority, or on obtaining letters of venia aetatis.

This rule reproduces s. 502 of the old Code, with verbal amendments.

Where under any law confers majority. See Mutiah Chetty v. Dingirra et al., (1908) 10 N. L. R. 371, in which a Court of three Judges held that a Kandyan woman under the age of twenty-one years does not become a major by marriage.

ORDER XXXVIII.

NOTES.

ACTIONS BY AND AGAINST PAUPERS.

Actions may be instituted in forma pauperis.

1. Subject to the following rules, any action may be instituted by a pauper.

Explanation.—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such action, or, where no such fee is prescribed, when he is not entitled to property worth fifty rupees, other than his necessary wearing apparel and the subject-matter of the action.

Contents of application.

2. Every application for permission to sue as a pauper shall be in writing, and shall contain the particulars required by Order VII., rule 1, 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 signed in the manner prescribed for the signature of plaints.

Application to be verified, and particulars of verification.

3. Every application under rule 2 shall be verified by affidavits by the applicant and by two headmen or respectable persons of the place at which the applicant resides to the effect—

- (a) That the applicant is a pauper;
- (b) That he has not within the two months next before the presentation of the application disposed of any property fraudulently, or in order to be able to apply for permission to sue as a pauper; and
- (c) That he has not entered into any agreement with reference to the subject-matter of the proposed action under which any other person has obtained an interest in such subject-matter.

Presentation of application.

4. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to it, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Examination of applicant.

5. (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If represented by agent, Court may order applicant to be examined on commission.

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined on commission in the manner in which the examination of an absent witness may be taken.

Rejection of application.

6. (1) The Court shall reject an application for permission to sue as a pauper—

- (a) Where it is not framed and presented in the manner prescribed by rules 2, 3, and 4.
- (b) Where the Court is not satisfied by the affidavits required by rule 3, or by the examination, if any, of the applicant or his agent under rule 5—
 - (i.) That the applicant is a pauper; or
 - (ii.) That he has not, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper; or
 - (iii.) That his allegations show a cause of action; or
 - (iv.) That he has not entered into an agreement with reference to the subject-matter of the proposed action under which any other person has obtained an interest in such subject-matter.

(2) The Court may, in its discretion, reject an application by a pauper for permission to institute an action to recover damages for defamation or malicious prosecution.

Notice of day for determination of question of applicant's pauperism.

7. (1) Where the Court sees no reason to reject the application on any of the grounds stated in rule 6, it shall appoint a day for the determination of, and shall proceed to determine, the question of the applicant's pauperism in accordance with the provisions of rule 5, sub-rule (1), sub-head (a), of Order XXVI.

Procedure at hearing.

(2) On the day so appointed, or so soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

This rule reproduces s. 441 of the old Code, with amendments taken from r. 1 of O. 33 of the new Indian Code.

This rule reproduces s. 443 of the old Code, with verbal amendments taken from r. 2 of O. 33 of the new Indian Code.

This rule reproduces s. 444 of the old Code, with amendments partly taken from r. 5 of O. 33 of the new Indian Code.

This rule is based on s. 445 of the old Code, with amendments partly taken from r. 3 of O. 33 of the new Indian Code

This rule is new, and is taken with verbal modifications from r. 4 of O. 33 of the new Indian Code.

Sub-rule (1) is based on s. 446 of the old Code, greatly expanded and amended, partly in accordance with r. 5 of O. 32 of the new Indian Code.

Sub-rule (2) is new. Section 442 of the old Code prohibited a pauper from instituting an action for “libel, slander, or abusive language.”

It seems better to give the Court a discretion in the matter; the word “defamation” includes libel and slander: “malicious prosecution”—a form of action apt to be vexatiously used in Ceylon—has been added.

In this rule, which is based on rr. 6 and 7 of O. 33 of the new Indian Code, the system embodied in s. 447 of the old Code of referring every application for leave to sue as a pauper to a proctor for inquiry and certification has been abandoned. The proctor's certificate did not, as counsel's opinion practically does

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(3) *The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 6, sub-rule (1).*

(4) *The Court shall then either allow or refuse to allow the applicant to sue as a pauper.*

Procedure if application admitted.

8. *Where the application is 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 Order IV., except that the plaintiff shall not be liable to any stamps in respect of any petition, appointment of a proctor, or other proceeding connected with the action.*

Recovery of value of stamps.

9. *Where 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.*

Where Court may order plaintiff to pay stamp fees.

10. *Where the plaintiff fails in the action, or is dispaupered under rule 12, or is disallowed his costs against the other party, or the action is dismissed for default of appearance, the Court shall order the plaintiff, or any person added as a co-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.*

Application to defend as a pauper.

11. (1) *A defendant in any action may apply to the Court in which such action is pending for permission to defend the action as a pauper.*

(2) *Application shall be made in the same manner as applications for permission to sue as a pauper, shall contain the particulars required by Order VIII., rule 4, to be contained in answers, and shall, so far as is practicable, be subject to the same rules and conditions as are in this Order prescribed with regard to applications for permission to sue as a pauper.*

Dispaupering.

12. (1) *The Court may on the application of the defendant or plaintiff, as the case may be, order any party permitted to sue or defend as a pauper 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.*

(2) *Every application under sub-rule (1) shall be made by motion, and seven clear days' notice thereof in writing shall be given to the party sought to be dispaupered.*

Refusal of application to bar subsequent application of like nature.

13. *An order refusing to allow an applicant to sue as a pauper 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, provided that he first pays the costs (if any) incurred by the opposite party in opposing his application for permission to sue as a pauper.*

Costs of application to be costs in cause.

14. *The costs of an application for permission to sue or defend as a pauper, and of an inquiry into pauperism, shall be costs in the cause.*

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in England under the R. S. C., O. 16, rr. 22 et. seq., bind the Court (*Hiniappu v. Hendris*, (1904) 7 N. L. R. 326). Nor was there in Ceylon any provision as in England for the assignment of counsel and a proctor to the applicant. It has been thought better to leave the matter entirely in the hands of the Court.

This rule reproduces, with verbal amendments chiefly taken from r. 8 of O. 33 of the new Indian Code, s. 449 of the old Code.

This rule reproduces s. 450 of the old Code, amended in accordance with r. 10 of O. 33 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 451 of the old Code. Compare r. 11 of O. 33 of the new Indian Code.

This rule reproduces, with numerous verbal amendments, s. 453 of the old Code.

This rule reproduces s. 454 of the old Code, with verbal amendments. Compare r. 9 of O. 33 of the new Indian Code.

This rule reproduces, with verbal amendments taken from r. 15 of O. 33 of the new Indian Code, s. 452 of the old Code.

This rule reproduces s. 455 of the old Code. Compare r. 16 of O. 33 of the new Indian Code.

ORDER XXXIX.

ACTIONS FOR APPOINTMENT OR REMOVAL OF TRUSTEES.

Applications for appointment and removal of trustees.

1. *Applications for the appointment and removal of trustees shall be made to the Court prescribed by the Courts Ordinance, 1889 (No. 1 of 1889), or by any other law for the time being in force.*

These rules reproduce, with amendments, s. 595 of the old Code.

Any other law. These words are added to meet the possibility of the enactment in Ceylon of a general Trustees Ordinance.

Application to be by petition.

2. *Subject to any provision to the contrary by any law for the time being in force, where no further relief than the appointment or removal of a trustee is claimed, every such application shall be made by petition in accordance with the provisions of Order XXVI.*

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Requisites of petition.

3. (1) Every petition by which an application is made to a Court for the exercise of its powers over and in respect of trustees shall state expressly that the petitioner does not know of any person interested in the subject of the petition, or the person sought to be affected by the order prayed for therein, who is likely to entertain any objection thereto other than those who are named as respondents in the petition.

(2) 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.

ORDER XL.

SUMMARY ACTIONS ON NEGOTIABLE INSTRUMENTS AND LIQUID CLAIMS.

Institution of summary actions upon bills of exchange, &c.

1. (1) All actions upon bills of exchange, promissory notes, or cheques, or contracts in writing for a liquidated amount of money, or on guarantees where the claim against the principal is in respect of such bills, notes, cheques, or contracts may, in case the plaintiff desires to proceed under this Order, be instituted by presenting a plaint in the form prescribed by Order VII., but the summons shall be in Form No. 13 in Appendix B, or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear and defend the action unless he obtains leave from the Court as hereinafter provided so to appear and defend; and in default of his obtaining such leave, or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the payment, and such sum for costs as the Court may allow at the time of making the decree, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith.

Instrument to be produced with the plaint, and affidavit required.

2. (1) A plaintiff shall on presenting the plaint produce to the Court the instrument on which he sues, and an affidavit that the sum claimed is justly due to him from the defendant thereon.

(2) Where such instrument appears to the Court to be duly stamped, and to be prima facie valid, the Court may make an order for the service of the summons on the defendant either personally or by any of the other modes of service prescribed by Order V., as to the Court may seem just.

(3) The day fixed in the summons for the defendant's appearance shall be as early a day as can conveniently be named, regard being had to the distance of the defendant's residence from the Court.

Defendant showing defence on merits to have leave to appear.

3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the action upon affidavits which disclose 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.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues, or otherwise, as the Court thinks fit.

Power to set aside decree, &c.

4. 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 the defendant to appear to the summons, and to defend the action, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

Court may order deposit of instrument.

5. In any proceeding under this Order the Court may order the instrument on which the action is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-acceptance of dishonoured bill or note.

6. 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 Order for the recovery of the amount of such bill or note.

NOTES.

This rule reproduces, with verbal amendments, those of the provisions of ss. 749 and 750 of the old Code that relate to trustees.

This rule reproduces ss. 703 and 704 of the old Code, amended in accordance with r. 2 of O. 37 of the new Indian Code. The second paragraph of s. 704, providing that the defendant should not be obliged to pay into Court the sum mentioned in the summons, or to give security unless the Court doubts the validity or genuineness of his defence, has been omitted. The matter should be left, as it is under the new Indian Code, to the discretion of the Court. See r. 3 infra.

This rule reproduces, with verbal amendments, s. 705 of the old Code. There is no corresponding provision in the new Indian Code.

Either personally just. This clause has been introduced in consequence of the decision of the Supreme Court in Letchimanan v. Ramanathan Chetty, (1901) 1 Bro. 368, that personal service is necessary.

This rule reproduces s. 706 of the old Code, amended in accordance with r. 3 of O. 37 of the new Indian Code.

This rule reproduces s. 707 of the old Code, with verbal amendments. Compare r. 4 of O. 37 of the new Indian Code.

This rule reproduces s. 708 of the old Code. Compare r. 5 of O. 37 of the new Indian Code.

This rule reproduces s. 709 of the old Code. Compare r. 6 of O. 37 of the new Indian Code.

ORDER XL.

Procedure in actions.

7. Save as provided by this Order, the procedure in actions under this Order shall be the same as the procedure in actions instituted under Order IV.

Special Trial. Roll to be kept.

8. (1) In every Court a special Trial Roll shall be kept of cases instituted under this Order.

(2) The Court may order such cases to be set down for hearing on such days, and to be called on for trial, in such order, as it thinks fit ; provided that the parties to any such case shall have received reasonable notice of the day of hearing.

ORDER XLI.

INTERPLEADER.

Plaint in interpleader action.

1. (1) In every action of interpleader the plaint shall, in addition to the other statements necessary, state—

(a) That the plaintiff has no interest in the subject-matter in dispute other than for charges or costs ;

(b) The claims made by the defendants severally ; and

(c) That there is no collusion between the plaintiff and any of the defendants.

(2) Such plaint shall also be supported by an affidavit by the plaintiff verifying the statements contained therein.

Payment of thing claimed into Court.

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required so to pay or place it before he shall be entitled to any order in the action.

Procedure at the hearing.

3. (1) 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 costs, and dismiss him from the action ; or

(b) If it thinks that justice or convenience so require, retain all parties until the final disposal of the action.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(a) That an issue between the parties be framed and tried ; and

(b) That any claimant be made a plaintiff in lieu of or in addition to the original plaintiff ;

and shall proceed to try the action in the ordinary manner.

Charge for plaintiff's costs.

4. Where the action is properly instituted, the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed, or in some other effectual way.

Procedure where defendant is suing plaintiff.

5. Where any of the defendants in an interpleader action is actually suing the plaintiff in respect of the subject of such action, the Court in which the action against the plaintiff is pending shall, on being so informed by the Court in which the interpleader action has been instituted, stay the proceedings as against him, and his costs in the action so stayed may be provided for in such action ; but if, and in so far as they are not provided for in that action, they may be added to his costs incurred in the interpleader action.

NOTES.

This rule reproduces, with verbal amendments, s. 710 of the old Code. Compare r. 7 of O. 37 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 711 of the old Code.

This rule reproduces s. 629 of the old Code, with verbal amendments.

Sub-rule (1) has been amended, so as to bring it into conformity with r. 1 of O. 35 of the new Indian Code.

Section 628 of the old Code, providing for the institution of interpleader actions, has been transferred to s. 40 of the Ordinance.

This rule reproduces s. 630 of the old Code, with verbal amendments taken from r. 2 of O. 35 of the new Indian Code.

This rule reproduces s. 631 of the old Code, amended in accordance with r. 4 of O. 35 of the new Indian Code.

This rule reproduces, with verbal amendments taken from r. 6 of O. 35 of the new Indian Code, s. 633 of the old Code.

The costs of the original plaintiff. These words are rendered necessary by the provisions in r. 3 (3) (b) for making a claimant plaintiff.

Section 632, providing that agents and tenants may not institute interpleader actions, has been transferred to the Ordinance. See s. 39.

This rule reproduces s. 634 of the old Code, with amendments mostly taken from r. 3 of O. 35 of the new Indian Code.

ORDER XLII.

NOTES.

ARREST AND SEQUESTRATION BEFORE JUDGMENT.

Where defendant may be called upon to furnish security for appearance.

1. (1) Where at any stage of an action for the recovery of a sum of money or of damages amounting to or exceeding Rs. 200, the Court is satisfied by affidavit or otherwise, that the defendant is about to leave the Colony under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the action, the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance.

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be held in deposit by the Court until the action is disposed of or until the further order of the Court.

(2) A warrant of arrest under sub-rule (1) shall be in Form No. 7. in Appendix F, with such variations as circumstances may require, and may be executed within any district in the Island, within one month from the date thereof, including the day of such date, but not afterwards.

(3) Where the plaintiff possesses any security for the debt, in whole or in part, the amount of such security shall be stated to the Court on any application for a warrant of arrest under sub-rule (1), and shall be deducted by the Court from the amount of the security to be required from the defendant.

(4) Where a plaintiff, or any person acting on his behalf for the purpose of an application under sub-rule (1), wilfully omits to state to the Court in an application under sub-rule (1) the amount of any security so held by him, such plaintiff or other person shall be liable to punishment as for contempt of Court.

Security.

2. (1) Where the defendant fails to show cause under rule 1, sub-rule (1), the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the action is pending and until satisfaction of any decree that may be passed against him in the action, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to rule 1, sub-rule (1).

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the action.

Procedure on application by surety to be discharged.

3. (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Procedure where defendant fails to furnish security or find fresh security.

4. Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to prison as a civil prisoner until the decision of the action, or, where a decree is passed against the defendant, until the decree has been satisfied.

Provided that no person shall be detained in prison under this rule in any case for a longer period than three months before decree.

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Where defendant may be called upon to furnish security for production of property.

5. (1) Where, at any stage of an action; the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him—

(a) Is about to dispose of the whole or any part of his property; or

(b) Is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security in such sum as may be specified in the order to produce and place at the disposal of the Court when required the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

This rule is based on s. 650 of the old Code, which has been completely re-drafted. As to sub-rule (1), see r. 1 of O. 38 of the new Indian Code. This sub-rule adopts the interpretation given to s. 650 by the Supreme Court in *Ramen Chetty v. Vallipuram*, (1910) 13 N. L. R. 337. Compare also *Murugappa Chetty v. Horsfall*, (1900) 5 N. L. R. 5.

The peremptory requirement by s. 650 of an affidavit has been modified. The substance of s. 655 has been incorporated in O. 21, r. 8, and its provisions extended to affidavits generally.

This and rule 4 supersede ss. 651 and 652 of the old Code. Compare r. 2 of O. 38 of the new Indian Code. Sub-rule (1) modifies s. 652, in that it does not lay down the details of procedure to be followed as regards a sum deposited by the defendant, but leaves the Court to make such order as it thinks fit.

This rule is new, and is taken from r. 3 of O. 38 of the new Indian Code.

Compare r. 4 of O. 38 of the new Indian Code, and see notes to r. 2 *supra*.

This rule and rule 6 supersede s. 653 of the old Code.

Sub-rules (1), (2), and (3) are adapted from r. 5 of O. 38 of the new Indian Code.

By affidavit or otherwise. See notes to r. 1 *supra*.

Sub-rule (4) is new, and is intended to remove a difficulty pointed out by Bonser C.J. in *Hing Appu v. Donchamy*, (1900) 1 Bro. 376.

ORDER XLII.

NOTES.

The plaintiff shall, unless the Court otherwise directs, specify the property required to be sequestered and the estimated value thereof.

(3) The Court may also in the order direct the conditional sequestration of the whole or any portion of the property so specified.

(4) This rule shall extend to the alienation or removal, with the intention specified in sub-rule (1), by the heirs of a deceased person of property belonging to such person where an action was instituted against him in his lifetime, and the cause of action survives against such heirs.

Sequestration where cause not shown or security not furnished.

6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the action, be sequestered.

(2) An order for sequestration shall be in Form No. 12 in Appendix F, with such variations as circumstances may require.

(3) Where the defendant shows cause why he should not be required to furnish security, and the property specified or any portion of it has been sequestered, the Court shall order the sequestration to be withdrawn, or make such other order as it thinks fit.

Mode of making sequestration.

7. Save as is otherwise expressly provided, the sequestration shall be made in the manner provided for sequestration or seizure of property preliminary to sale thereof in execution of a decree for money.

Investigation of claim to property sequestered before judgment.

8. Where any claim is preferred to the property sequestered before judgment, such claim shall be investigated and determined in the manner hereinbefore provided for the investigation and determination of claims to property seized in execution of a decree for the payment of money and not otherwise.

Removal of sequestration when security furnished or action dismissed.

9. Where an order is made for sequestration before judgment, the Court shall order the sequestration to be withdrawn when the defendant furnishes the security required, together with security for the costs of the sequestration, or when the action is dismissed.

Effect of sequestration on prior rights.

10. 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.

Where property sequestered before judgment, fresh seizure in execution of decree unnecessary.

11. Where property is under sequestration by virtue of the provisions of this Order, and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a fresh seizure of the property.

Plaintiff before warrant of arrest or sequestration to give security.

12. (1) Before making an order for a warrant of arrest or for sequestration before judgment, the Court shall require the plaintiff to enter into a bond, with or without sureties, in its discretion conditioned for the payment of 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 the Court may award such damages and costs of action either to the defendant or to such other person.

(2) A bond under sub-rule (1) shall be in Form No. 13 in Appendix F, with such variations as circumstances may require.

Punishment for wilful false statement.

13. Any person wilfully making any false statement by affidavit or otherwise in the course of any proceedings under this Order may be punished as for contempt of Court, without prejudice to his liability to be tried and punished for perjury where such statement is on oath or affirmation.

This rule is adapted from r. 6 of O. 38 of the new Indian Code.

This rule reproduces, with verbal amendments, s. 657 of the old Code. Compare r. 7 of O. 38 of the new Indian Code.

This rule is founded on ss. 658 and 659 of the old Code. Compare r. 8 of O. 38 of the new Indian Code.

It does not follow the decision in *Carimjee Jafferjee v. Pain*, (1906) 3 Bal. 69, as it has been thought better to assimilate the procedure under section 659 to that under ss. 241 et seq. of the old Code.

This rule is new, and is taken from r. 9 of O. 38 of the new Indian Code.

This rule reproduces, without amendment, s. 660 of the old Code. Compare r. 10 of O. 38 of the new Indian Code.

This rule reproduces s. 661 of the old Code, with verbal amendments mainly taken from r. 11 of O. 38 of the new Indian Code.

This rule reproduces, with numerous verbal amendments, s. 654 of the old Code.

This rule reproduces, with verbal amendments, s. 656 of the old Code.

For s. 655 of the old Code, see the note to r. 1 supra.

ORDER XLIII.

NOTES.

INTERLOCUTORY ORDERS AS TO INJUNCTIONS,
INTERIM PRESERVATION OF PROPERTY,
AND RECEIVERS.*Interlocutory Injunctions.*

*Cases in which
interlocutory
injunctions may
be granted.*

i. (1) *Where in any action it is proved by affidavit or otherwise—*

(a) *That any property in dispute in an action is in danger of being wasted, damaged, or alienated by any party to the action, or wrongfully sold in execution of a decree; or*

(b) *That the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors—*

the Court may by order grant an interlocutory injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the action or until further order.

(2) *In case of disobedience to an injunction granted under sub-rule (1), the Court may enforce the injunction by the punishment of the person guilty of such disobedience as for a contempt of Court.*

*Injunction to
restrain
repetition or
continuance of
breach.*

2. (1) *In any action for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the action or not, the plaintiff may, at any time after the commencement of the action, and either before or after judgment, apply to the Court for an interlocutory injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.*

(2) *The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security or otherwise as the Court thinks fit.*

(3) *In case of disobedience or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be sequestered, and may also order such person to be detained in prison as a civil prisoner for a term not exceeding three months, unless in the meantime the Court directs his release.*

(4) *No sequestration under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property sequestered may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.*

*Application to
be on notice to
opposite party.*

3. *The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.*

*Order for
injunction may
be discharged,
varied, or set
aside.*

4. (1) *An order for an injunction made under this Order may be discharged, or varied, or set aside by the Court, on application therefor made on petition under Order XXVI. by any party dissatisfied with such order.*

(2) *Notice of any application under sub-rule (1) shall be given to the party obtaining the order for the injunction.*

The title to this Order is taken from the English R. S. C., O. 50. The term "interlocutory" seems preferable to the term "temporary" used in relation to injunctions in the Indian Code.

The present Order includes Chapters XLVIII. (Injunctions), XLIX. (Interim Orders), and L. (Receivers) of the old Code. The powers of the Courts of first instance to grant injunctions are defined by s. 87 of the Courts Ordinance, 1889. This Order is, of course, concerned only with interlocutory injunctions, the grant of perpetual injunctions being a matter ordinarily dealt with by the decree in a regular action.

Rule 1 (1) is taken from r. 1 of O. 39 of the new Indian Code. Section 662 of the old Code, which provided that applications for (interlocutory) injunctions should be made by petition supported by affidavit, has been omitted. It seems better to leave the Court a free hand.

Sub-rule (2) represents s. 663 of the old Code, with verbal amendments.

This rule is new, and is taken, with verbal modifications, from r. 2 of O. 39 of the new Indian Code.

This rule reproduces s. 664 of the old Code, amended in accordance with the provisions of r. 3 of O. 39 of the new Indian Code, and r. 1 (1) of this Order. See notes to r. 1 *supra*.

Sub-rule (1) reproduces, with verbal amendments, s. 666 of the old Code.

Sub-rule (2) is new, and gives effect to the decision of the Supreme Court in D. C., Trincomalee, 20,709, (1871) Vand. R. 241.

ORDER XLIII.

NOTES.

Injunction to corporation binding on its officers.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members or officers of the corporation, whose personal action it seeks to restrain.

This rule reproduces, with verbal amendments taken from r. 5 of O. 39 of the new Indian Code, s. 665 of the old Code.

Section 667 of the old Code, empowering the Court to award damages for the issue of an injunction on insufficient grounds, has been transferred to the Ordinance. See s. 45.

Interim Orders.

Power to order interim sale.

6. (1) *The 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-matter of such action, or sequestered before judgment in such action, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.*

This rule reproduces s. 668 of the old Code, with amendments principally taken from r. 6 of O. 39 of the new Indian Code.

(2) *The person carrying out the sale shall, within such time as the Court shall fix, and after deducting thereout such expenses as the Court may allow him, deposit the proceeds of the sale in Court to the credit of the action.*

Order for detention, preservation, or inspection of property.

7. (1) *The Court may, on the application of any party to an action, and on such terms as it thinks fit—*

Sub-rule (1) reproduces s. 669 of the old Code, with amendments taken from r. 7 (1) of O. 39 of the new Indian Code.

(a) *Make an order for the detention, preservation, or inspection and survey of any property which is the subject-matter of such action, or as to which any question may arise therein ;*

Sub-rule (2) is new, and is taken from r. 7 (2) of O. 39 of the new Indian Code.

(b) *For all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such action ; and*

(c) *For all or any of the purposes aforesaid authorize any samples to be taken or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.*

(2) *The provisions as to execution of process shall apply, so far as may be applicable, to persons authorized to enter under this rule.*

Application to be made under Order XXVI.

8. (1) *An application under either of the two last preceding rules shall be made by petition under Order XXVI. ; and every party who is sought to be affected by the Order shall be named a respondent in the petition.*

This rule reproduces, with amendments taken from r. 8 of O. 39 of the new Indian Code, s. 670 of the old Code.

(2) *Any such application may be made by the plaintiff at any time after the institution of the action and by the defendant at any time after appearance.*

At any time action. The provision in s. 670, "after service of summons," was unsatisfactory as there is frequently great delay in the service of summons.

Deposit of money, &c., in Court.

9. *Where the subject-matter of an action is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.*

This rule is new, and reproduces r. 10 of O. 39 of the new Indian Code.

Receivers.

Appointment of receivers.

10. (1) *Where it appears to the Court to be just and convenient, the Court may by order—*

This rule is based on s. 671 of the old Code, which has been brought, as regards sub-rules (1) (a), (b), (c), (d), and (2), into conformity with r. 1 of O. 40 of the new Indian Code. Sub-rule (3) absorbs s. 672.

(a) *Appoint a receiver of any property, whether before or after decree ;*

(b) *Remove any person from the possession or custody of the property ;*

(c) *Commit the same to the custody or management of the receiver ;*

(d) *Confer upon the receiver 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 documents, as the owner himself has, or such of those powers as the Court thinks fit ; and*

(e) *Remove any receiver appointed under this sub-rule.*

(2) *Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the action has not a present right to remove.*

In sub-rule (1) the words "just and convenient" take the place of the enumeration in s. 671 of the grounds on which a receiver might be appointed ; and s. 671 has further been amended by the omission of the words "the subject of an action or under sequestration" and "on the application of any person who shall establish a *prima facie* right to or interest in such property," as to the interpretation

ORDER XLIII.

(3) *Where an application for the appointment of a receiver is made by any party to an action, whether before or after decree, the Court may order such notice (if any) of the application as it thinks fit to be given.*

Remuneration.

11. *The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.*

Duties.

12. Every receiver so appointed shall—

- (a) *Furnish such security (if any) or fresh security as the Court thinks fit duly to account for what he shall receive in respect of the property ;*
- (b) *Submit his accounts at such periods and in such form as the Court directs ;*
- (c) *Pay the amount due from him as the Court directs ; and*
- (d) *Be responsible for any loss occasioned to the property by his wilful default or gross negligence.*

Enforcement of a receiver's duties.

13. *Where a receiver—*

- (a) *Fails to submit his accounts at such periods and in such form as the Court directs ; or*
- (b) *Fails to pay the amounts due from him as the Court directs ; or*
- (c) *Occasions loss to the property by his wilful default or gross negligence,*

the Court may, without prejudice to the power of removal conferred on it by rule 10, sub-rule (1), sub-head (e), direct the property of the receiver to be sequestered and sold and apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

NOTES.

of which see *Siyadoris v. Hendrick*, (1892) 1 S. C. R. 350. The receiver's fee is dealt with in rule 11. Sub-rule (2) absorbs s. 675 of the old Code. The words "remove any receiver," &c., in sub-rule (1) (e)—which is new—confer on the Court full power to remove a receiver whenever it is "just and convenient," and dispense with the provision to that effect in s. 674 of the old Code.

This rule is new, and is taken from r. 2 of O. 40 of the new Indian Code. See notes to r. 10 (1) *supra*.

This rule reproduces, with verbal amendments partly taken from r. 3 of O. 40 of the new Indian Code, s. 673 of the old Code.

The words "or fresh security" in s. 673 (a) dispense with the necessity for the provision in the same sense in s. 674.

This rule is new, and is adapted from r. 4 of O. 40 of the new Indian Code.

ORDER XLIV.

APPEALS TO THE SUPREME COURT.

The Petition of Appeal.

Form of appeal.

1. (1) Every appeal to the Supreme Court shall be preferred in the form of a petition in the name of the appellant in *Form No. 1 in Appendix G, with such variations as circumstances may require.*

(2) *Where an appeal is preferred from a decree or order in any action or application in which title to land or a question of pedigree is in issue, the petition of appeal shall be accompanied by a memorandum in Form No. 2 in Appendix G, with such variations as circumstances may require, signed by the appellant's proctor, and containing a list of all documents received in evidence on both sides, showing their markings by the Court, and concisely stating their nature and by whom and in whose favour they were made.*

(3) The petition of appeal shall be distinctly printed, typewritten, or written in the English language, and shall contain the following particulars :

- (a) The name of the Court in which the case is pending ;
- (b) The names of the parties to the action ;
- (c) The names of the appellant and respondent ;
- (d) A plain and concise statement, *without any argument or narrative*, of the grounds of objection, *which shall be numbered consecutively*, to the decree or order appealed from ;
- (e) The relief claimed.

Sub-rule (1) reproduces, with amendments, the first paragraph of s. 754 of the old Code. Compare r. 1 (1) of O. 41 of the new Indian Code.

Sub-rule (2) is based on r. 3 of the Civil Procedure Rules, 1909.

Sub-rule (3) reproduces the first paragraph of s. 758 of the old Code, with amendments taken from r. 1 of O. 41 of the new Indian Code.

Without any argument, &c. (This clause is intended to prevent petitions of appeal from being converted, as they frequently are at present in Ceylon, into briefs for counsel.)

Section 753, dealing with the powers of the Supreme Court in revision, has been transferred to the Ordinance. See s. 53. This Order includes Chapters LVIII. (ss. 753-760), LIX. (ss. 761-764), LX. (ss. 765-767), LXI. (ss. 768-777), and LXII. (s. 778) of the old Code.

ORDER XLIV.

NOTES.

Grounds which may be taken in appeal.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the petition of appeal; but the Court in deciding the appeal shall not be confined to the grounds set forth in the petition of appeal or taken by leave of the Court under this rule.

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Petition of appeal to be signed by proctor.

3. (1) Every petition of appeal shall be signed by a proctor.

(2) Where the appellant is himself a proctor, the petition of appeal shall be signed by a proctor other than the appellant.

(3) Nothing in sub-rules (1) and (2) shall preclude an advocate from drawing or settling any petition of appeal.

Presentation of petition of appeal to Court of first instance.

4. (1) The petition of appeal shall be presented to the Court whose decree or order is appealed from within a period of fourteen clear days, or where such Court is a Court of Requests ten clear days, from the date of such decree or order, exclusive of Sundays and public holidays, and shall be received by such Court if it complies with the requirements of rules 1 and 3 of this Order.

(2) Where the Attorney-General is the appellant, the Court may allow such further time for the presentation of the appeal as it thinks fit.

Rejection or return for amendment of petition of appeal.

5. (1) The Supreme Court shall refuse to any receive petition of appeal not signed as required by rule 3, sub-rules (1) and (2), or not presented within the times prescribed by rule 4 for the presentation of petitions of appeal to District Courts and Courts of Requests respectively.

Provided that—

- (a) Any party desiring to appeal may, within the time limited for presenting a petition of appeal, upon furnishing the proper stamp therefor, state the grounds on which he so desires to appeal;
- (b) Such grounds shall be recorded by the secretary or chief clerk of the Court in the form of a petition of appeal; and
- (c) The written statement thereof shall, on being signed by the appellant and attested by the secretary or chief clerk, be received as the petition of appeal without the signature of any proctor.

(2) The Court may refuse to receive, or may return to the appellant to be amended either forthwith or within a time to be fixed by the Court—

- (a) Any petition of appeal which—
 - (i.) Contains argument or narrative; or
 - (ii.) Contains scandalous matter or improper reflections upon any Court or Judge thereof; or
 - (iii.) Does not comply with the requirements of sub-rule (3) of rule 1, and

(b) In cases coming under sub-rule (2) of rule 1 any memorandum which does not comply with the requirements of that sub-rule; and may make such order as to the costs of any such petition of appeal or memorandum or of its amendment as it thinks fit.

(3) Where a petition of appeal is amended, the Court, or such officer as it may appoint in this behalf, shall sign or initial the amendment.

One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

6. Where there are more plaintiffs or more defendants than one in an action, and the decree appealed from 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 Supreme Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

This rule reproduces the second paragraph of s. 758 of the old Code, amended in accordance with r. 2 of O. 41 of the new Indian Code.

Sub-rule (1) is taken from the first paragraph of s. 755 of the old Code, but provides that the petition shall be signed by a proctor in any case, and not in the alternative by an advocate; and see sub-rule (3).

Sub-rule (2) is new, and is intended to meet the difficulty pointed out in *Perera v. Perera*, (1907) 10 N. L. R. 378.

Sub-rule (1) of this rule reproduces the second paragraph of s. 754 of the old Code, with various amendments.

Sub-rule (2) is new, and has been introduced to meet a difficulty that has sometimes arisen in Crown cases, where the ordinary time limit for the presentation of appeals has been found to be insufficient to permit of the necessary communication between the Attorney-General and the local executive officers as to whether or not an appeal is desirable.

This rule is founded on s. 759 and the second paragraph of s. 755 of the old Code, with numerous amendments. Compare r. 3 of O. 41 of the new Indian Code.

This rule reproduces s. 760 of the old Code, with verbal amendments mainly taken from r. 4 of O. 41 of the new Indian Code.

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Stay of Proceedings and of Execution.

Stay by Supreme Court.

7. (1) *An appeal shall not operate as a stay of proceedings under the decree or order appealed from, except so far as the Supreme Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree, but the Supreme Court may for sufficient cause order stay of execution of such decree.*

Sub-rules (1), (2), (3), and (4) reproduce s. 761 of the old Code, amended in accordance with r. 5 of O. 41 of the new Indian Code.

Sub-rule (5) reproduces, with verbal amendments, s. 762 and the first paragraph of s. 763 of the old Code.

Stay by Court which passed the decree.

(2) *Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may, on sufficient cause being shown, order the execution to be stayed.*

(3) *No order for stay of execution shall be made under this rule 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 has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.*

(4) *Notwithstanding anything contained in sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the application.*

(5) *Every application to a Court—*

(a) *For stay of execution under this rule ; or*

(b) *For execution of a decree under rule 8—*

shall be made by petition, in which the judgment-creditor, or the judgment-debtor, as the case may be, shall be named respondent.

Security in case of order for execution of decree appealed from.

8. (1) *Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been 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, or the Supreme Court may for like cause direct the Court which passed the decree to take such security.*

This rule reproduces the second and third paragraphs of s. 763 of the old Code, amended in accordance with r. 6 of O. 41 of the new Indian Code.

(2) *Where an order has been made for the sale of immovable property in execution of a decree, and an appeal is pending against such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.*

Exception in favour of Government.

9. *No such security in appeal shall be required from the Crown or, where the 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.*

This rule reproduces, with verbal amendments, s. 764 of the old Code.

Exercise of powers in appeal from order made in execution of decree.

10. *The powers conferred by rules 7 and 8 shall be exercisable where an appeal may be or has been preferred, not from the decree, but from an order made in execution of such decree.*

This rule is new, and is taken from r. 8 of O. 41 of the new Indian Code.

Security for cost of appeal.

Procedure on Admission of Appeal.

11. (1) *Where a petition of appeal has been received by the Court under rule 4, the appellant shall forthwith give notice to the respondent or his proctor that he will on a day specified in such notice tender security for the respondent's costs of appeal, and deposit a sum sufficient to cover the expenses of serving notice of the appeal on the respondent.*

This rule reproduces s. 756 of the old Code, completely re-drafted. The words "or his proctor" in sub-rule (1) give effect to the decision in *Perera v. Hendrick*, (1906) 1 A. C. R. 25.

(2) *The security shall be perfected and the deposit made within a period of twenty clear days, or where the Court of first instance is a Court of Requests, fourteen clear days (excluding in either case Sundays and public holidays), from the date of the decree or order appealed from.*

By sub-rule 4 (b) further particulars are required to be included in the certificate in appeal for practical reasons.

(3) *On the day specified in the notice, the respondent may show cause (if any) against such security being accepted.*

(4) *Where the security is accepted and the deposit made within such period as aforesaid, the Court shall immediately issue notice of the appeal, together with a copy of the petition of appeal, to*

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be furnished to Court for that purpose by the appellant to the Fiscal for service on the respondent or on his proctor, and shall forward to the Supreme Court the petition of appeal, together with—

- (a) All the papers and proceedings in the case relevant to the decree or order appealed from ; and
- (b) A certificate in Form No. 5 in Appendix G from the secretary or chief clerk of the Court, stating the date of the institution of the action, the nature of the action and the amount involved, the date of the decision of the case, in whose favour it was decided, the respective days on which the petition of appeal was filed and the security given, and whether either the plaintiff sued or the defendant was sued in formá pauperis.

(5) 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 (No. 1 of 1889), provided, the petition of appeal shall be presented to the Supreme Court within ten clear days, and the security and deposit required by sub-rule (1) of this rule shall respectively be perfected and made within fourteen clear days from the date of the decree or order appealed against, the provisions of this rule and of rule 12 as to notice on the respondent, the giving and the form of security, and the making of the deposit shall, so far as may be applicable, apply, and the Registrar shall proceed in the manner directed by rule 13.

(6) The Fiscal's return to process issued under this rule shall—

- (a) Whenever it is received by the Court of first instance be transmitted to the Supreme Court ; or
- (b) Where the appeal is from the decision of a Judge of the Supreme Court sitting alone be made to the Registrar of such Court and filed by him with the proceedings in appeal.

(7) Where a petition of appeal has been received under rule 4, but the appellant has failed to give the security and to make the deposit provided for by this rule, the petition of appeal shall abate.

12. The security to be required from a party appellant shall be—

- (a) By bond in Form No. 6 in Appendix G with one or more good and sufficient sureties ; or
- (b) By mortgage of immovable property ; or
- (c) By deposit and hypothecation by bond of a sum of money sufficient to cover the costs of the appeal or of the original action or application, or of both, as the Court may think fit.

Procedure on Hearing of Appeal.

13. (1) Where a petition of appeal has been transmitted to the Supreme Court under rule 11, sub-rule (4), or presented to and admitted by the Supreme Court under sub-rule (5) of that rule, the Registrar shall, unless the Court otherwise orders, number the petition and enter the appeal in the Register of Appeals for hearing, and the appeal shall come on for hearing in due course without any special notice to the parties concerned.

(2) A list of the appeals pending before the Court in their order on the Register or of a sufficient number of them to constitute a general notice to the respective parties thereto shall be daily kept affixed in some convenient place on the Court premises.

(3) No appeal shall, without the consent of all parties thereto or their respective proctors, come on for hearing until it has been in such list, in the case of appeals from District Courts for fourteen, or in the case of appeals from Courts of Requests for seven, days.

(4) Notwithstanding anything in sub-rule (1) or sub-rule (3) contained, the Court may of its motion or on the application of any party or parties after such notice (if any) as the Court deems reasonable, accelerate or postpone the hearing of an appeal, upon such terms (if any) as to the prosecution or the costs of the appeal, or otherwise, as it may think fit.

(5) (a) The appellant shall furnish to the Registrar, for the use of each of the Judges who shall sit on the hearing of the appeal, a printed or typewritten copy of so much of the record of the case as may be necessary for the decision of the appeal.

(b) The costs of such copies shall be costs in the appeal, and shall be dealt with accordingly.

(6) (a) The Registrar shall, upon the application in writing of any party to the action or proceeding, supply him with typewritten copies of the whole or such part of the record as may be specified in such application, upon payment of the fees prescribed in Appendix J.

Security to be by bond and with surety.

Hearing of appeal.

This rule reproduces, with amendments, s. 757 of the old Code.

Or of the original ft. This clause is adapted from r. 10 (1) of O. 41 of the new Indian Code.

Sub-sections (1)-(4) of this rule reproduce s. 768 of the old Code, completely re-drafted.

Sub-rules (5), (6), and (7) reproduce, with verbal amendments, rules 1, 2, and 3 respectively of the Civil Appellate Rules, 1908.

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Provided that where the record is exceptionally voluminous, the Registrar may require for such copies payment of a higher charge, not exceeding by more than one-half the rates set forth in the said Appendix.

Provided also that where more than one copy is applied for, the Registrar may charge for each such additional copy at the higher rate in the last proviso mentioned.

(b) Such payment shall be made by stamps to be affixed to the application, and every such application shall state the value of the subject-matter and the nature of the action or proceeding in respect of which the application is made.

(7) If the appellant shall not lodge with the Registrar the copies mentioned in sub-rule (5), sub-head (a), or duly make an application therefor under sub-rule (6), within one month from the date of the receipt of the petition of appeal in the Supreme Court Registry, or within such further time as the Court or a Judge shall in the circumstances consider reasonable, the Court or Judge may order the appeal to be dismissed.

Right to begin.

14. (1) *On the day fixed for the hearing of the appeal, or any other day to which such hearing may be adjourned, the appellant shall be heard in support of the appeal.*

(2) *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.*

Dismissal of appeal for appellant's default.

Hearing appeal *ex parte*.

15. (1) *Where 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.*

(2) *Where the appellant appears, and the respondent does not appear, the appeal may be heard *ex parte*.*

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

Power of Court to adjourn hearing.

16. (1) *Where on the day fixed for the hearing of the appeal, or on any other day to which such hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the costs of serving the notice, the Court may make an order that the appeal be dismissed.*

Provided that no such order shall be made, although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

(2) *Where on the day aforesaid the respondent is not present, but the Court is not satisfied that the notice of appeal was served upon him or his proctor, or where it appears to the Court, on such day, that any person who was a party to the action in the Court from whose decree the appeal is taken, but who has not been made a party to the appeal, ought to be made a party thereto, the Court may adjourn the hearing to a future day, to be fixed by it, and direct, as the case may be, that notice of appeal be re-issued for service on the respondent, or that the person not a party to the appeal be made a party thereto, and be served with notice of such appeal.*

Re-admission of appeal dismissed for default.

Re-hearing on application of respondent against whom *ex parte* decree made.

Upon hearing respondent may object to decree as if he had preferred separate appeal.

17. *Where an appeal is dismissed under rule 15 or rule 16, sub-rule (1), the appellant may apply to the Supreme Court for the re-admission of the appeal; and where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, or from depositing the sum required, the Court may re-admit the appeal on such terms as to costs or otherwise as it thinks fit.*

18. *Where an appeal is heard *ex parte*, and judgment is pronounced against the respondent, he may apply to the Supreme Court to re-hear the appeal; and if he satisfies the Court that the notice of appeal was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.*

19. (1) *Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-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 cross-objection.*

(2) *Such cross-objection shall be in the form prescribed under rule 1, sub-rule (3), sub-head (d), and shall be filed, together with a written acknowledgment of the receipt of the notice specified in sub-rule (1), within fourteen days from the date of the service of the notice of appeal on the respondent.*

This rule reproduces, with amendments, the first paragraph of s. 769 of the old Code.

Sub-rule (1) reproduces, with verbal amendments, the second paragraph of s. 769 of the old Code. Compare r. 17 (1) of O. 41 of the new Indian Code.

Sub-rule (2) is new, and is taken from r. 17 (2) of the new Indian Code.

Sub-rule (1) is new, and is taken from r. 18 of O. 41 of the new Indian Code.

Sub-rule (2) reproduces, with numerous amendments, s. 770 of the old Code. Compare r. 20 of O. 41 of the new Indian Code. It absorbs the proviso to s. 769 of the old Code.

This rule is taken from r. 19 of O. 41 of the new Indian Code.

This rule reproduces s. 771 of the old Code, amended in accordance with r. 21 of O. 41 of the new Indian Code.

This rule is founded on s. 772 of the old Code.

Sub-rules (3) and (4) are new, and are adapted from r. 22 (4) and (5) of O. 41 of the new Indian Code.

In sub-rule (1) the words "upon the hearing" have been omitted. Sub-rule (3) has been introduced in order to give effect to the decision of the Supreme

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(3) Where, in any case in which any respondent has under this rule given notice of a cross-objection, the original appeal is withdrawn or dismissed for default, such cross-objection may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(4) The provisions of rules 28 and 29 of this Order as to pauper appeals shall, so far as they can be made applicable, apply to a cross-objection under this rule.

Judgment when and where pronounced.

20. (1) On the termination of the hearing of the appeal, the Supreme Court shall pronounce judgment in open Court either at once or on some future day, of which notice shall be given to the parties or their counsel.

(2) The provisions of Order XXII., rule 1 (2), shall be applicable to every judgment of the Supreme Court pronounced under sub-rule (1).

Contents, date, and signature of judgment.

21. The judgment which shall be given or taken down in writing, and shall be signed and dated by the Judge, 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 for the decision ;
- (d) Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Decree in Appeal.

Date and contents of decree.

22. (1) 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 ; and shall bear the date of the day on which the judgment was pronounced.

- (2) The decree shall contain the following particulars :
 - (a) The heading " In the Supreme Court " ;
 - (b) The Court numbers and title of the appeal ;
 - (c) The names and descriptions of the appellant and respondent cited ;
 - (d) A clear specification of the relief granted or other adjudication made.

(3) The decree shall also state by what parties, and in what proportions, and out of what property, the costs of the action and of the appeal are to be paid.

(4) The decree shall be sealed with the seal of the Court.

Return of case to Court of first instance.

23. Whenever the decree has been sealed, all the proceedings in the case transmitted to the Supreme Court on appeal, together with the petition of appeal and 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 decree in appeal.

24. Where a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this Order desires to obtain execution of the same, he shall apply to the Court which passed the decree appealed from ; 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.

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Court in *Palingu Menika v. Banda*, (1908) 11 N. L. R. 110. Section 773 of the old Code, as to the powers of the Supreme Court in appeal, has been transferred to the Ordinance. See s. 52.

The provisions of s. 40 of the Courts Ordinance, 1889, referred to in s. 773 of the old Code, are sufficiently wide to dispense with any necessity for the insertion in these rules (as in rr. 24-29 of O. 41 of the new Indian Code) of provisions as to the admission of new evidence on appeal.

Sub-rule (1) reproduces, with verbal amendments, the first paragraph of s. 774 of the old Code, omitting an unnecessary clause providing that each Judge might, if he so desired, pronounce a separate judgment.

Sub-rule (2) is new, and extends to the Supreme Court the power given to Courts of first instance by O. 22, r. 1 (2), to state the effect of a written judgment instead of reading it in full. See notes to that rule.

This rule reproduces, with verbal amendments, the second paragraph of s. 774 of the old Code.

Judge. Judgments in appeal are signed by the Judge. The copy which is sent with the record to the Court of first instance is signed by the Registrar. Section 775 of the old Code, as to re-hearing appeals has been transferred to the Ordinance. See s. 53.

This rule reproduces the first, second, and third paragraphs of s. 776 of the old Code, with verbal amendments partly taken from r. 35 of O. 41 of the new Indian Code.

This rule reproduces, with verbal amendments, the last paragraph of s. 776 of the old Code.

This rule reproduces, with verbal amendments, s. 777 of the old Code. See *Muttiah Chetty v. Mohammodu*, (1904) 1 Bal. 124.

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Appeal notwithstanding Lapse of Time.

Appeal notwithstanding lapse of time.

25. The Supreme Court may admit a petition of appeal from any decree or order of any Court of original civil jurisdiction, although such petition of appeal has not been presented, or the security for the costs of the appeal perfected, or the deposit for the costs of serving notice of appeal made, within the periods prescribed by rules 4 and 11 respectively, where it is satisfied—

- (a) That the petitioner was prevented by causes not within his control from complying with the provisions of those rules ; and
- (b) That the petitioner has a good ground of appeal ; and
- (c) That nothing has occurred since the date when the decree or order appealed from was passed or made to render it inequitable to the judgment-creditor that such decree or order appealed from should be disturbed.

This rule reproduces, with amendments, s. 765 of the old Code.

Petition therefor.

26. (1) In every such petition of appeal 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 admitted, which are prescribed by rule 25, are fulfilled.

This rule reproduces, with verbal amendments, s. 766 of the old Code.

To be presented immediately to the Supreme Court.

(2) 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 of the *subject-matter* of the appeal shall contain a prayer that the appeal may be admitted notwithstanding the lapse of time.

Order of Supreme Court thereon.

27. (1) On any such petition being forwarded to the Supreme Court, the question whether or not it ought to be admitted shall be determined according to the provisions of rule 5, sub-rule (1), sub-head (b), of Order XXVI., and for this purpose the jurisdiction of the Court may be exercised by a single Judge thereof.

This rule reproduces s. 767 of the old Code, with amendments.

(2) Where the Supreme Court is satisfied that the conditions prescribed in rule 25 of this Order 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.

(3) Where a petition of appeal is admitted under sub-rule (2)—

- (a) Where the Court of first instance is the Supreme Court, the Registrar shall proceed as in rule 11, sub-rule (5), provided ; and
- (b) 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 in the action in which the decree or order appealed from was passed.

(4) Where 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 it just.

Pauper Appeals.

Who may appeal as pauper.

28. (1) Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay for the stamps required for the petition of appeal, may present an application to the Supreme Court accompanied by a petition of appeal, and may be allowed to appeal as a pauper, subject, in all matters including the presentation of such application, to the provisions relating to actions by and against paupers, in so far as those provisions are applicable.

This rule is based on s. 778 of the old Code, amended in accordance with Order XLIV. of the new Indian Code.

Subject applicable. Under the old Code the reference was to appeals for leave to appeal notwithstanding lapse of time. The present provision seems better.

Provided also that no person allowed to appeal as a pauper shall be required to give security for the costs of such appeal.

(2) The Court shall reject the application, unless upon a perusal thereof, and of the judgment and decree appealed from, it sees reason to think that the decree appealed from is a proper subject for appeal.

Inquiry into pauperism.

29. The inquiry into the pauperism of the applicant may be made either by the Supreme Court or, under the orders of the Supreme Court, by the Court from whose decision the appeal is preferred.

For the alteration in the procedure on an inquiry into pauperism, see O. 38, r. 7, and the explanatory note thereto.

Provided that if the applicant was allowed to sue as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary unless the Supreme Court sees special cause to direct such inquiry.

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Appeals to the King in Council.

Amount in respect of which an appeal lies as of right.

1. Subject to the provisions of these rules, an appeal shall lie—

- (a) As of right, from any final judgment of the Court, where the matter in dispute on the appeal amounts to or is of the value of Rs. 5,000 or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value Rs. 5,000 or upwards.

Provided that, for the purpose of ascertaining the amount in dispute within the meaning of this sub-head, the Court shall ascertain by an examination of the record of the action and of the appeal, and by such further inquiry, if any, as it may deem necessary, the real amount in dispute between the parties, and shall not be bound in the case of a plaintiff-appellant, to have regard only to the value stated in the plaint or in respect of which stamp duty has been paid.

Appeals at the discretion of the Court.

- (b) At the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if in the opinion of the Court the question involved in the appeal is one which by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

Application for leave to appeal.

2. Application to the Court for leave to appeal shall be made by petition in Form No. 11 in Appendix G within thirty days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application, and shall file with his petition a written acknowledgment from the opposite party of having received such notice.

Security to be given by appellant.

3. (1) Leave to appeal under rule 1 shall only be granted by the Court in the first instance—

- (a) Upon condition of the appellant, within a period to be fixed by the Court, but not exceeding three months from the date of the hearing of the application for leave to appeal, entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding Rs. 3,000 for the due prosecution of the appeal, and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal (as the case may be).
- (b) Upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

Security for costs of appeal.

(2) The security to be given by the applicant under sub-head (a) shall be by deposit of a sum of Rs. 3,000 with the Registrar and hypothecation thereof by bond in Form No. 12 in Appendix G, or in such other form as the Court shall, on application made after notice to the other side, approve.

Deposit to meet costs of transcribing, &c.

(3) (i.) The applicant on obtaining conditional leave to appeal, either shall deposit with the Registrar a sum of Rs. 300 in respect of the amounts and fees mentioned in sub-heads (b) and (c) of sub-section (2) of section 56 of the Ordinance, or may apply in writing to the Registrar, stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees, and thereafter deposit the estimated sum with the Registrar.

(ii.) If it appears at any time that the Rs. 300 or the estimated sum is not or will not be sufficient, the Court, or a Judge in Chambers, may, on the application of the Registrar, on notice to the applicant, require any further sum to be deposited.

(iii.) The deposit shall be made within three months from the date of the hearing of the application for leave to appeal.

(iv.) Any balance of the deposit, after payment of the said amounts and fees, shall, on application therefor by the depositor, be repaid to him by the Registrar.

This is S. R., r. 1. The proviso meets the difficulty pointed out in *Muniasinghe v. Mentho Fernando*, (1912) S. C. Mins., June 7, 1912.

This is S. R., r. 2. The reference to the Form depends on 1910, r. 18, and Schedule II. (a).

Sub-rule (1) is taken from S. R., r. 3; sub-rules (2) and (3) from 1910, rr. 5 and 6.

* This Order reproduces the rules scheduled to the Appeals (Privy Council) Ordinance, 1909 (No. 31 of 1909), and the Appellate Procedure (Privy Council) Order, 1910, with amendments in drafting and otherwise. The necessary sections of the Appeals (Privy Council) Ordinance, 1909, have been incorporated in the Ordinance. In the notes to these rules, S. R. stands for the rules scheduled to Ordinance No. 31 of 1909; 1910 for the Order of 1910.

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Revocation of acceptance of security.

4. At any time before giving final leave to appeal the Court may, upon cause shown, revoke the acceptance of any such security and make further direction thereon.

This is S. R., r. 4.

Application for final leave to appeal.

5. (1) Application for final leave to appeal shall be by petition in Form No. 13 in Appendix G, and such petition shall state how the conditions prescribed by rule 3 have been complied with.

This is 1910, r. 7.

(2) The applicant shall give the opposite party notice of his intention to apply for final leave to appeal, and shall file with his petition a written acknowledgment from the opposite party of having received such notice.

Documents to be included in record.

6. The appellant shall, within ten days after obtaining final leave to appeal, serve on the respondent a list of all such documents as he shall consider necessary for the due hearing of the appeal; and the respondent shall, within five days after the receipt of such list, return it to the appellant, having first added to it any other documents that he may consider necessary for the hearing of the appeal, and notified thereon which (if any) of the documents in the appellant's list he considers to be unnecessary; and the appellant shall, within three days after the return of such list, lodge it with the Registrar, having first notified in like manner which (if any) of the documents added by the respondent he considers to be unnecessary.

This is 1910, r. 8.

Power to order further security.

7. Where at any time after final leave to appeal is allowed, but before the transmission of the copy of the record to His Majesty in Council, the security furnished under rule 3 appears inadequate, the Court may order the appellant to furnish within a specified time other and sufficient security.

This is S. R., r. 5.

Failure to comply with order.

8. (1) Where 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 His Majesty in Council, and in the meantime execution of the decree appealed against shall not be stayed.

Sub-rule (1) is S. R., r. 6.
Sub-rule (2) is 1910, r. 10.

Where conditions not complied with, Registrar not to forward record to Privy Council without order of Court.

(2) Where any other conditions imposed under rule 3 or prescribed by this Order have not been complied with, the Registrar shall not transmit the record to the Privy Council until the appellant has obtained an order for the transmission thereof from the Court.

Judgment to be executed on security being given for restitution.

9. Where the judgment appealed from requires the appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal, to direct that the said judgment shall be carried into execution if the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such order as His Majesty in Council shall think fit to make thereon.

This is S. R., rr. 7 and 8.

Court may stay execution on appellant giving security.

Provided, nevertheless, that where the appellant shall establish to the satisfaction of the Court that real and substantial justice requires that, pending such appeal, execution should be stayed, the Court may order the execution of such judgment to be stayed, if the appellant shall give sufficient security for the due performance of such order as His Majesty in Council shall think fit to make thereon.

Security when not required in case of immovable property.

10. Where the subject of litigation consists of immovable property, and the judgment appealed from does not change, affect, or relate to the actual occupation thereof, no security shall be demanded, either from the respondent or appellant, for the performance of the judgment to be pronounced or made upon such appeal; but if such judgment changes, affects, or relates to the occupation of any such property, then such security shall not be of greater amount than may be necessary, to secure the restitution free from all damage or loss of such property or of the intermediate profit which, pending any such appeal, may probably accrue from the intermediate occupation thereof.

This is S. R., r. 9.

Security in case of movable property.

11. Where the subject of litigation consists of money or other chattels, or of any personal debt or demand, the security to be demanded either from the respondent or appellant, for the performance of the judgment to be pronounced or made upon such appeal shall be either a bond to be entered into in the amount or value of such subject of litigation by one or more sufficient surety or sureties, or such security shall be given by way of mortgage or voluntary condemnation of or upon some immovable property situate and lying within the Colony and being of the full value of such subject of litigation over and above the amount of all mortgages and charges of whatever nature upon or affecting the same.

This is S. R., r. 10.

Preparation of record subject to supervision of Court.

12. The preparation of the record shall be subject to the supervision of the Court and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

This is S. R., r. 11.

ORDER XLV.

NOTES.

- Exclusion of documents from record.*
13. *The Registrar as well as the parties and their proctors shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject-matter of the appeal and generally to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the record.*
- This is S. R., r. 12.
- Objection to inclusion of any document.*
14. *Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant, and the other party nevertheless insists upon its being included, the record as finally printed (whether in Ceylon or England) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.*
- This is S. R., r. 13.
- Printing of record.*
15. *The record shall be printed in accordance with the Rules set forth in Part I. of Appendix K, and may be so printed either in Ceylon or in England.*
- This is S. R., r. 14.
- Procedure when record is printed in Ceylon.*
16. *Where the record is printed in Ceylon—*
- (a) *The appellant shall deliver the prints thereof to the Registrar for examination and certification within two months after obtaining final leave to appeal; and*
- (b) *The Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council forty copies of such record, one of which copies he shall certify to be correct by signing his name on or initialling every eighth page thereof, and by affixing thereto the seal of the Court.*
- This rule combines 1910, r. 9 and S. R., r. 15.
- Procedure when record is to be printed in England.*
17. (1) *Where the record is to be printed in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case.*
- (2) *No other certified copies of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.*
- This is S. R., r. 16.
- Procedure where part of record is printed in Ceylon and part is to be printed in England.*
18. *Where part of the record is printed in Ceylon and part is to be printed in England, rules 16 and 17 shall, as far as practicable, apply to such parts as are printed in Ceylon and such as are to be printed in England respectively.*
- This is S. R., r. 17.
- Reasons for judgment of Court to be despatched.*
19. *The reasons given by the Judge, or any of the Judges, for or against any judgment pronounced in the course of the proceedings out of which the appeal arises shall by such Judge or Judges be communicated in writing to the Registrar, and shall by him be transmitted to the Registrar of the Privy Council at the same time when the record is transmitted.*
- This is S. R., r. 18.
- Consolidation of appeals.*
20. *Where there are two or more applications for leave to appeal arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated, and grant leave to appeal by a single order.*
- This is S. R., r. 19.
- Withdrawal of appeal before final leave to appeal is allowed.*
21. *An appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his appeal on such terms as to costs and otherwise as the Court may direct.*
- This is S. R., r. 20.
- Delay of appellant in getting final leave to appeal.*
22. *Where an appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such order, fails thereafter to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, of its own motion or on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal, notwithstanding the appellant's compliance with the conditions imposed by such order, order that the appeal do abate, and give such directions as to the costs of the appeal and the security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.*
- This is S. R., r. 21.

ORDER XLV.

NOTES.

Application for final leave to appeal.

23. Notwithstanding anything contained in sub-rule (2) of rule 5 of this Order, the Court may, on an application for final leave to appeal, inquire whether notice or sufficient notice of the application has been given by the appellant to all parties concerned, and, if not satisfied as to the notices given, may defer the granting of final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

This is S. R., r. 22.

Prosecution of appeal after final leave to appeal has been given.

24. An appellant who has obtained final leave to appeal shall prosecute his appeal in accordance with the rules for the time being regulating the general practice and procedure in appeals to His Majesty in Council.

This is S. R., r. 23.

Withdrawal of appeal after final leave to appeal has been given.

25. Where an appellant, having obtained final leave to appeal, desires, prior to the despatch of the record to England, to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express order of His Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

This is S. R., r. 24.

Delay of appellant in getting record despatched to England.

26. Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the despatch of the record to England, the respondent may, after giving the appellant due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate, the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express order of His Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

This is S. R., r. 25.

Death or change of status of a party to the appeal before the despatch of the record to England.

27. Where at any time between the order granting final leave to appeal and the despatch of the record to England the record becomes defective by reason of the death, or change of status, of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of, or in addition to, the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express order of His Majesty in Council.

This is S. R., r. 26.

Death or change of status of a party to the appeal after the despatch of the record to England.

28. Where the record subsequently to its despatch to England becomes defective by reason of the death, or change of status, of a party to the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in the place of, or in addition to, the party who has died or undergone a change of status.

This is S. R., r. 27.

Applications under rules 27 and 28.

29. Before making an order on an application under rule 27 or rule 28, the Court may refer the application to the Court of original jurisdiction in which the action was brought to inquire and report who is the proper person to be substituted or entered on the record in place of, or in addition to, the party who has died or undergone a change of status.

This is 1910, r. 11.

Printing of case.

30. The case of each party to the appeal may be printed either in Ceylon or in England, and shall, in either event, be printed in accordance with the Rules set forth in Part I. of Appendix K, every tenth line thereof being numbered in the margin, and shall be signed by at least one of the counsel who attends at the hearing of the appeal, or by the party himself if he conducts his appeal in person.

This is S. R., r. 28.

Further provisions.

31. The case shall consist of paragraphs numbered consecutively, and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the same, and the reasons of appeal. References by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed in the margin, and care shall be taken to avoid as far as possible, the reprinting in the case of long extracts from the record. The taxing officer, in taxing the cost of the appeal, shall, either of his own motion or at the instance of the opposite party, inquire into any unnecessary prolixity in the case, and shall disallow the costs occasioned thereby.

This is S. R., r. 29.

ORDER XLV.

NOTES.

Taxation of costs.

32. (1) Where the Judicial Committee directs a party to bear the costs of an appeal incurred in Ceylon, such costs shall be taxed by the proper officer of the Court in accordance with the Rules for the time being regulating the taxation of costs.

This combines S. R., r. 30, and 1910, r. 12.

Fees and amounts payable for transcribing, &c., the record.

(2) The amounts and fees payable under sub-heads (b) and (c) of sub-section (2) of section 56 of the Ordinance shall be in accordance with the scale in Part II. of Appendix K, and shall be allowed on taxation.

Execution of judgment of His Majesty in Council.

33. Any order which His Majesty in Council may think fit to make on an appeal from a judgment of the Court may be enforced and executed in manner hereinafter appearing :

This is S. R., r. 31.

(i.) Whoever desires to enforce or obtain execution of any order of His 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 Court.

(ii.) 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 His Majesty to the Court which made such decree, or to such other Court as His Majesty by His 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.

Notices.

34. (1) A party who is required under these rules to serve any notice may himself serve it or cause it to be served, or may apply by motion in Court before a single Judge for an order that it may be issued by and served through the Court ; and in the latter case he shall within two days after obtaining the order, lodge in the Registry a notice in duplicate prepared for the Registrar's signature and duly stamped.

This is 1910, r. 3.

(2) The notice may be served either on the party or on his proctor.

Appointments of proctors to be filed in the Registry.

35. A party to an application under these rules, whether applicant or respondent, shall, unless he appears in person, file in the Registry a document in writing appointing a proctor of the Supreme Court to act for him in connection therewith ; provided nevertheless that, if he has already filed in the Registry a writing appointing a proctor to act for him for the purposes of the original appeal to the Court, and empowering him to act under this Order, no further appointment shall be required.

This is 1910, r. 4.

Stamp on certificate of appeal.

36. Stamps for the duty payable in respect of the Registrar's certificate in appeal to the King in Council shall be lodged by the party applying for leave to appeal at the same time at which he gives security for the prosecution of his appeal.

This is 1910, r. 13.

Applications in Chambers.

37. All applications to enlarge or abridge the time prescribed by this Order or by any order made thereunder, and all applications for payment out of money deposited in Court, may be made to a single Judge in Court or in Chambers. All applications in Chambers must be by motion in writing, and may be supported or opposed by the proctors representing the parties.

This is 1910, r. 14.

Minute Book.

38. There shall be kept in the Registry a book in which shall be entered in order of date under the head of each action a record of all proceedings taken and things done under this Order from the filing of the application for leave to appeal ; and the book may be inspected by the parties or their proctors.

This is 1910, r. 15.

Extension of time.

39. The Court may, for good cause, extend the time allowed by this Order for doing any act, notwithstanding that the time has expired.

This is 1910, r. 16.

A Court of two Judges may refer a matter to a Court of three Judges and a single Judge to two Judges.

40. A Court consisting of not less than two Judges may refer any matter before it arising under this Order to a Court of not less than three Judges ; and a single Judge whether sitting in Court or in Chambers may refer any such matter before him to a Court of not less than two Judges.

This is 1910, r. 2.

ORDER XLVI.

NOTES.

Summary Procedure in respect of Contempt of Court.

Summary procedure in case of contempt.

1. 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 Code to be punishable as contempts of Court, shall be that prescribed by this Order.

This rule reproduces, with verbal amendments, s. 792 of the old Code.

Summons to accused.

2. The Court shall issue a summons to the accused person in Form No. 40 in Appendix H, with such variations as circumstances may require, stating shortly the nature of the alleged offence and the information or grounds upon which the summons is issued, and requiring the accused to appear before the Court on a day named in the summons to answer the charge.

This rule reproduces, with verbal amendments, s. 793 of the old Code.

At time of issue of summons Court may issue warrant of arrest.

3. (1) The Court may together with such summons, or at any time, if it has reason to believe that the attendance of the accused at the time appointed in the summons to answer the charge cannot otherwise be secured, after such summons has been duly issued, issue a warrant for his arrest in Form No. 41 in Appendix H, to the like effect.

This rule reproduces, with verbal amendments, s. 794 of the old Code.

(2) Such warrant shall recite the issuing of the summons, and the day appointed therein for the hearing of the charge, and shall order that the accused after arrest be kept in custody until the day so appointed and be brought on such day before the Court to answer the charge in the summons.

(3) The accused shall at any time after arrest be released from custody upon sufficient security, to an amount endorsed on the warrant by the Court for his appearance in Court on the day named in the summons, being furnished to the officer in whose custody he is.

Contempt in the presence of the Court.

4. Where the alleged contempt is committed in the presence of the Court, the Judge shall record the facts constituting such contempt forthwith, and in such case no summons shall be necessary, but the charge may be heard either at once, or on any subsequent day to which the hearing may be adjourned in the manner provided by rule 5.

This rule is based on s. 795 of the old Code, amended and re-drafted.

Procedure on hearing of charge.

5. (1) 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, the Court shall ask the accused person whether or not he admits the charge; and where the charge is not so admitted shall proceed to take such evidence (if any) as may be necessary to establish the charge, and also the statement of the accused person and any evidence which he may offer in his defence.

This rule is based on ss. 796 and 797 of the old Code, amended and re-drafted.

(2) Where the accused admits the charge, or where, after taking evidence and hearing the defence of the accused, the Court finds the accused guilty, it shall record his conviction in Form No. 42 in Appendix H.

As to sub-rule (3), see *In re Karolis*, (1881) 4 S. C. C. 84.

(3) The conviction shall contain a statement of such facts as suffice to show that the offence charged has been committed.

(4) The sentence passed by the Court shall be recorded on the conviction.

(5) Where the Court finds the accused not guilty of the charge, it shall dismiss the charge, and shall make and record an order to that effect.

Appeal to Supreme Court.

6. (1) An appeal shall lie to the Supreme Court from every order, conviction, or sentence by any Court under this Order.

This rule is founded on s. 798 of the old Code, amended and re-drafted.

(2) A Judge of the Supreme Court sitting alone, as in section 40 of the Courts Ordinance, 1889 (No. 1 of 1889) provided, shall be deemed to be a Court within the meaning of sub-rule (1).

Sub-rule (2) settles a difficulty which was raised, but which it was not necessary to decide in *Rex v. Attygalle* (Kandy, August, 1911, unreported).

No. 15 of 1898.

(3) The procedure on any appeal under this rule shall, so far as is practicable, follow the procedure laid down in the Criminal Procedure Code with reference to appeals from orders made in the ordinary criminal jurisdiction of District and Police Courts.

Procedure for carrying out sentence of Court in case of conviction for contempt. No. 15 of 1898.

7. Every sentence of fine or imprisonment passed by a Court under this Order 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.

This rule reproduces, with amendments in drafting, s. 799 of the old Code.

Section 800, defining the sentences which may be passed under this Order for contempt of Court, has been transferred to the Ordinance. See s. 63.

APPENDICES TO THE FIRST SCHEDULE.

Appendix A.—FORMS OF PLEADINGS.

No. 1.—TITLES OF ACTIONS.

(See Order VI., r. 3.)

In the District Court of _____,

or

In the Court of Requests of _____.

A. B. (*add description and residence*) _____, Plaintiff.

v.

C. D. (*add description and residence*) _____, Defendant.

Note.—See Appendix A (1) of the new Indian Code. In Schedule II., Form 14, of the old Code the title of the action, the description of parties, and the substance of the plaint are combined. It has been thought better to separate them.

No. 2.—DESCRIPTION OF PARTIES IN PARTICULAR CASES.

The Attorney-General.

The A. B. Co., Ltd., having its registered office at _____.

A. B., a firm carrying on business in partnership at _____.

A. B. (*add description and residence*), by his attorney C. D. (*add description and residence*).

A. B. (*add description and residence*), executor or administrator of C. D., deceased.

A. B. (*add description and residence*), heir of C. D., deceased.

A. B. (*add description and residence*), on behalf of himself and all other creditors of C. D., late of (*add description and residence*).

A. B., a minor (*add description and residence*), by C. D. (*add description and residence*), his next friend.

A. B. (*add description and residence*), a person of unsound mind, by C. D. of (*add description and residence*), his next friend.

Note.—See Appendix A (2) of the new Indian Code, and notes to Form No. 1 *supra*.

No. 3.—PLAINTS.

(See Order VII., r. 1.)

Plaints in Ordinary Cases.

(1) Money Lent.

(Title.)

1. On the _____ day of _____, 19—, at _____, the plaintiff lent the defendant _____ rupees, repayable on the _____ day of _____.

2. The defendant has not paid the same, except _____ rupees paid on the _____ day of _____, 19—.

(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. (*Facts showing when the cause of action arose, and that the Court has jurisdiction.*)

5. The value of the subject-matter of the action for the purpose of jurisdiction is _____ rupees, and for the purpose of stamp duty is _____ rupees.

6. The plaintiff claims _____ rupees, with interest at _____ per cent. from the _____ day of _____, 19—.

Note.—See Note to Form No. 1 *supra*. This Form reproduces, with amendments, Form No. 33 (1) in Schedule II. of the old Code; and compare Appendix A (3) of the Indian Code.

(2) Money received to Plaintiff's use.

(Title.)

1. On the _____ day of _____, 19—, at _____, the defendant received _____ rupees (or a cheque on the _____ Bank for _____ rupees) from one *E. F.* for the use of the plaintiff.

2. The defendant has not paid (or delivered) the same accordingly.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (2) in Schedule II. of the old Code.

(3) Price of Goods sold on Commission.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff delivered to the defendant (1,000 barrels of flour, 500 bushels of rice, or as the case may be) for sale upon commission.

2. On the _____ day of _____, 19— (or some day before the plaint was filed), the defendant sold the said goods for _____ rupees.

3. The commission and expenses of the defendant thereon amount to _____ rupees.

4. On the _____ day of _____, 19—, the plaintiff demanded from the defendant the proceeds of the said sale.

5. He has not paid the same.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (3) in Schedule II. of the old Code.

(4) Money received by Defendant through the Plaintiff's Mistake of Fact.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff agreed to buy and the defendant agreed to sell _____ bars of silver at _____ cents per ounce of fine silver.

2. The plaintiff procured the said bars to be assayed by *E. F.*, who was paid by the defendant for such assay, and *E. F.* declared each of the said bars to contain 1,500 ounces of fine silver, and the plaintiff accordingly paid the defendant _____ rupees therefor.

3. Each of the said bars contained only 1,200 ounces of fine silver.

4. The defendant has not repaid the sum so overpaid.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (4) in Schedule II. of the old Code.

(5) Money paid to a Third Party at the Defendant's Request.

(Title.)

1. On the _____ day of _____, 19—, at the request of the defendant, the plaintiff paid to *E. F.* _____ rupees.

2. 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. On the _____ day of _____, 19—, the plaintiff demanded payment of the same from the defendant.

4. The defendant has not paid the same.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (5) in Schedule II. of the old Code.

(6) Goods sold at a Fixed Price and delivered.

(Title.)

1. On the _____ day of _____, 19—, *E. F.* sold and delivered to the defendant (100 barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods).

2. 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. He has not paid the same.

4. *E. F.* died on the _____ day of _____, 19—. By his last will he appointed the plaintiff his executor.

5. On the _____ day of _____, 19—, probate of the said will was granted to the plaintiff by the District Court of _____.

(As in paragraphs 4 and 5 of Form No. (1).)

8. The plaintiff as executor of *E. F.* claims _____.

Note.—This Form reproduces, with verbal amendments, Form No. 33 (6) in Schedule II. of the old Code.

(7) Goods sold at a Reasonable Price and delivered.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff sold and delivered to the defendant (*sundry articles of house furniture*), but no express agreement was made as to the price.
2. The goods were reasonably worth _____ rupees.
3. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (7) in Schedule II. of the old Code.

(8) Goods delivered to a Third Party at Defendant's Request, at a Fixed Price.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff sold to the defendant (*100 barrels of flour*), and, at the request of the defendant, delivered the same to *E. F.*
2. The defendant promised to pay to the plaintiff _____ rupees therefor.
3. He has not paid the same.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (8) in Schedule II. of the old Code.

(9) Goods made at Defendant's Request, and not accepted.

(Title.)

1. On the _____ day of _____, 19—, *E. F.* agreed with the plaintiff that the plaintiff should make for him (*6 tables and 50 chairs*), and that the said *E. F.* should pay for the goods on delivery _____ rupees.
2. The plaintiff made the goods, and on the _____ day of _____, 19—, offered to deliver them to *E. F.*, and has ever since been ready and willing so to do.
3. *E. F.* has not accepted the goods or paid for them.
4. On the _____ day of _____, 19—, the District Court of _____ duly adjudged *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the defendant manager of his estate.

(As in paragraphs 4 and 5 of Form No. (1).)

7. The plaintiff claims _____ rupees, with interest from the _____ day of _____ at the rate of _____ per cent. per annum, to be paid out of the estate of *E. F.* in the hands of the defendant.

Note.—This Form reproduces, with verbal amendments, Form No. 33 (12) in Schedule II. of the old Code. Forms Nos. 33 (9), (10), and (11) have been omitted.

(10) Deficiency upon a Re-sale (Goods sold at Auction).

(Title.)

1. On the _____ day of _____, 19—, the plaintiff put up at auction sundry goods, subject to the condition that all goods not paid for and removed by the purchaser within (*ten days*) after the sale should be re-sold by auction on his account, of which condition the defendant had notice.
2. The defendant purchased (*one crate of crockery*) at the auction at the price of _____ rupees.
3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for (*ten days*) after.
4. The defendant did not take away the goods purchased by him, nor pay for them within (*ten days*) after the sale, nor afterwards.
5. On the _____ day of _____, 19—, the plaintiff re-sold the (*crate of crockery*) on account of the defendant, by public auction, for _____ rupees.
6. The expenses attendant upon such re-sale amounted to _____ rupees.
7. The defendant has not paid the deficiency thus arising, amounting to _____ rupees.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (13) in Schedule II. of the old Code.

(11) Purchase Money of Lands conveyed.

(Title.)

1. On the _____ day of _____, 19—, by deed of transfer No. _____ registered on the _____ day of _____, 19—, the plaintiff sold (and conveyed) to the defendant (the house and compound No. _____, in _____, or a farm known as _____, in _____, or a piece of land lying, &c.).

2. The defendant by the said deed promised to pay the plaintiff ----- rupees for the (house and compound, or farm, or land).

3. He has not paid the money.

(Where there has been no actual conveyance, say in paragraph 1: "sold to the defendant the house, &c., and placed him in possession of the same.")

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (14) in Schedule II. of the old Code.

(12) Purchase Money of Immovable Property contracted to be sold, but not conveyed.

(Title.)

1. On the ----- day of -----, 19—, 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. On the ----- day of -----, 19—, the plaintiff tendered (or was ready and willing, and offered to execute) a sufficient instrument of conveyance of the property to the defendant, and is still ready and willing to execute the same on payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (15) in Schedule II. of the old Code.

(13) Services at a Fixed Price.

(Title.)

1. On the ----- day of -----, 19—, the defendant (hired plaintiff as a clerk, at the salary of ----- rupees per year).

2. From the (said day) until the ----- day of -----, 19—, the plaintiff served the defendant as his (clerk).

3. The defendant has not paid the salary.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (16) in Schedule II. of the old Code.

(14) Services at a Reasonable Price.

(Title.)

1. Between the ----- day of -----, 19—, and the ----- day of -----, 19—, the 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. The services were reasonably worth ----- rupees.

3. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (17) in Schedule II. of the old Code. Compare Appendix A, Form No. 7, of the new Indian Code.

(15) Services and Materials at a Fixed Price.

(Title.)

1. On the ----- day of -----, 19—, the plaintiff (furnished the paper for and printed 1,000 copies of a book called -----) for the defendant at his request (and delivered the same to him).

2. The defendant promised to pay ----- rupees therefor.

3. He has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (18) in Schedule II. of the old Code.

(16) Services and Materials at a Reasonable Price.

(Title.)

1. On the ----- day of -----, 19—, the 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. The work done and materials supplied were reasonably worth _____ rupees.

3. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (19) in Schedule II. of the old Code. Compare Appendix A, Form No. 8, of the new Indian Code.

(17) Rent reserved in a Lease.

(Title.)

1. The plaintiff by deed of lease No. _____, dated _____, and registered _____, let to the defendant a house No. _____, for seven years, from the _____ day of _____, 19____, at _____ rupees a year, payable quarterly.

2. Of such rent _____ quarters are due and unpaid.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, the second alternative Form in No. 33 (20) in Schedule II. of the old Code.

(18) Use and Occupation.

(Title.)

1. The defendant occupied the house (No. _____, _____ Street) by permission of X. Y., from the _____ day of _____, 19____, until the _____ day of _____, 19____, and no agreement was made as to payment for the use of the said premises.

2. The use of the said premises for the said period was reasonably worth _____ rupees.

3. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1).)

6. X. Y. died on the _____ day of _____, having by his last will, dated _____, appointed the plaintiff his executor.

7. On the _____ day of _____, probate of the said will was granted to the plaintiff by the District Court of _____.

8. The plaintiff as executor of X. Y. claims (relief claimed).

Note.—This Form reproduces, with amendments, Form No. 33 (22) in Schedule II. of the old Code. Compare Appendix A, Form No. 9, of the new Indian Code.

(19) Board and Lodging.

(Title.)

1. From the _____ day of _____, 19____, until the _____ day of _____, 19____, 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. In consideration thereof the defendant promised to pay (or no agreement was made as to payment for such board and lodging, but the same was reasonably worth) the sum of _____ rupees.

3. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (23) in Schedule II. of the old Code.

(20) Freight of Goods.

(Title.)

1. On the _____ day of _____, 19____, the plaintiff transported in (his barge, or otherwise) (one thousand barrels of flour or sundry goods), from _____ to _____, at the request of the defendant.

2. The defendant promised to pay the plaintiff the sum of (one rupee per barrel) as freight thereon (or no agreement was made as to payment for such transportation, but such transportation was reasonably worth _____ rupees).

3. The defendant has not paid the same.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (24) in Schedule II. of the old Code.

(21) Passage Money.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff conveyed the defendant (in his ship, called the _____), from _____ to _____, at his request.
2. The defendant promised to pay the plaintiff _____ rupees therefor (or no agreement was made as to the said passage, but the said passage was reasonably worth _____ rupees).
3. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (25) in Schedule II. of the old Code.

(22) On an Award.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff and defendant having a difference between them concerning (a demand of the plaintiff for the price of 10 barrels of oil, which the defendant refused to pay), agreed to submit the same to the arbitration of E. F. and G. H., a copy of which agreement is hereto annexed.
2. On the _____ day of _____, 19—, the arbitrators awarded that the defendant should (pay the plaintiff _____ rupees).
3. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (26) in Schedule II. of the old Code. Compare Appendix A, Form No. 10, of the new Indian Code.

(23) On a Foreign Judgment.

(Title.)

1. On the _____ day of _____, 19—, in the State (or Kingdom) of _____, the _____ Court of that State (or Kingdom), in an action 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. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (27) in Schedule II. of the old Code. Compare Appendix A, Form No. 11, of the new Indian Code.

(24) On a Bond.

(Title.)

1. On the _____ day of _____, 19—, 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 bond should be void.
2. On the _____ day of _____, 19—, the sum of _____ rupees for _____ of the half-yearly payments became due to the plaintiff, and is still unpaid.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (28) in Schedule II. of the old Code.

(25) Payee against Maker of Promissory Note.

(Title.)

1. On the _____ day of _____, 19—, the defendant, by his promissory note, promised to pay to the plaintiff _____ rupees _____ (days) after date.
2. The promissory note is now overdue.
3. The defendant has not paid the same (except _____ rupees, paid on the _____ day of _____, 19—).

(NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute—)

1. On the _____ day of _____, 19—, the defendant, by his promissory note, promised to pay to the plaintiff _____ rupees _____ months after notice.
2. Notice was given on the _____ day of _____ by the plaintiff to the defendant to pay the same _____ months after the said notice.
3. The time for payment has elapsed, but the defendant has not paid the money.

(Where the note is payable at a particular place, say—)

1. On the _____ day of _____, 19—, the defendant, by his promissory note, promised to pay to the plaintiff (at Messrs. A. & Co.'s, Colombo) _____ rupees _____ months after date.

2. The promissory note is now overdue.
3. The note was duly presented for payment (at Messrs. A. & Co.'s), but has not been paid.
(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (29) in Schedule II. of the old Code.

(26) First Indorsee against Maker.

(Title.)

1. On the _____ day of _____, 19—, the defendant, by his promissory note, promised to pay to the order of E. F. (or to E. F. or order) rupees _____ (_____ days after date).
2. E. F. endorsed the same to the plaintiff.
3. The promissory note is now overdue.
4. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (30) in Schedule II. of the old Code.

(27) Subsequent Indorsee against Maker.

(Title.)

1. (As in last preceding Form.)
2. The same was, by the indorsement of E. F. and of G. H. and I. J. (or and others), transferred to the plaintiff.
3. The promissory note is now overdue.
4. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (31) in Schedule II. of the old Code.

(28) First Indorsee against First Indorser.

(Title.)

1. E. F., on the _____ day of _____, 19—, by his promissory note, promised to pay to the defendant, or order _____ rupees _____ months after date.
2. The defendant indorsed the same to the plaintiff.
3. On the _____ day of _____, 19—, the promissory note was duly presented for payment, but was not paid (or state facts excusing want of presentment).
4. The defendant had notice thereof.
5. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (32) in Schedule II. of the old Code.

(29) Subsequent Indorsee against First Indorser, the Indorsement being Special.

(Title.)

1. The defendant indorsed to E. F. a promissory note made (or purporting to have been made) by G. H., on the _____ day of _____, 19—, to the order of the defendant, for the sum of _____ rupees (payable _____ days after date).
2. The promissory note was, by the indorsement of E. F. (and others), transferred to the plaintiff (or that _____ indorsed the note to the plaintiff).
- 3, 4, and 5. (As 3, 4, and 5 of the last preceding Form.)

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (33) in Schedule II. of the old Code.

(30) Subsequent Indorsee against his Immediate Indorser.

(Title.)

1. The defendant indorsed to the plaintiff a promissory note made (or purporting to have been made) by E. F., on the _____ day of _____, 19—, to the order of G. H., for the sum of _____ rupees (payable _____ days after date), and indorsed by G. H. to the defendant.
2. The promissory note is now overdue.
- 3, 4, and 5. (As in 3, 4, and 5 in Form No. (29).)

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (34) in Schedule II. of the old Code.

(31) Subsequent Indorsee against Intermediate Indorser.

(Title.)

1. A promissory note made (or purporting to have been made) by *E. F.*, on the _____ day of _____, 19—, to the order of *G. H.*, for the sum of _____ rupees (payable _____ days after date), and indorsed by *G. H.* to the defendant, was by the indorsement of the defendant (and others) transferred to the plaintiff.

2. The promissory note is now overdue.

3, 4, and 5. (*As in No. (29).*)

(*As in paragraphs 4 and 5 of Form No. (1) and relief claimed.*)

Note.—This Form reproduces, with amendments, Form No. 33 (35) in Schedule II. of the old Code.

(32) Subsequent Indorsee against Maker and First and Second Indorser.

1. On the _____ day of _____, 19—, the defendant, *C. D.*, by his promissory note, promised to pay to the order of the defendant, *E. F.*, _____ rupees (_____ months after date).

2. *E. F.* indorsed the note to the defendant, *G. H.*, who indorsed it to the plaintiff.

3. On the _____ day of _____ 19—, the note was presented (or state facts excusing want of presentment) to *C. D.* for payment, but was not paid.

4. *E. F.* and *G. H.* had notice thereof.

5. They have not paid the money.

(*As in paragraphs 4 and 5 of Form No. (1) and relief claimed.*)

Note.—This Form reproduces, with amendments, Form No. 33 (36) in Schedule II. of the old Code.

(33) Drawer against Acceptor of Bill of Exchange.

(Title.)

1. On the _____ day of _____, 19—, by his bill of exchange, the plaintiff required the defendant to pay to him _____ rupees (_____ days after date or sight, thereof).

2. 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. The bill is now overdue.

4. The defendant has not paid the money.

5. By reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

(NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, and 4, say—)

1. On, &c., at &c., by his bill of exchange drawn upon the defendant, plaintiff required the defendant to pay to *E. F.*, or order, _____ rupees _____ months after date.

2. The plaintiff delivered the bill to *E. F.* on _____.

4. The defendant accepted the said bill, but did not pay the money, whereupon the bill was returned to the plaintiff.

(*As in paragraphs 4 and 5 of Form No. (1) and relief claimed.*)

Note.—This Form reproduces, with amendments, Form No. 33 (37) in Schedule II. of the old Code.

(34) Payee against Acceptor.

(Title.)

1. On the _____ day of _____, 19—, the defendant accepted a bill of exchange made (or purporting to have been made) by *E. F.*, on the _____ day of _____, 19—, requiring the defendant to pay to the plaintiff _____ rupees _____ at sight thereof.

2. The bill is now overdue.

3. The defendant has not paid the money.

(*As in paragraphs 4 and 5 of Form No. (1) and relief claimed.*)

Note.—This Form reproduces, with amendments, Form No. 33 (38) in Schedule II. of the old Code.

(35) First Indorsee against Acceptor.

(Title.)

1. On the _____ day of _____, 19—, the defendant accepted a bill of exchange made (or purporting to have been made) by *E. F.*, on the _____ day of _____, 19—, requiring the defendant to pay to the order of *G. H.* _____ rupees _____ after sight thereof.

2. *G. H.* indorsed the same to the plaintiff.

3. The bill is now overdue.

4. The defendant has not paid the money.

(*As in paragraphs 4 and 5 of Form No. (1) and relief claimed.*)

Note.—This Form reproduces, with amendments, Form No. 33 (39) in Schedule II. of the old Code.

(36) Subsequent Indorsee against Acceptor.

(Title.)

1. (As in the last preceding Form to the end of paragraph 1.)
2. By the indorsement of *G. H.* (and others) the bill was transferred to the plaintiff.
3. The bill is now overdue.
4. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (40) in Schedule II. of the old Code.

(37) Payee against Drawer for Non-acceptance.

(Title.)

1. On the _____ day of _____, 19—, the defendant, by his bill of exchange drawn upon *E. F.*, required *E. F.* to pay to the plaintiff _____ rupees (_____ days after sight).
2. On the _____ day of _____, 19—, the bill was duly presented to *E. F.* for acceptance, and was dishonoured.
3. The defendant had due notice thereof.
4. He has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (41) in Schedule II. of the old Code.

(38) First Indorsee against First Indorser.

(Title.)

1. The defendant indorsed to the plaintiff a bill of exchange, now overdue, made (or purporting to have been made) by *E. F.*, on the _____ day of _____, 19—, requiring *G. H.* to pay to the order of the defendant _____ rupees _____ days after sight (or after date, or at sight) thereof (and accepted by *G. H.* on the _____ day of _____, 19—).
2. On the _____ day of _____, 19—, the bill was presented to the said *G. H.* for payment, and was dishonoured.
3. The defendant had due notice thereof.
4. He has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (42) in Schedule II. of the old Code.

(39) Subsequent Indorsee against First Indorser, the Indorsement being Special.

(Title.)

1. The defendant indorsed to *E. F.* a bill of exchange, now overdue, made (or purporting to have been made) by *G. H.*, on the _____ day of _____, 19—, requiring *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 _____, 19—. (This paragraph may be omitted if not according to the fact.)
2. The bill was, by the indorsement of *E. F.* (and others), transferred to the plaintiff.
3. That on the _____ day of _____, 19—, the bill was presented to *I. J.* for payment, and was dishonoured.
4. The defendant had due notice thereof.
5. He has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (43) in Schedule II. of the old Code.

(40) Subsequent Indorsee against his Immediate Indorser.

(Title.)

1. The defendant indorsed to the plaintiff a bill of exchange, now overdue, made (or purporting to have been made) by *E. F.*, on the _____ day of _____, 19—, requiring *G. H.* to pay to the order of *I. J.* _____ rupees _____ days after sight thereof (or otherwise), (accepted by *G. H.*) and indorsed by *I. J.* to the defendant.
2. On the _____ day of _____, 19—, the bill was presented to *G. H.* for payment, and was dishonoured.
3. The defendant had due notice thereof.
4. He has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (44) in Schedule II. of the old Code.

(41) Subsequent Indorsee against Intermediate Indorser.

(Title.)

1. A bill of exchange, now overdue, made (or purporting to have been made) by *E. F.*, on the _____ day of _____, 19—, requiring *G. H.* to pay to the order of *I. J.* _____ rupees _____ days after sight thereof (or otherwise), accepted by *G. H.* and indorsed by *I. J.* to the defendant, was, by the indorsement of the defendant (and others), transferred to the plaintiff.

2. On the _____ day of _____, 19—, the bill was presented to *G. H.* for payment, and was dishonoured.

3. The defendant had due notice thereof.

4. He has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (45) in Schedule II. of the old Code.

(42) Indorsee against Drawer, Acceptor, and Indorser.

1. On the _____ day of _____, 19—, the defendant, *C. D.*, by his bill of exchange, now overdue, drawn upon the defendant *E. F.*, required *E. F.* to pay to the order of the defendant *G. H.* _____ rupees (_____ days after sight thereof).

2. On the _____ day of _____, 19—, *E. F.* accepted the bill.

3. *G. H.* indorsed the bill to the plaintiff.

4. On the _____ day of _____, 19—, the bill was presented to *E. F.* for payment, and was dishonoured.

5. The other defendants had due notice thereof.

6. They have not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (46) in Schedule II. of the old Code.

(43) Payee against Drawer for Non-acceptance of a Foreign Bill.

(Title.)

1. On the _____ day of _____, 19—, the defendant by his bill of exchange, drawn in (*Colombo*), required *E. F.* to pay to the plaintiff in (*London*) _____ pounds sterling (*sixty days*) after sight thereof.

2. On the _____ day of _____, 19—, the bill was presented to *E. F.* for acceptance, was dishonoured, and was thereupon duly protested.

3. The defendant had due notice thereof.

4. He has not paid the money.

5. (The value of _____ pounds sterling, at the time of the service of notice of protest on the defendant, was _____ rupees and _____ cents.)

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (47) in Schedule II. of the old Code.

(44) Payee against Acceptor.

(Title.)

1. On the _____ day of _____, 19—, *E. F.*, by his bill of exchange, now overdue, drawn upon the defendant, required the defendant to pay to the plaintiff _____ rupees after date (or _____ days after sight) thereof.

2. On the _____ day of _____, 19—, the defendant accepted the said bill.

3. He has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (48) in Schedule II. of the old Code.

(45) 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. On the _____ day of _____, 19—, the defendants, in consideration of _____ rupees to them paid (or which the plaintiff then promised to pay), executed to him a policy of 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. The said ship, while proceeding on the voyage mentioned in the said policy, was on the _____ day of _____, 19—, totally lost by the perils of the sea (or otherwise).

4. The plaintiff's loss thereby was _____ rupees.
5. On the _____ day of _____, 19—, 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. The defendants have not paid the said loss.
(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (49) in Schedule II. of the old Code.

(46) On Cargo lost by Fire (valued Policy).

(Title.)

1. The 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. On the _____ day of _____, 19—, the defendants, in consideration of _____ rupees which the plaintiff then paid (or promised to pay), executed to him a policy of insurance upon the 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 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. On the _____ day of _____, 19—, at _____, while proceeding on the voyage mentioned in the said policy, the 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, and as in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (50) in Schedule II. of the old Code.

(47) On Freight (valued Policy).

(Title.)

1. 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 a large quantity of goods was shipped upon freight in her at that time.
2. On the _____ day of _____, 19—, the defendant, in consideration of _____ rupees to him paid by the plaintiff, 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. The said ship, while proceeding upon the voyage mentioned in the policy, was, on the _____ day of _____, 19—, totally lost by (the perils of the sea).
4. 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. 45.)
(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (51) in Schedule II. of the old Code.

(48) Loss by General Average.

(Title.)

1. The plaintiff was the owner of (or had an interest in) (100 bales of cotton) shipped on board the Y. Z., _____ to _____, at the time of the loss hereafter mentioned.
2. On the _____ day of _____, 19—, 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. On the _____ day of _____, 19—, while proceeding on the voyage mentioned in the policy, the 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. The plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of _____ rupees.
5. On the _____ day of _____, 19—, he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the policy on his part.
6. The defendant has not paid the said loss.
(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (52) in Schedule II. of the old Code.

(49) Particular Average Loss.

(Title.)

1 and 2. (As in the last preceding Form.)

3. On the _____ day of _____, 19—, while on the 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, and paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (53) in Schedule II. of the old Code.

(50) On a Fire Insurance Policy.

(Title.)

1. The plaintiff (was the owner of, or) had an interest in a (dwelling house, known as No. _____, _____ Street, in the _____ of _____), at the time of its destruction (or injury) by fire as hereinafter mentioned.

2. On the _____ day of _____, 19—, in consideration of _____ rupees (to them paid by the plaintiff), 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. On the _____ day of _____, 19—, the said (dwelling house) was totally destroyed (or greatly damaged) by fire.

4. The plaintiff's loss thereby was _____ rupees.

5. On the _____ day of _____, 19—, he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the policy on his part.

6. The defendants have not paid the said loss.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (54) in Schedule II. of the old Code.

(51) Against Surety for Payment of Rent.

(Title.)

1. On the _____ day of _____, 19—, *E. F.* hired from the plaintiff, for the term of _____ years, the (house No. _____, _____ Street, _____) at the annual rent of _____ rupees, payable (monthly).

2. The defendant agreed, in consideration of the letting of the said premises to the said *E. F.*, to guarantee the punctual payment of the rent.

3. The rent for the month of _____, 19—, 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. On the _____ day of _____, 19—, the plaintiff gave notice to the defendant of the non-payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (55) in Schedule II. of the old Code. Compare Appendix A, Form No. 12, of the new Indian Code.

(52) Breach of Agreement to convey Land.

(Title.)

1. On the _____ day of _____, 19—, 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 (10,000) rupees payable as hereinafter mentioned, he would, on the _____ day of _____, 19—, execute to the plaintiff a sufficient conveyance of (the house No. _____, _____ Street, in _____) free from all incumbrances; and the plaintiff agreed to pay (10,000) rupees for the same on delivery thereof.

2. On the _____ day of _____, 19—, the plaintiff demanded the conveyance of the property from the defendant and tendered _____ rupees to the defendant (or, 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. The defendant has not executed any conveyance of the property to the plaintiff (or there is a mortgage upon the property, made by _____ to _____, for _____ rupees, registered in the office of _____, on the _____ day of _____, 19—, and still unsatisfied, or any other defect of title).

4. The plaintiff has thereby lost the use of the money paid by him as deposit, and of other moneys provided by him for the completion of the purchase, and 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 expenses in endeavouring to procure the performance thereof by the defendant.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (56) in Schedule II. of the old Code.

(53) Breach of Agreement to Purchase Land.

(Title.)

1. On the _____ day of _____, 19—, 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 (40 acres of land in the village of _____ for _____ rupees).

2. On the _____ day of _____, 19—, 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 is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument) on the payment by the defendant of the sum agreed upon.

3. The defendant has not paid the money.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (57) in Schedule II, of the old Code. The alternative Form (58) is omitted. Compare Appendix A, Form No. 13, of the new Indian Code.

(54) Non-delivery of Goods Sold.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff and defendant mutually agreed that the defendant should deliver (100 barrels of flour) to the plaintiff (on the _____ day of _____, 19—), and that the plaintiff should pay therefor _____ rupees on delivery.

2. 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. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (59) in Schedule II. of the old Code. Compare Appendix A, Form No. 14, of the new Indian Code.

(55) Wrongful Dismissal.

(Title.)

1. On the _____ day of _____, 19—, 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. On the _____ day of _____, 19—, the plaintiff entered upon the service of the defendant, 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. On the _____ day of _____, 19—, the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (60) in Schedule II. of the old Code. Compare Appendix A, Form No. 15, of the new Indian Code.

(56) Breach of Contract to employ, where the Employment never took place.

(Title.)

1. (As in last preceding Form.)

2. On the _____ day of _____, 19—, the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. The defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (61) in Schedule II. of the old Code.

(57) Breach of Contract to Serve.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an (*annual*) salary of _____ rupees, and that the defendant should serve the plaintiff as (*an artist*) for the term of (*one year*).
2. The plaintiff has always been ready and willing to perform his part of the agreement (and on the _____ day of _____, 19—, offered so to do).
3. The defendant (entered upon) the service of the plaintiff on the above-mentioned day, but afterwards, on the _____ day of _____, 19—, he refused to serve the plaintiff as aforesaid.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (62) in Schedule II. of the old Code. Compare Appendix A, Form No. 16, of the new Indian Code.

(58) Against a Builder for Defective Workmanship.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed (*or state the tenor of the contract.*)
2. The plaintiff duly performed all the conditions of the agreement on his part.
3. The defendant (*built the house referred to in the agreement in a bad and unworkmanlike manner.*)

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (63) in Schedule II. of the old Code. Compare Appendix A, Form No. 17, of the new Indian Code.

Forms Nos. 33 (64), Master against Father or Guardian of Apprentice, and 33 (65), Apprentice against Master, are omitted.

(59) On a Bond for the Fidelity of a Clerk.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff took *E. F.* into his employment as a clerk.
2. In consideration thereof, on the _____ day of _____, 19—, the defendant agreed with the plaintiff that if *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.

(*Or, 2. In consideration thereof, the defendant bound himself to pay to the plaintiff the penal sum of _____ rupees, subject to the condition that if 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 bond should be void, but not otherwise.*)

(*Or, 2. In consideration thereof, the defendant executed a bond in favour of the plaintiff, a copy of which is hereto annexed.*)

3. Between the _____ day of _____, 19—, and the _____ day of _____, 19—, *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.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with amendments, Form No. 33 (66) in Schedule II. of the old Code. Compare Appendix A, Form No. 18, of the new Indian Code.

(60) By Tenant against Landlord, with Special Damage.

(Title.)

1. On the _____ day of _____, 19—, 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. All conditions were fulfilled, and all things happened necessary to entitle the plaintiff to maintain this action.

3. On the _____ day of _____, 19—, during the said term, *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. 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).

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (67) in Schedule II. of the old Code. Compare Appendix A, Form No. 19, of the new Indian Code.

(61) Breach of Warranty of Movables.

(Title.)

1. On the _____ day of _____, 19—, _____, 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. The engine was not then in good working order, the plaintiff incurred expense in having it repaired, and lost the profits which would otherwise have accrued to him while the engine was under repair.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (68) in Schedule II. of the old Code.

(62) On an Agreement of Indemnity.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff and defendant, being partners in trade under the style of *A. B. and C. D.*, dissolved the 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 firm.
2. The plaintiff duly performed all the conditions of the agreement on his part.
3. On the _____ day of _____, 19—, a judgment was recovered against the plaintiff and defendant by *E. F.* in the District Court of _____, upon a debt due from the firm to *E. F.*, and on the _____ day of _____, 19—, the plaintiff paid _____ rupees (in satisfaction of the same).
4. The defendant has not paid the same to plaintiff.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (69) in Schedule II. of the old Code. Compare Appendix A, Form No. 20, of the new Indian Code.

(63) By Shipowner against Freighter for not loading.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.
(Or, 1. On the _____ day of _____, 19—, the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship _____, at _____, on the _____ day of _____, 19—, 500 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. At the time fixed by the agreement the plaintiff was ready and willing, and offered, to receive (the merchandise, or the merchandise mentioned in the agreement) from the defendant.
3. The period allowed for loading and demurrage has elapsed, but the defendant has not delivered the merchandise to the ship.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (70) in Schedule II. of the old Code.

(64) Trespass on Land.

(Title.)

1. On the _____ day of _____, 19—, 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).

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (71) in Schedule II. of the old Code.

(65) Trespass in entering a Dwelling House.

(Title.)

1. On the _____ day of _____, 19—, the defendant entered a dwelling house of the plaintiff called _____, made a noise and disturbance therein, broke open the doors of the dwelling house, removed, took, and carried away the fixtures and goods of the plaintiff therein, disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the dwelling house, and kept them so expelled for _____.
2. The plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling house for himself and his family.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (72) in Schedule II. of the old Code.

(66) Trespass to Movables.

(Title.)

1. On the _____ day of _____, 19—, the defendant broke open 10 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. 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 cows and bullocks are diminished in value to the plaintiff (otherwise state the injury according to the facts).

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (73) in Schedule II. of the old Code.

(67) Conversion of Movable Property.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff was in possession of certain goods described in the schedule hereto annexed (or of 1,000 barrels of flour).

2. On that day the defendant converted the goods to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (74) in Schedule II. of the old Code.

(68) Against a Warehouseman for Refusal to deliver Goods.

(Title.)

1. On the _____ day of _____, 19—, the defendant, in consideration of the payment to him by the plaintiff of _____ rupees (or _____ rupees per barrel, per month, &c.), agreed to keep in his godown (100 barrels of flour), and to deliver the same to the plaintiff on payment of the said sum.

2. The plaintiff deposited with the defendant (the 100 barrels of flour).

3. On the _____ day of _____, 19—, the plaintiff requested the defendant to deliver the goods, and tendered to him _____ rupees (or the full amount of storage due thereon), but the defendant refused to deliver the goods.

4. The plaintiff was thereby prevented from selling the goods to E. F., and the goods are lost to the plaintiff.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (75) in Schedule II. of the old Code.

(69) Procuring Property by Fraud.

(Title.)

1. On the _____ day of _____, 19—, 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. The plaintiff was thereby induced to sell (and deliver) to the defendant (dry goods) of the value of _____ rupees.

3. The said representations were false (or state the particular falsehood), and were then known by the defendant to be so.

4. The defendant has not paid for the goods. (Or, if the goods were not delivered, the plaintiff, in preparing and shipping the goods and procuring their restoration, expended _____ rupees.)

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (76) in Schedule II. of the old Code. Compare Appendix A, Form No. 21, of the new Indian Code.

(70) Fraudulently procuring Credit to be given to another Person.

(Title.)

1. On the _____ day of _____, 19—, the defendant represented to the plaintiff that 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. The plaintiff was thereby induced to sell to E. F. (rice) of the value of _____ rupees (on _____ months' credit).

3. 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 the plaintiff).

4. *E. F.* did not pay for the goods at the expiration of the credit aforesaid (or has not paid for the said rice, and the plaintiff has wholly lost the same).

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (77) in Schedule II. of the old Code. Compare Appendix A, Form No. 22, of the new Indian Code.

(71) Polluting the Water under the Plaintiff's Land.

(Title.)

1. The plaintiff is, and at all 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 well and of the water therein, and to have certain springs and streams of water, which flowed and ran into the well to supply the same, to flow or run without being fouled or polluted.

2. On the _____ day of _____, 19—, the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the 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 well and water.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (78) in Schedule II. of the old Code. Compare Appendix A, Form No. 23, of the new Indian Code.

(72) Carrying on a Noxious Manufacture.

(Title.)

1. The plaintiff is, and at all times hereinafter mentioned was, possessed of certain lands called _____, situate in _____.

2. Ever since the _____ day of _____, 19—, 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 lands.

3. Thereby the trees, hedges, herbage, and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to depasture the 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 lands as he otherwise would have had.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (79) in Schedule II. of the old Code. Compare Appendix A, Form No. 24, of the new Indian Code.

(73) Obstructing a Right of Way.

(Title.)

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of (a house in the village of _____).

2. He was entitled to a right of way from the house over a certain field to a public highway, and back again from the highway over the field to the house, for himself and his servants (with vehicles, or on foot), at all times of the year.

3. On the _____ day of _____, 19—, the defendant wrongfully obstructed the said way, so that the plaintiff could not pass (with vehicles, or on foot, or in any manner) along the way (and has ever since wrongfully obstructed the same).

4. (State special damage, if any.)

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, the First Form in Form No. 33 (80) in Schedule II. of the old Code. Compare Appendix A, Form No. 25, of the new Indian Code.

(74) Obstructing a Highway.

(Title.)

1. 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. 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.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, the Second Form in Form No. 33 (80) in Schedule II. of the old Code. Compare Appendix A, Form No. 26, of the new Indian Code.

(75) Diverting a Water-course.

(Title.)

1. 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. By reason of such possession the plaintiff was entitled to the flow of the stream for working the said mill.
3. On the _____ day of _____, 19—, the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.
4. 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.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (81) in Schedule II. of the old Code. Compare Appendix A, Form No. 27, of the new Indian Code.

(76) Obstructing a Right to use Water for Irrigation.

(Title.)

1. The plaintiff is, and at the time hereinafter mentioned was, 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. 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.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (82) in Schedule II. of the old Code. Compare Appendix A, Form No. 28, of the new Indian Code.

(77) Assault and Battery.

(Title.)

1. On the _____ day of _____, 19—, the defendant assaulted and beat plaintiff.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (84) in Schedule II. of the old Code. Form No. 33 (83), Waste by a Lessee, has been omitted.

(78) Assault and Battery, with Special Damage.

(Title.)

1. On the _____ day of _____, 19—, the defendant assaulted and beat the plaintiff until he became insensible.
2. The plaintiff was thereby disabled from attending to his business for (6 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).

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (85) in Schedule II. of the old Code.

(79) Assault and False Imprisonment.

(Title.)

1. On the _____ day of _____, 19—, the defendant assaulted the plaintiff and imprisoned him for _____ days (or hours); (state special damage, if any, thus :—)

2. By reason thereof the plaintiff suffered great pain of body and mind, was injured in his credit and circumstances, 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).

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (86) in Schedule II. of the old Code.

(80) Injuries caused by Negligence on a Railroad.

(Title.)

1. On the _____ day of _____, 19—, the defendants were common carriers of passengers by railway between _____ and _____.

2. On that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. 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).

(Or thus : 2. 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 paragraph 3.)

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (87) in Schedule II. of the old Code. Compare Appendix A, Form No. 29, of the new Indian Code.

(81) 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 _____ day of _____, 19—, the plaintiff was walking eastward along _____ Street, in Colombo, at about 3 o'clock in the afternoon. He was obliged to cross _____ 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 4 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.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (88) in Schedule II. of the old Code. Compare Appendix A, Form No. 30, of the new Indian Code.

(82) Libel, the Words being Libellous in themselves.

(Title.)

1. On the _____ day of _____, 19—, 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. The said publication was false and malicious.

NOTE.—If the libel was not in 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).”

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (89) in Schedule II. of the old Code.

(83) Libel, the Words not being Libellous in themselves.

(Title.)

1. The plaintiff (is, and) was on and before the _____ day of _____, 19—, a merchant doing business in _____.
2. On the _____ day of _____, 19—, the defendant published in a newspaper, called the _____ (or in a letter addressed to *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. The defendant meant thereby that (the plaintiff had absconded to avoid his creditors, and with intent to defraud them).
4. The said publication was false and malicious.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (90) in Schedule II. of the old Code.

(84) Slander, the Words being actionable in themselves.

(Title.)

1. On the _____ day of _____, 19—, 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. In consequence of the said words, the plaintiff lost his situation as _____ in the employ of _____.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (91) in Schedule II. of the old Code.

(85) Slander, the Words not being actionable in themselves.

(Title.)

1. On the _____ day of _____, 19—, the defendant falsely and maliciously said to *E. F.* concerning the plaintiff: ("He is a young man of remarkably easy conscience").
2. 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. In consequence of the said words (*E. F.* refused to employ the plaintiff as a clerk).

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (92) in Schedule II. of the old Code.

(86) Malicious Prosecution.

(Title.)

1. On the _____ day of _____, 19—, the defendant obtained a warrant of arrest from _____ (Police Magistrate of, 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. In so doing the defendant acted maliciously and without reasonable or probable cause.
3. On the _____ day of _____, 19—, the said Police Magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.
4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him (or in consequence of the arrest, the plaintiff lost his situation as a clerk to *E. F.*, or 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).

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (93) in Schedule II. of the old Code. Compare Appendix A, Form No. 31, of the new Indian Code.

(87) By Owner for the Possession of Immovable Property.

(Title.)

1. *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 city of Colombo, the estimated value of which is _____ rupees).
2. On the _____ day of _____, 19—, *Z.* illegally dispossessed *X. Y.* of the estate (or share, or house).

3. X. Y. has since died intestate, leaving the plaintiff, A. B., his heir him surviving
4. 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.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, the First Form in Form No. 33 (94) in Schedule II. of the old Code.

(88) By Owner against Tenant.

(Title.)

1. On the _____ day of _____, 19—, the plaintiff, by an instrument in writing, let to the defendant a house and premises (No. 52, _____, in the _____) for a term of 5 years from the _____ day of _____, at the monthly rent of _____ rupees.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The instrument contained a clause of re-entry entitling the plaintiff to re-enter upon the house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for 21 days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the _____ day of _____, 19—, a month's rent became due, and on the _____ day of _____, 19—, another month's rent became due ; on the _____ day of _____, 19—, both had been in arrear for 21 days, and both are still due.

5. On the same _____ day of _____, 19—, the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to re-instate the same in good and tenantable 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 _____, 19—, to the day of recovering possession.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, the Second Form in Form No. 33 (94) in Schedule II. of the old Code.

(89) By Tenant.

(Title.)

1. 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. On the _____ day of _____, 19—, E. F. let the said premises to the plaintiff for _____ years, from _____.

3. The defendant withholds the possession thereof from the plaintiff.

(As in paragraphs 4 and 5 of Form No. (1) and relief claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (95) in Schedule II. of the old Code.

(90) Movables wrongfully detained.

(Title.)

1. On the _____ day of _____, 19—, the 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. From that day until the commencement of this action the defendant has detained the same from the plaintiff.

3. Before the commencement of this action, to wit, on the _____ day of _____, 19—, the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff claims :

- (1) Delivery of the said goods, or _____ rupees in case delivery cannot be had ;
- (2) _____ rupees compensation for the detention thereof.

(The Schedule.)

(As in paragraphs 4 and 5 of Form No. (1).)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (97) in Schedule II. of the old Code. Compare Appendix A, Form No. 32, of the new Indian Code.

It has not been thought necessary to retain Form No. 33 (96), Movables wrongly taken.

(91) Against a Fraudulent Purchaser and his Transferee, with Notice.

(Title.)

1. On the _____ day of _____, 19—, 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. The plaintiff was thereby induced to sell and deliver to *C. D.* (100 boxes of tea), the estimated value of which is _____ rupees.
3. The said representations were false, and were then known by the said *C. D.* to be so. (Or, At the time of making the said representations *C. D.* was insolvent, and knew himself to be so.)
4. *C. D.* afterwards transferred the goods to the defendant *E. F.* without consideration (or who had notice of the falsity of the representation).

The plaintiff claims :

- (1) Delivery of the said goods, or _____ rupees in case such delivery cannot be had ;
- (2) _____ rupees compensation for the detention thereof.

(As in paragraphs 4 and 5 of Form No. (1).)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (98) in Schedule II. of the old Code. Compare Appendix A, Form No. 33, of the new Indian Code.

(92) Rescission of a Contract on the Ground of Mistake.

(Title.)

1. On the _____ day of _____, 19—, the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at _____, contained (10 acres).
2. 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 agreement, of which a copy is hereto annexed. But the land has not been transferred to him.
3. On the _____ day of _____, 19—, the plaintiff paid the defendant _____ rupees as part of the purchase money.
4. The said piece of ground contained in fact only (5 acres).
5. The plaintiff claims :

- (1) _____ rupees, with interest from the _____ day of _____, 19— ;
- (2) That the said agreement be delivered up and cancelled.

(As in paragraphs 4 and 5 of Form No. (1).)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (99) in Schedule II. of the old Code. Compare Appendix A, Form No. 34, of the new Indian Code.

(93) An Injunction restraining Waste.

(Title.)

1. The plaintiff is the absolute owner of (*describe the property*).
2. The defendant is in possession of the same under a lease from the plaintiff.
3. 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.

(As in paragraphs 4 and 5 of Form No. (1).)

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

(Pecuniary compensation may also be claimed.)

Note.—This Form reproduces, with verbal amendments, Form No. 33 (100) in Schedule II. of the old Code. Compare Appendix A, Form No. 35, of the new Indian Code.

(94) Injunction restraining Nuisance.

(Title.)

1. That plaintiff is, and at all times hereinafter mentioned was, the absolute owner of (the house No. _____, _____ Street).
2. The defendant is, and at all the said times was, the absolute owner of a (plot of ground in the same Street _____).
3. On the _____ day of _____, 19—, 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 house of the plaintiff).

4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.

(As in paragraphs 4 and 5 of Form No. (1).)

The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

Note.—This Form reproduces, with verbal amendments, Form No. 33 (101) in Schedule II. of the old Code. Compare Appendix A, Form No. 36, of the new Indian Code.

(95) Injunction against the Diversion of a Water-course.

(Title.)

(As in Form No. 75.)

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

Note.—This Form reproduces, with verbal amendments, Form No. 33 (102) in Schedule II. of the old Code. Compare Appendix A, Form No. 38, of the new Indian Code.

(96) For Restoration of Movable Property, threatened with Destruction, and for an Injunction.

(Title.)

1. The 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. On the _____ day of _____, 19—, he deposited the same for safe keeping with the defendant.

3. On the _____ day of _____, 19—, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. 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. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the (painting).

(As in paragraphs 4 and 5 of Form No. (1).)

8. The plaintiff claims :

(1) That the defendant be restrained by injunction from disposing of, injuring, or concealing the said (painting).

(2) That he be compelled to deliver the same to the plaintiff.

Note.—This Form reproduces, with verbal amendments, Form No. 33 (103) in Schedule II. of the old Code. Compare Appendix A, Form No. 39, of the new Indian Code.

(97) Interpleader.

(Title.)

1. Before the date of the claims hereinafter mentioned, G. H. deposited with the plaintiff (describe the property) for (safe keeping).

2. The defendant, C. D., claims the same (under an alleged assignment thereof to him from G. H.).

3. The defendant, E. F., also claims the same (under an order of G. H. transferring the same to him).

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. This action is not brought by collusion with either of the defendants.

(As in paragraphs 4 and 5 of Form No. (1).)

9. The plaintiff claims :

(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.

Note.—This Form reproduces, with amendments, Form No. 33 (104) in Schedule II. of the old Code. Compare Appendix A, Form No. 40, of the new Indian Code.

(98) Execution of Trusts.

(Title.)

1. The 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 said instrument.

3. *C. D.* claims to be entitled to a beneficial interest under the instrument.

(As in paragraphs 4 and 5 of Form No. (1).)

6. 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 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.

Note.—This Form reproduces, with verbal amendments, Form No. 33 (105) in Schedule II. of the old Code. Compare Appendix A, Form No. 44, of the new Indian Code.

(99) Specific Performance (No. 1).

(Title.)

1. By an agreement dated the _____ day of _____, and signed by the defendant, *C. D.*, he contracted to buy of (or sell to) the plaintiff certain immovable property therein described and referred to, for the sum of _____ rupees.

2. The plaintiff has applied to the defendant specifically to perform the said agreement on his part, but he has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part, of which the defendant has had notice.

(As in paragraphs 4 and 5 of Form No. (1).)

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement, and to do all acts necessary to put the 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.]

Note.—This Form reproduces, with verbal amendments, Form No. 33 (108) in Schedule II. of the old Code. Compare Appendix A, Form No. 47, of the new Indian Code.

(100) Specific Performance (No. 2).

(Title.)

1. On the _____ day of _____, 19—, the plaintiff and defendant entered into an agreement in writing, a copy of which is hereto annexed.

2. The defendant was absolutely entitled to certain immovable property described in the said agreement.

3. On the _____ day of _____, 19—, the plaintiff tendered _____ rupees to the defendant, and demanded a transfer of the property by a sufficient instrument.

4. On the _____ day of _____, 19—, the plaintiff again demanded such transfer.

5. The defendant has not executed such transfer. (Or, The defendant refused to transfer the same to the plaintiff.)

6. The plaintiff is still ready and willing to pay the purchase money of the said property to the defendant.

(As in paragraphs 4 and 5 of Form No. (1).)

9. The plaintiff claims :

(1) That the defendant transfer the said property to the plaintiff by a sufficient instrument (following the terms of the agreement);

(2) _____ rupees compensation for withholding the same.

Notes.—This Form reproduces, with amendments, Form No. 33 (109) in Schedule II. of the old Code. Compare Appendix A, Form No. 48, of the new Indian Code.

(101) Partnership.

(Title.)

1. The plaintiff and C. D., the defendant, have been for _____ years (or months) last past carrying on business together under articles of partnership in writing (or under a deed, or under a verbal agreement).

2. Several 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). (Or, The defendant has committed the following breaches of the partnership articles :

- (1) _____.
- (2) _____.
- (3) _____.

(As in paragraphs 4 and 5 of Form No. (1).)

6. The plaintiff claims :

- (1) Dissolution of the partnership ;
- (2) That accounts be taken ;
- (3) That a Receiver be appointed.

Note.—This Form reproduces the substance of Form No. 33 (110) in Schedule II. of the old Code. Compare Appendix A, Form No. 49, of the new Indian Code.

No. 4.—CONCISE STATEMENTS TO BE PRESENTED WITH PLAINT.

(Title.)

(See Order VII., r. 10.)

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 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.

Execution of Trust.

The plaintiff's claim is to have the trusts of an agreement 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 _____.

Note.—This Form reproduces, with amendments, Form No. 20 in Schedule II. of the old Code. The Forms in Form No. 20, of concise statements in mortgage actions and for raising portions, have been omitted.

Forms Nos. 21-24, dealing with decrees nisi and absolute, have also been omitted, as the procedure by way of decree nisi and absolute has been abolished by the new Code.

No. 5.—FORMAL PARTS OF THE ANSWER AND REPLICATION.

(See Orders VIII. and IX.)

(Title and number of action, names, descriptions, and addresses of parties, as in the plaint.)

The _____ day of _____, 19—.

- 1. The defendant denies, &c.
- 2. The defendant does not admit, &c.

(Here set forth the defence or defences and claim in reconvention, if any, separately stating and numbering them ; and where defendant claims a declaration of title to land, conclude—)

The defendant claims that the plaintiff's action be dismissed with costs (or as the case may be).

Note.—This Form replaces Form No. 15 in Schedule II. of the old Code.

No. 6.—ANSWERS.

(See Order VIII.)

(1) Answer in Action for Goods Sold and Delivered.

(Title.)

- 1. The defendant did not order the goods.
- 2. The goods were not delivered to the defendant.
- 3. The defendant (or A. B., the defendant's agent) satisfied the claim by payment before action to the plaintiff (or to C. D., the plaintiff's agent) on the _____ day of _____, 19—.

Or

The defendant satisfied the claim by payment after action to the plaintiff on the _____ day of _____, 19—.

(2) Answer in Action on Bond.

- 1. The bond is not the defendant's bond.
- 2. The defendant made payment to the plaintiff on the day according to the condition of the bond.

Or

The defendant made payment to the plaintiff, after the day named and before action brought, of the principal and interest due under the bond.

(3) Answer in Action on Guarantee.

- 1. The principal debtor satisfied the claim by payment before action brought.
- 2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

(4) Answer in Action for Debt and Claim in Reconvention.

- 1. As to rupees _____ part of the money claimed, the defendant made tender before action of rupees _____, and has paid the same into Court.
- 2. The defendant claims in reconvention rupees _____ for goods sold and delivered by him to the plaintiff.

Particulars are as follows :

1912, January 25	..	..	Rs. _____
1912, February 1	..	..	Rs. _____
		Total ..	Rs. _____

(5) Answer in Action for Injuries caused by Negligent Driving.

- 1. The defendant denies that the carriage mentioned in the plaint was his carriage. The carriage belonged to _____ of _____ Street, Colombo, being stable keepers employed by the defendant to supply him with carriages and horses ; and the person under whose charge and control the said carriage was, was the servant of the said _____.
- 2. The defendant does not admit that the said carriage was turned out of _____ Street negligently, suddenly, or without warning, or at a rapid or dangerous pace.
- 3. The plaintiff might, and could, by the exercise of reasonable care and diligence, have seen the carriage approaching him and avoided any collision with it.

(6) Answer in all Actions for Wrongs.

Denial of the several acts (or matters) complained of.

(7) Answer in Action for Detention of Goods.

1. The goods were not the property of the plaintiff.
 2. The goods were detained for a lien to which the defendant was entitled.
- Particulars are as follows :

1912, May 3.—To carriage of the goods claimed from _____ to _____,
Rs. _____.

(8) Answer in Action for Infringement of Copyright.

1. Plaintiff is not the author (assignee), &c.
2. The book was not registered.
3. The defendant did not infringe.

(9) Answer in Action for Infringement of Trade Mark.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

(10) Answer in Action relating to a Nuisance.

1. The plaintiff's lights are not ancient (or deny his other alleged prescriptive rights).
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.
3. The defendant denies that he or his servants polluted the water (or did what is complained of).

(If the defendant claims a right by prescription, or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, *i.e.*, whether by prescription, grant, or what.)

4. The plaintiff has been guilty of laches, of which the following are particulars : _____.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff.

(If other grounds are relied on, they must be stated, *e.g.*, limitation as to past damages.)

(11) Answer to Action for Specific Performance.

1. The defendant did not enter into the agreement.
2. A. B. was not agent of the defendant (*if alleged by plaintiff*).
3. The plaintiff has not performed the following conditions (*conditions*).
4. The defendant did not (*alleged acts of part performance*).
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters (*state why*).
6. The agreement is uncertain in the following respects (*state them*).
7. (*Or*) The plaintiff has been guilty of delay.
8. (*Or*) The plaintiff has been guilty of fraud (*or misrepresentation*).
9. The agreement is unfair.
10. (*Or*) The agreement was entered into by mistake.
11. The following are particulars of 7, 8, 9, 10 (*or as the case may be*).
12. The agreement was rescinded under conditions of sale No. 11 (*or by mutual agreement*).

(*In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement, or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., limitation, fraud, &c.*)

Note.—These Forms are new, and are adapted from Appendix A, Section (4), of the new Indian Code.

Appendix B.—PROCESS.

No. 1.—Notice to a Person who, the Court considers, should be joined as a Co-plaintiff.

(See Order I., r. 12.)

(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 _____, 19—, signify to this Court whether you consent to be so added.

(Signed) _____,

District Judge (*or as the case may be*).

Dated this _____ day of _____, 19—.

Note.—The Form reproduces, with amendments, Form No. 3 in Schedule II. of the old Code. Compare Appendix B, Form No. 5, of the new Indian Code.

No. 2.—Summons.

(See Order V., r. 1 (3).)

(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 on the _____ day of _____, 19—, at 10 o'clock in the forenoon, to answer the above-named plaintiff, and to bring with you all documents in your possession or power containing evidence relating to the merits of the plaintiff's case, or on which you intend to rely in support of your own case :

Take notice that in default of your so appearing the action will be heard and determined in your absence.

By order of Court,

(Signed) _____,

Secretary (*or as the case may be*).

Dated the _____ day of _____, 19—.

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 claim, you should pay the money into Court, with the costs of the action; to avoid execution of the decree which may be made against your person or property, or both.

Note.—This Form reproduces, with amendments, Form No. 16 in Schedule II. of the old Code. The reference in that Form to the production of documents for inspection has been omitted, as that matter is now dealt by Order XIII. Compare Appendix B, Form No. 1, of the new Indian Code.

No. 3.—Precept to Fiscal to serve Summons.

(See Order V., r. 2.)

(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 _____, 19—, in what manner you have executed this precept, returning the summons attached to your certificate as an exhibit.

By order of Court,

(Signed) _____,

Secretary (*or as the case may be*).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 17 in Schedule II. of the old Code.

No. 4.—Summons for Service out of the Colony.

(See Order V., r. 16.)

(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).

Note.—This Form reproduces Form No. 18 in Schedule II. of the old Code.

No. 5.—Order for Transmission of Summons to be served on a Prisoner.

(See Order V., r. 17.)

(Title.)

To the officer in charge of the Prison at _____.

Under the provisions of Order V., rule 17, of the Code of Civil Procedure, 19—, a summons in duplicate is herewith forwarded for service on the defendant _____, who is a prisoner in _____ Prison. You are required to cause a copy of the said summons to be served on the said defendant, and to return the original to the Court with a statement of service endorsed thereon by you.

(Signed) _____,

District Judge (or as the case may be).

Note.—This Form is new. Compare Appendix B, Form No. 8, of the new Indian Code.

No. 6.—Order for Transmission of Summons to be served on a Public Servant, Sailor, or Soldier.

(See Order V., rr. 18, 19.)

(Title.)

To _____.

Under the provisions of Order V., rule 18 (or rule 19, as the case may be), of the Code of Civil Procedure, 19—, a summons in duplicate is herewith forwarded for service on the defendant _____, who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant, and to return the original to this Court (or to me, where service is under rule 19) with a statement of service endorsed thereon by you.

(Signed) _____,

District Judge (or as the case may be).

Note.—This Form is new. Compare Appendix B, Form No. 9, of the new Indian Code.

No. 7.—Summons to Witness.

(See Order XVI., r. 1.)

(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 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) _____,

Secretary (or as the case may be).

Dated the _____ day of _____, 19—.

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.

Note.—This Form reproduces, with verbal amendments, Form No. 32 in Schedule II. of the old Code. Compare Appendix B, Form No. 13, of the new Indian Code.

No. 8.—Warrant of Arrest of Witness.

(See Order XVI., r. 10 (2).)

(Title.)

To the Fiscal of _____.

Whereas (*name of witness*) has been duly served with summons, but has failed to appear in obedience thereto (or having appeared has departed in contravention of the provisions of rule 17 of Order XVI.): You are hereby ordered to arrest the said (*witness*) and bring him before this Court forthwith.

(Signed) _____,

District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces the substance of Form No. 39 in Schedule II. of the old Code. Compare Appendix B, Form No. 17, of the new Indian Code.

No. 9.—Proclamation to be issued when Summons cannot be served.

(See Order XVI., r. 10 (2).)

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 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.): It is hereby proclaimed that the said (*witness*) is required to attend at this Court on the _____ day of _____, 19—, 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,

(Signed) _____,

Secretary (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with amendments, Form No. 37 in Schedule II. of the old Code. Compare Appendix B, Form No. 14, of the new Indian Code.

No. 10.—Mandate of Sequestration after Proclamation.

(See Order XVI., r. 11.)

(Title.)

To the Fiscal of _____.

Whereas the witness cited by _____ has not, after the expiration of the period limited in the proclamation issued by this Court on the _____ day of _____, 19—, for his attendance, appeared in Court: You are hereby commanded to seize and sequester _____ property belonging to the said witness to the value of _____, and to submit a return, accompanied with an inventory thereof, within _____ days.

By order of Court,

(Signed) _____,

Secretary (or as the case may be).

Dated the _____ day of _____, 19—.

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 (or as the case may be).

Note.—This Form reproduces the substance of Form No. 38 in Schedule II. of the old Code. Compare Appendix B, Form No. 16, of the new Indian Code.

No. 11.—Certificate of Service of Foreign Process.

(See Order XXV., r. 11.)

I, _____, Registrar of the Supreme Court of the Island of Ceylon, hereby certify that the documents annexed hereto are as follows :

1. The original letter of request for service of process received from the Court or Tribunal at _____, in the _____ of _____, in the matter of _____ versus _____ ; and

2. The process received with such letter of request ; and

3. The evidence of service upon _____ the person named in such letter of request, together with the verification of a Notary Public.

And I certify that such service so proved, and the proof thereof, are such as are required by the law and practice of the Supreme Court of the Island of Ceylon regulating the service of legal process and the proof thereof.

And I certify that the cost of effecting such service as duly certified by me in the statement of charges hereto annexed amounts to _____ rupees.

Registrar, Supreme Court.

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is adapted from a Rule of the Supreme Court of Judicature in England dated March 24, 1911; and see the (Ceylon) Rules of 1911 for Service of Foreign Process (*Ceylon Government Gazette* No. 6,466 of October 13, 1911).

No. 12.—Summons to Legal Representative of a Deceased Defendant.

(See Order XXVII., r. 4.)

(*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 _____, 19—, 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 (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 71 in Schedule II. of the old Code.

No. 13.—Summons in a Summary Action on a Liquid Claim.

(See Order XL., r. 1 (1).)

(*Title.*)

To the above-named defendant (or defendants).

Whereas the above-named plaintiff has instituted an action against you in this Court under Order XL. of the Code of Civil Procedure, 19—, for _____ rupees principal and interest (or _____ rupees, balance of principal and interest, due to him as payee (or indorsee) of a bill of 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 (name 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 (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 19 in Schedule II. of the old Code.

Appendix C.—DISCOVERY, INSPECTION, AND ADMISSION.

No. 1.—Interrogatories.

(See Order XIII., r. 5.)

(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.

Note.—This Form reproduces Form No. 25 in Schedule II. of the old Code. Compare Appendix C, Form No. 2, of the new Indian Code.

No. 2.—Affidavit in Answer to Interrogatories.

(See Order XIII., r. 10.)

(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.*)

5. I object to answer the interrogatories numbered _____, on the ground that (*state ground of objection, verifying the same*).

Sworn (*or affirmed*) this _____ day of _____, 19—, before me, &c.

Note.—This Form reproduces Form No. 26 in Schedule II. of the old Code. Compare Appendix C, Form No. 3, of the new Indian Code.

No. 3.—Order for Affidavit as to Documents.

(See Order XIII., r. 14 (1).)

(Title.)

Upon hearing _____,

It is ordered that the _____ do within _____ days from the date of this order answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this action, and that the costs of this application be _____.

Note.—This Form is new, and is taken from Appendix C, Form No. 4, of the new Indian Code.

No. 4.—Affidavit as to Documents.

(See Order XIII., r. 15.)

(Title.)

I, the above-named defendant, make oath (*or affirmation*) and say as follows:

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto (*state grounds of objection*).

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power or (*state when and what has become of them, and in whose possession or power they now are*).

5. According to the best of my knowledge, information, and belief, I have not now, and never had, in my possession, custody, or power, or in the possession, custody, or power of my Proctor or agent, or in the possession, custody, or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

Note.—This Form is new, and is taken from Appendix C, Form No. 5, of the new Indian Code.

No. 5.—Order to produce Documents for Inspection.

(See Order XIII., r. 16.)

(Title.)

Upon hearing ———, and upon reading the affidavit of ——— filed the ——— day of ———, 19—.

It is ordered that the ——— do, at all reasonable times, on reasonable notice produce at ———, situate at ———, the following documents, namely ———, and that the ——— be at liberty to inspect and peruse the documents so produced and to make notes of their contents. In the meantime it is ordered that all further proceedings be stayed, and that the costs of this application be ———.

Note.—This Form is new, and is taken from Appendix C, Form No. 6, of the new Indian Code.

No. 6.—Notice to produce Documents for Inspection.

(See Order XIII., r. 18.)

(Title.)

To (set out name and place of residence of party to be served).

Take notice that the 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,

(Signed) ———,

Secretary (or as the case may be).

Dated the ——— day of ———, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 29 in Schedule II. of the old Code. Compare Appendix C, Form No. 7, of the new Indian Code.

No. 7.—Notice to inspect Documents, or objection to Inspection.

(See Order XIII., r.19.)

(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 ———, 19—, 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 ———, 19—, 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) ———,

By Party (or Proctor).

Dated the ——— day of ———, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 30 in Schedule II. of the old Code. The additional Form No. 31 seems unnecessary. Compare Appendix C, Form No. 8, of the new Indian Code.

No. 8.—Notice to admit Documents.

(See Order XIV., r. 3.)

(Title.)

To (set out names and places of residence of persons to be served with the notice).

Take notice that the 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 (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, that such as are specified as copies are true copies; and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered, respectively, saving all just exceptions to the admissibility of all such documents.

By order of Court,

(Signed) ———,

Secretary (or as the case may be).

Dated the ——— day of ———, 19—.

(Here annex schedule of documents, describing the documents, and specifying as to, each document whether it is an original or a copy.)

Note.—This Form reproduces, with amendments, Form No. 27 in Schedule II. of the old Code. Compare Appendix C, Form No. 9, of the new Indian Code.

No. 9.—Admission of Documents.

(See Order XIV., r. 2 (2).)

(Title.)

To (names, &c., of persons to be served).

I (or We, if the case is so), saving all just exceptions as to the admissibility thereof in evidence, hereby admit that the documents mentioned in the notice of the _____ day of _____, 19—, issued from this Court at the instance of (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).

Dated the _____ day of _____, 19—.

(Signed) _____,
By Party (or Proctor).

Note.—This Form reproduces, with verbal amendments, Form No. 28 in Schedule II. of the old Code.

No. 10.—Notice to admit Facts.

(See Order XIV., r. 5.)

(Title.)

To _____.

Take notice that the plaintiff (or defendant) in this action requires the defendant (or plaintiff) to admit, for the purposes of this action only, the several facts respectively hereunder specified, and the defendant (or plaintiff) is hereby required within _____ days from the service of this notice to admit the several said facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

(Signed) _____,
Proctor for plaintiff or defendant.

The facts the admission of which is required are :

1. That M. died on January 1, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on April 1, 1896.
5. That O. was never married.

Note.—This Form is new, and is taken from Appendix C, Form No. 10, of the new Indian Code.

No. 11.—Admission of Facts pursuant to Notice.

(See Order XIV., r. 5).

(Title.)

To _____.

The defendant (or plaintiff) in this action, for the purposes of this action only, admits the several facts respectively hereunder specified, subject to the qualification or limitation (if any) hereunder specified, saving all just exceptions to the admissibility of such facts, or of any of them, as evidence in this action. Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant (or plaintiff) on any other occasion or by any one other than the plaintiff (or defendant or party requiring the admission).

(Signed) _____,
Proctor for plaintiff or defendant.

Facts admitted.

1. That M. died on January 1, 1890.
2. That he died intestate.
3. That N. was his lawful son.
4. That O. died.
5. That O. was never married.

Qualifications or Limitations (if any) subject to which they are admitted.

1. _____.
2. _____.
3. But not that he was his only lawful son.
4. But not that he died on April 1, 1896.
5. _____.

Note.—This Form is new, and is taken from Appendix C, Form No. 11, of the new Indian Code.

No. 12.—Notice to produce Documents.

(General Form.)

(See Order XIV., r. 7.)

(Title.)

To _____.

Take notice that you are hereby required to produce, and show to the Court, at the trial of this action, all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly _____.

(Signed) _____,
Proctor for plaintiff or defendant.

Note.—This Form is new, and is adapted from Appendix C, Form No. 12, of the new Indian Code.

Appendix D.—DECREES.

No. 1.—GENERAL FORM OF DECREE.

(See Order XXII., r. 5 (2).)

(Title.)

This action coming on for final disposal before (*name and office of Judge*) on the _____ day of _____, 19— (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 Order XXII., r. 7.)

(Where the decree is for delivery of movable property, specify the amount to be paid as an alternative if delivery cannot be had. See Order XXII., r. 8.)

(Where the decree is for specific performance, state the amount of damages to be paid if the contract is not performed.)

(Where defendant is allowed a set-off, &c., state what is due to plaintiff and defendant, and decree recovery of the balance. See Order XXII., r. 12.)

(Where mesne profits pending or prior to action are claimed, vary decree according to Order XXII., r. 13.)

(Where the action is to enforce a right of pre-emption, carry out the directions of Order XXII., r. 16.)

(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. See Order XXII., r. 20.)

(Signed) _____,
(Name and office of Judge.)

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 41 in Schedule II. of the old Code. Compare Appendix D, Form No. 1, of the new Indian Code.

No. 2.—DECREES IN PARTICULAR CASES.

(1) Decree for Rectification of Instrument.

(Title.)

It is hereby declared that the _____ dated the _____ day of _____, 19—, does not truly express the intention of the parties to such _____.

And it is decreed that the said _____ be rectified by _____.

(2) Decree setting aside Transfer in Fraud of Creditors.

(Title.)

It is hereby declared that the _____ dated the _____ day of _____, 19—, and made between _____ and _____, is void as against the plaintiff and all other the creditors, if any, of the defendant.

(3) Interlocutory Order in Partnership Action.

(See Order XXII., r. 17.)

(Title.)

It is declared that the proportionate shares of the parties in the partnership are as follows :

It is declared that this partnership shall stand dissolved (*or shall be deemed to have been dissolved*) as from the _____ day of _____, and it is ordered that the dissolution thereof as from that day be advertised in the _____ (*Gazette, &c.*).

And it is ordered that _____ be the receiver of the partnership estate and effects in this action, and do get in all the outstanding book debts and claims of the partnership.

And it is ordered that the following accounts be taken :

1. An account of the credits, property, and effects now belonging to the partnership.
2. An account of the debts and liabilities of the said partnership.
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled amount exhibited in this action and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the _____* may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the _____ day of _____, 19—, and that the _____* do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf for the inspection of the parties on the _____ day of _____.

And, lastly, it is ordered that this action stand adjourned for making a final decree to the _____ day of _____.

* Here insert name of proper officer.

(4) Final Decree in Partnership Action.

(Title.)

It is ordered that the fund now in Court, amounting to the sum of _____ rupees be applied as follows :

1. In payment of the debts due by the partnership set forth in the certificate of the _____,* amounting the whole to _____ rupees.
2. In payment of the costs of all parties in this action, amounting to _____ rupees.

(These costs must be ascertained before the decree is drawn up.)

3. In payment of the sum of _____ rupees to the plaintiff as his share of the partnership assets, of the sum of _____ rupees, being the residue of the said sum of _____ rupees now in Court, to the defendant as his share of the partnership assets.

(Or, And that the remainder of the said sum of _____ rupees be paid to the said plaintiff (or defendant) in part payment of the sum of _____ rupees certified to be due to him in respect of the partnership accounts.)

4. And that the defendant (or plaintiff) do on or before the _____ day of _____ pay to the plaintiff (or defendant) the sum of _____ rupees, being the balance of the said sum of _____ rupees due to him, which will then remain due.

* Insert name of proper officer.

(5) Decree for Recovery of Land and Mesne Profits.

(See Order XXII., r. 13.)

(Title.)

It is hereby decreed as follows :

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.
2. That the defendant do pay to the plaintiff the sum of _____ rupees, with interest thereon at the rate of _____ per cent. per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the action.

Or,

2. That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the action.
3. That an inquiry be made as to the amount of mesne profits from the institution of the action until (the delivery of possession to the decree-holder), (the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court), (the expiration of three years from the date of the decree).

(Schedule.)

Note.—These Forms are new, and are adapted from Appendix D of the new Indian Code.

Appendix E.—EXECUTION.

No. 1.—Application for Execution of Decree.

(See Order XXIV., rr. 2 *et seq.*)

In the _____ Court of _____.

I, A. B., decree-holder, hereby apply for execution of the decree hereinbelow set forth :—

Number of Action.	Names of Parties.	Date of Decree.	Whether any Appeal preferred	Payment or Adjustment made, if any.	Previous Application, if any, with Date and Result.	Amount with Interest due upon the Decree, or other relief granted thereby, together with Particulars of any Cross-Decree.	Amount of Costs, if any, awarded.	Against whom to be executed.	Mode in which the Court's assistance is required.
1 No. 175, D. C., Colombo	2 A. B., plaintiff, against C. D., defendant	3 21st January, 1888	4 No	5 —	6 —	7 Rs. 250 principal (interest at — per cent. from date of decree to payment)	8 Rs. 25.75 costs as awarded in the decree, Rs. 10.50 subsequently incurred Rs. 36.25	9 The defend- ant, C. D.	10 (When seizure and sale of movable property is sought—) I pray that the total amount of Rs. _____ (together with interest on the principal sum up to date of payment), and the costs of taking out this execution, be realized by (indicate manner of relief required).

Dated the _____ day of _____, 19—.

(Signed) _____.

Note.—This Form reproduces, with amendments, Form No. 42 in Schedule II. of the old Code. Compare Appendix E, Form No. 6, of the new Indian Code. The declaration in the old Form has been omitted as not required by the terms of Order XXIV., rr. 2 *et seq.*, and see the case of *Attorney-General v. Appahamy*, (1912) 15 N. L. R. 421.

No. 2.—Writ of Execution against Property.

(See Order XXIV., r. 7.)

(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 this Court bearing date the _____ day of _____, 19—, and have that money before this Court on the _____ day of _____, 19—, 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 the Court,

(Signed) _____,

Secretary (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 43 in Schedule II. of the old Code.

No. 3.—Prohibitory Notices.

(Under Order XXIV., r. 12.)

(1) (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 _____, 19—, in (title, &c., of case), in favour of _____ for _____ rupees: It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained until the further order of this Court 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 (debtor) be, and you are hereby, prohibited and restrained until such further order from making payment of the said debt or any part thereof to any person or persons whomsoever.

(Signed) _____,

Fiscal.

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 44 in Schedule II. of the old Code. Compare Appendix E, Form No. 17, of the new Indian Code.

(2) (In the case of a share in the capital of a corporation.)

To (defendant) and to Secretary (&c.) of Corporation.

Whereas _____ has failed to satisfy a decree (recital as in (1) supra): It is ordered that you, the defendant, are hereby prohibited and restrained until the further order of this Court from making any transfer of _____ shares in the aforesaid Corporation, namely, _____, or from receiving payment of any dividends thereof; and you, the said _____, Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

(Signed) _____,

Fiscal.

Note.—This Form reproduces, with amendments, Form No. 45 in Schedule II. of the old Code. Compare Appendix E, Form No. 18, of the new Indian Code.

(3) (In the case of movable property not in the possession of the judgment-debtor.)

To (defendant) and to (person in possession).

Whereas (recital as in (1) supra): It is ordered that you, the said defendant, be, and you are hereby, prohibited and restrained until the further order of this Court 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 such further order from delivering such property to any person or persons whomsoever.

(Signed) _____,

Fiscal.

Note.—This Form reproduces, with verbal amendments, Form No. 46 in Schedule II. of the old Code. Compare Appendix E, Form No. 16, of the new Indian Code.

No. 4.—Notice where Property is in the Custody of a Court or Public Officer.

(See Order XXIV., r. 15.)

Sir,—The plaintiff in the above-named action having applied under Order XXIV. of the Civil Procedure Code, 19—, 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 this Court.

I have, &c.,

Fiscal.

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 47 in Schedule II. of the old Code. Compare Appendix E, Form No. 21, of the new Indian Code.

No. 5.—Notice to a Court requesting Stay of Execution of its Decree.

(See Order XXIV., r. 16 (1) (b).)

To (name and office of Judge).

Sir,—I have the honour to inform you that the decree obtained in your Court on the _____ day of _____, 19—, by _____ in (title of action) in which he was _____, has been seized by this Court on the application of _____. You are, therefore, requested to stay the execution of the decree of your Court until this notice has been cancelled by this Court, or until execution of the said decree is applied for by the holder of the decree now sought to be executed, or by his judgment-debtor.

I have, &c.,
(Signed) _____,
District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form is founded on Form No. 48 in Schedule II. of the old Code amended in accordance with Form No. 22 in Appendix E of the new Indian Code.

No. 6.—Prohibitory Notice to Holder of a Decree sought to be seized.

(See Order XXIV., r. 16 (4).)

(Title.)

To (defendant).

Whereas in execution of the decree passed against you in the above-named action application has been made in this Court by _____ for the seizure of the decree passed against _____ in (title, &c., of action), of which you are the holder: It is ordered that you, the said _____, be, and you are hereby, prohibited and restrained until the further order of this Court from transferring or charging the said decree in any way.

By order of Court,
(Signed) _____,
Secretary (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 49 in Schedule II. of the old Code. Compare Form No. 23 in Appendix E of the new Indian Code.

No. 7.—Prohibitory Notice in case of Immovable Property.

(See Order XXIV., r. 17.)

To (defendant).

Whereas you have failed to satisfy a decree passed against you on the _____ day of _____, 19—, in (title, &c., of case), in favour of _____, for _____ rupees (here set out the particulars required by r. 19 (2)): It is ordered that you, the said defendant, be, and you are hereby, prohibited and restrained until the further order of this Court from in any way transferring, alienating, or charging the property specified in the schedule hereto annexed, and that all persons be, and they are hereby, prohibited from receiving the same or any part thereof by purchase, gift, or otherwise.

(Signed) _____,
Fiscal.

Dated the _____ day of _____, 19—.

(Schedule.)

Note.—This Form reproduces, with verbal amendments, Form No. 50 in Schedule II. of the old Code. Compare Form No. 24 in Appendix E of the new Indian Code.

No. 8.—Certificate to Judgment-Debtor authorizing him to
Mortgage, Lease, or Sell Property.

(See Order XXIV., r. 41 (2).)

(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.

(Signed) _____,
Judge (or as the case may be).

Dated the _____ day of _____, 19—.

(Details of property referred to.)

Note.—This Form reproduces, with verbal amendments, Form No. 51 in Schedule II. of the old Code.

No. 9.—Fiscal's Certificate where there has been a Re-sale at a Loss,
or Failure to pay the Deposit.

(See Order XXIV., r. 47 (2).)

(Title.)

I, A.B., Fiscal of the _____ Province, hereby certify that the under-mentioned property was, on the _____ day of _____, 19—, duly put up for sale under writ No. _____ of this Court in execution of the decree in the above-named action.

_____ 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 _____, 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.

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 the 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 _____, 19—, again put up for sale under the said writ, and re-sold, and _____ was duly declared to be the purchaser at such re-sale 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.)

(Conclude :) Demand in writing was duly made upon the said _____ for the payment of the said sum of _____ rupees, on the _____ day of _____, 19—, but although one week has elapsed since the date of such demand the said _____ has not paid the sum of _____ rupees.

(Signed) _____,
Fiscal, _____ Province.

Dated the _____ day of _____, 19—.

(Schedule of Property.)

Note.—This Form reproduces, with verbal amendments, Form No. 52 in Schedule II. of the old Code.

No. 10.—Notice to Person in possession of Movables sold in Execution.

(See Order XXIV., r. 59 (2).)

(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 until the further order of this Court from delivering possession thereof to any person except the said _____.

(Signed) _____,

Dated the _____ day of _____, 19—.

Fiscal.

Note.—This Form reproduces, with verbal amendments, Form No. 53 in Schedule II. of the old Code.

No. 11.—Notice prohibiting Payment of Debts sold in Execution to any Person but the Purchaser.

(See Order XXIV., r. 59 (3).)

To (judgment-debtor) and to (judgment-debtor's debtor).

Whereas _____ has become the purchaser at a sale (&c.) 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).

(Signed) _____,

Fiscal.

Dated the _____ day of _____, 19—.

(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 Secretary of the Corporation, and will prohibit transference of the shares or receipt or payment of dividends thereon.)

Note.—This Form reproduces, with verbal amendments, Form No. 54 in Schedule II. of the old Code.

No. 12.—Order confirming or setting aside Sale of Land.

(See Order XXIV., r. 65 (1) and (2).)

(Title.)

Whereas the under-mentioned property was on the _____ day of _____, 19—, 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 disallowed): It is ordered that the said sale be and the same is hereby confirmed. (Mutatis mutandis where the sale is set aside.)

(Signed) _____,

(Name and office of Judge.)

Dated the _____ day of _____, 19—.

(Schedule.)

Note.—This Form reproduces, with verbal amendments, Form No. 55 in Schedule II. of the old Code.

No. 13.—Fiscal's Conveyance to Purchaser after Confirmation of Sale by Court.

(See Order XXIV., r. 67 (2).)

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 _____, 19—, 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 _____, 19—, 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 become 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 _____, 19—, 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), 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 _____, 19__.

Witnesses :

Annexures.

_____,
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.)

Note.—This Form reproduces, with verbal amendments, Form No. 56 in Schedule II. of the old Code.

No. 14.—Order of Delivery of Possession to a Purchaser where Property in Occupancy of Judgment-Debtor.

(See Order XXIV., r. 70 (1).)

(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.)

Dated the _____ day of _____, 19__.

Note.—This Form reproduces Form No. 57 in Schedule II. of the old Code.

No. 15.—Payments to Fiscals, &c.

Note from Fiscal to Government Agent.

(See Order XXIV., r. 77 (i).)

No. of note: _____.

No. of action: _____.

Name of payer: _____.

Rs. _____.

Date of payment: _____.

No. of note: _____.

No. of action: _____.

To the Government Agent of _____.

Please to receive from _____

Rs. _____.

Signature of Government Agent
or Assistant Government Agent.

Fiscal's Office.

Note.—This Form reproduces Form No. 58 in Schedule II. of the old Code.

No. 16.—Register of such Notes.

(See Order XXIV., r. 77 (vi).)

No.	No. of Action.	District Court.	Plaintiff.	Payer.	On what Account.	Amount.	Date of Issue.	Date when Receipt sent back.

Note.—This Form reproduces Form No. 59 in Schedule II. of the old Code.

No. 17.—Warrant for Arrest of a Judgment-Debtor.

(See Order XXIV., r. 81.)

(Title.)

To _____, Fiscal of _____ Province.

Whereas _____ was adjudged by a decree in the above-named action, dated the _____ day of _____, 19____, to pay the plaintiff above-named the sum of _____ Rs. c. _____ 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 r. 50 (1), 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.

Principal	Rs. c.	_____	of _____ rupees
Interest	..	_____	has not been paid to the said plaintiff in satisfaction
Cost	..	_____	of the said decree : And whereas (state any other of the requisites
Execution	..	_____	required by r. 50 (1), as the case is) : These are to command you to
Total	..	_____	arrest the said defendant, and unless the said defendant shall pay to

You are further commanded to return this warrant on or before the _____ day of _____, 19____, 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.)

Dated the _____ day of _____, 19____.

Note.—This Form reproduces, with verbal amendments, Form No. 60 in Schedule II. of the old Code.

No. 18.—Warrant of Commitment.

(See Order XXIV., r. 82 (2).)

(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.)

Dated the _____, day of _____, 19____.

Note.—This Form reproduces Form No. 61 in Schedule II. of the old Code. Compare Appendix E, Form No. 41, of the new Indian Code.

No. 19.—Writ for Delivery of a Specific Movable.

(See Order XXIV., r. 95 (2).)

(Title.)

To the Fiscal of _____ Province.

Whereas by a judgment of this Court dated the _____ day of _____, 19____, 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), or in default of such delivery to pay _____ rupees damages in lieu thereof: 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 default of such delivery, levy execution on the property of the said (defendant) for the amount of such damages (or cause the said (defendant) to be arrested and brought before this Court in execution of the said decree) in accordance with the rules prescribed for writs of execution (and warrant of arrest) issued for the enforcement of decrees falling under Order XXIV., head B. 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) _____.

Dated the _____ day of _____, 19____.

Note.—This Form reproduces Form No. 62 in Schedule II. of the old Code, amended so as to bring it into accordance with Order XXII., r. 8, and Order XXIV., r. 95. See notes to those rules.

No. 20.—Writ for Delivery of Immovable Property.

(See Order XXIV., r. 98 (2).)

(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*).

Note.—This Form reproduces Form No. 63 in Schedule II. of the old Code.

No. 21.—Warrant of Committal in Case of Obstruction of Execution of Decree.

(See Order XXIV., r. 103.)

(Title.)

To the Fiscal, _____.

Whereas the under-mentioned property has been decreed to _____, the plaintiff in this action, and whereas this Court is satisfied that _____ without any just cause resisted (*or obstructed*) and is still resisting (*or obstructing*) the said _____ in obtaining possession of the property, and whereas the said _____ has made application to this Court that the said _____ be committed to prison as a civil prisoner :

You are hereby commanded and required to take and receive the said _____ into the _____ prison, and to keep him imprisoned therein as a civil prisoner for the period of (not exceeding thirty) days.

(Signed) _____,
Judge (*or as the case may be*).

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is adapted from Form No. 41 in Appendix E of the new Indian Code.

No. 22.—Notice to show cause why Payment or Adjustment should not be recorded as certified.

(See Order XXIV., r. 124 (2).)

(Title.)

To _____.

Whereas in execution of the decree in the above-named action _____ has applied to this Court that the sum of _____ rupees recoverable under the decree has been paid (adjusted) and should be recorded as certified, this is to give you notice that you are to appear before this Court on the _____ day of _____, 19—, to show cause why the payment (adjustment) aforesaid should not be recorded as certified.

(Signed) _____,
District Judge (*or as the case may be*).

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is taken from Form No. 1 in Appendix E of the new Indian Code.

No. 23.—Notice where a Sum of Money in Court is claimed.

(See Order XXIV., r. 125 (4).)

(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 _____, 19—, 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 _____, 19—, 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) _____,
Secretary (*or as the case may be*).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces Form No. 64 in Schedule II. of the old Code.

Appendix F.—INCIDENTAL PROCEEDINGS.

No. 1.—Petition in Incidental Applications.

(See Order XXVI. rr. 1 and 2.)

In the District Court (or Court of Requests) of _____.

(Where the application is not incidental to a pending action, set out, as in a plain 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 _____, 19— (and go on to show that the right of action survives to the remaining plaintiff alone).

3. (State the value of the subject-matter of the application for the purposes of jurisdiction and of stamp duty, so far as the case admits.)

(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 Order XXVI., r. 4), requisite to furnish *primâ facie* proof of the material facts set out.)

Note.—This Form reproduces, with amendments, Form No. 65 in Schedule II. of the old Code.

No. 2.—(a) Order *Nisi* or (b) Interlocutory Order on a Petition in an Incidental Application.

(See Order XXVI., rr. 5 and 6.)

(Title.)

This matter coming on for disposal before (name and office of Judge) on the _____ day of _____, 19—, 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 _____, 19—.)

(b) (It is ordered that the _____ day of _____, 19—, 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 a decree.)

Note.—This Form reproduces, with verbal amendments, Form No. 66 in Schedule II. of the old Code.

No. 3.—Order refusing Petition where grounds adduced insufficient to show *primâ facie* Case.

(See Order XXVI., r. 7.)

(Proceed as in No. 2, and the order will be—)

It is ordered that the prayer of the said petition be and the same is hereby refused.

Note.—This Form reproduces Form No. 67 in Schedule II. of the old Code.

No. 4.—Order dismissing Petition where Petitioner does not appear.

(See Order XXVI., r. 9.)

(Proceed as in No. 2, reciting the order made under sub-head (b) of r. 5 of Order XXVI., 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.)

Note.—This Form reproduces, with verbal amendments, Form No. 68 in Schedule II. of the old Code.

No. 5.—Order where Respondent does not appear.

(See Order XXVI., r. 10.)

(Proceed as in No. 2, reciting the order made under r. 5, and continue—)

And the petitioner having appeared (in person, or by proctor, or by counsel) in support of his said petition, and the respondent not having appeared either in person or by proctor or by 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 r. 5 (I) (a)—)

The above order is made absolute.

(But if the order was an interlocutory order under r. 5 (I) (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).

Note.—This Form reproduces, with verbal amendments, Form No. 69 in Schedule II. of the old Code.

No. 6.—Order where both Parties appear.

(See Order XXVI., r. 11.)

(Proceed as in No. 2, reciting the order under r. 5, 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 _____, 19—, 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 a decree.)

Note.—This Form reproduces, with verbal amendments, Form No. 70 in Schedule II. of the old Code.

No. 7.—Warrant of Arrest before Judgment.

(See Order XLII., r. 1 (2).)

To the Fiscal of _____,

Whereas _____, the plaintiff in the above action, claims the sum of _____ rupees as noted in the margin, and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant _____ is

Principal ..	Rs. c.	about to quit the Island: These are to command you to demand and
Interest ..	—	receive from the said _____ the sum of _____ rupees as sufficient
Costs ..	—	to satisfy the plaintiff's claim, and unless the said sum of _____
Total ..	—	rupees is forthwith delivered to you by or on behalf of the said

_____ , to take the said _____ into custody, and to bring him before this Court in order that he may show cause why he should not furnish security to the amount of _____ rupees for his personal appearance before the Court, until such time as the said action shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the action.

District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form is based on Form No. 100 in Schedule II. of the old Code, amended in accordance with Form No. 1 in Appendix F of the new Indian Code.

No. 8.—Security, &c., to be given by Defendant arrested before Judgment.

(See Order XLII., r. 2.)

(Title.)

Whereas at the instance of _____, the plaintiff in the above action, the defendant has been arrested and brought before the Court; and whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security:

Therefore I, _____, have voluntarily become surety, and do hereby bind myself, my heirs and executors, to the said Court that the said defendant shall appear at any time called upon while the action is pending, and until satisfaction of any decree that may be passed against him in the said action; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said action.

Witness my hand at _____, this _____ day of _____, 19—.

Witnesses: _____ (Signed) _____.

(1) _____.

(2) _____.

Note.—This Form is based on Form No. 101 in Schedule II. of the old Code, amended in accordance with Form No. 2 in Appendix F of the new Indian Code.

No. 9.—Summons to Defendant to appear on Surety's Application for Discharge.

(See Order XLII., r. 3 (2).)

To _____.

Whereas _____, who became surety on the _____ day of _____, 19—, for your appearance in the above action has applied to this Court to be discharged from his obligation:

You are hereby summoned to appear in this Court in person on the _____ day of _____, 19—, at _____ A.M., when the said application will be heard and determined.

District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is taken from Form No. 3 in Appendix F of the new Indian Code.

No. 10.—Warrant of Commitment.

(See Order XLII., r. 4.)

To the Fiscal of _____ (Title.)

Whereas _____, plaintiff in this action, has made application to the Court that security be taken for the appearance of _____, the defendant, to answer any judgment that may be passed against him in the action; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do: It is ordered that the said defendant _____ be committed to prison as a civil prisoner until the decision of the action (or if judgment be pronounced against him, until satisfaction of the decree).

District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form is based on Form No. 103 in Schedule II. of the old Code amended in accordance with Form No. 4 in Appendix F of the new Indian Code.

No. 11.—Security for fulfilment of Decree.

(See Order XLII., r. 5.)

To the Fiscal of _____.

Whereas _____ has proved to the satisfaction of the Court that the defendant in the above action _____:

These are to command you to call upon the said defendant _____ on or before the _____ day of _____, 19—, either to furnish security for the sum of _____ rupees to produce and place at the disposal of this Court when required _____, or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him, or to appear and show cause why he should not furnish security; and you are further ordered to seize the said _____ and keep the same under safe custody until the further order of the Court; and you are further commanded to return this warrant on or before the _____ day of _____, 19—, with an endorsement certifying the date on which and manner in which it has been executed, or the reason why it has not been executed.

District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is adapted from Form No. 5 in Appendix F of the new Indian Code.

No. 12.—Order for Sequestration before Judgment on proof of failure to furnish Security.

(See Order XLII, r. 6 (2).)

To the Fiscal of _____ (Title.)

Whereas _____, the plaintiff in this action, has applied to the Court to call upon _____, the defendant, to furnish security to fulfil any decree that may be passed against him in the action, and whereas the Court has called upon the said _____ to furnish such security which he has failed to do: These are to command you to sequester _____, the property of the said _____, and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the _____ day of _____, 19—, with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is adapted from Form No. 7 in Appendix F of the new Indian Code.

No. 13.—Security to be given by Plaintiff.

(See Order XLII, r. 12 (2).)

Bond in ordinary form, the Secretary or Chief Clerk 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.

Notes.—This Form reproduces, with verbal amendments, Form No. 105 in Schedule II. of the old Code.

Forms Nos. 111–125, both terminals included—relating to judicial settlement—are included in the Appendix to the Second Schedule.

For the Forms relating to arbitration (Nos. 106–110), see the Appendix to the Third Schedule.

No. 14.—Interlocutory Injunctions.

(See Order XLIII, r. 1.)

(Title.)

Upon motion made unto this Court by _____, Proctor (or Advocate) for the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed (this day) (or the plaint filed in this action on the _____ day of _____, 19—, or the written statement of the said plaintiff filed on the _____ day of _____, 19—), and upon hearing the evidence of _____ and _____ in support thereof (if after notice and defendant not appearing: add, and also the evidence of _____ as to service of notice of this motion upon the defendant C. D.): This Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents, and workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said action of the plaintiff mentioned (or, in the statement or petition of the plaintiff and evidence at the hearing of this motion mentioned), and from selling the materials whereof the said house is composed, until the hearing of this action, or until the further order of this Court.

District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

(Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:)

To restrain the defendants _____ and _____ from parting with out of the custody of them or any of them, or endorsing, or assigning, or negotiating, the promissory note (or bill of exchange) in question, dated on or about the _____, &c., mentioned in the plaintiff's plaint (or petition), and the evidence heard at this motion, until the hearing of this action, or until the further order of this Court.

(In Copyright Cases.)

To restrain the defendant C. D., his servants, agents, or workmen, from printing, publishing, or vending a book called _____, or any part thereof, until the, &c.

(Where part only of a book is to be restrained) To restrain the defendant C. D., his servants, agents, or workmen, from printing, publishing, selling, or otherwise disposing of such parts of the book in the plaint (or petition and evidence, &c.) mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled _____, and also that part which is entitled _____ (or which is contained in page _____ to page _____, both inclusive, until the &c).

(In Patent Cases.)

To restrain the defendant C. D., his servants, agents, and workmen, from making or vending any perforated bricks (or as the case may be) upon the principle of the inventions in the plaintiff's plaint (or petition, &c., or written statement, &c.) mentioned belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint (or as the case may be) mentioned, and from counterfeiting, imitating, or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the, &c.

(In Cases of Trade Mark.)

To restrain the defendant *C. D.*, his servants, agents, or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking (or as the case may be) described as or purporting to be blacking manufactured by the plaintiff *A. B.*, in bottles having affixed thereto such labels as in the plaintiff's plaint (or petition, &c.) mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and so sold by the plaintiff *A. B.*, and from using trade cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff *A. B.*, until the, &c.

(To restrain a Partner from in any way interfering in the Business.)

To restrain the defendant *C. D.*, his servants and agents, from entering into any contract, and from accepting, drawing, endorsing, or negotiating any bill of exchange, note, or written security in the name of the partnership firm of *B. and D.*, and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing, or causing to be done, any act in the name or on the credit of the said partnership firm of *B. and D.*, or whereby the said partnership firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise, or undertaking until the, &c.

Note.—These Forms are new, and are adapted from Form No. 8 in Appendix F of the new Indian Code.

No. 15.—Appointment of Receiver.

(See Order XLIII., r. 10.)

(Title.)

To _____.

Whereas _____ has been seized in execution of a decree passed in the above action on the _____ day of _____, 19—, in favour of _____: You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XLIII. of the Code of Civil Procedure, 19—, with full powers under the provisions of that order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on _____. You will be entitled to remuneration at the rate of _____ per cent. upon your receipts under the authority of this appointment.

District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is adapted from Form No. 6 in Appendix F of the new Indian Code.

No. 16.—Bond to be given by Receiver.

(See Order XLIII. r. 12.)

(Title.)

Know all men by these presents that we, _____ and _____ and _____, are jointly and severally bound to _____, of the Court of _____, in _____ rupees to be paid to the said _____ or his successor in office for the time being. For which payment to be made we bind ourselves and each of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, by these presents.

Dated the _____ day of _____, 19—.

Whereas a plaint has been filed in this Court by _____ against _____ for the purpose of (*here insert the object of action*):

And whereas the said _____ has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immovable property and to get in the outstanding movable property of _____ in the said plaint named:

Now the condition of this obligation is such that if the above-bounden _____ shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property and in respect of the movable property of the said _____ at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above bounden in the presence of _____.

NOTE.—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

Note.—This Form is new, and is taken from Form No. 7 in Appendix F of the new Indian Code.

Appendix G.—APPEALS.

No. 1.—Petition of Appeal.

(See Order XLIV., r. 1 (1).)

(Title.)

The _____ day of _____, 19—.

1. The (plaintiff or defendant) above-named humbly begs to appeal to the Supreme Court from the decree of the _____ Court of _____ in this action, dated the _____ day of _____, 19—, on the following grounds :

- (a) The action is barred by Ordinance No. 22 of 1871, s. —.
- (b) The (plaintiff) is estopped from bringing the action by reason of the decree in D. C. _____ No. —.
- (c) The judgment is against the weight of the evidence, &c.

2. The appellant prays—

- (i.) _____.
- (ii.) _____.
- (iii.) _____.

(Signed) _____,

Proctor for Plaintiff (or Defendant), Appellant.

Note.—This Form is new. See notes to Order XLIV., r. 1; and compare Form No. 1 in Appendix G of the new Indian Code.

No. 2.—Memorandum of Documents received in Evidence.

(See Order XLIV., r. 1 (2).)

Nature of Document.	Dated.	By whom made or executed.	In whose favour.	Markings by Court of First Instance.

(Signed) _____,

Proctor for Appellant.

Note.—This Form is new, and specifies the particulars required by Order XLIV., r. 1 (2), which replaces rule 3 of the Civil Procedure Rules, 1909. Cf. Order IV., r. 5 (1).

No. 3.—Notice to Respondent that Appellant will tender Security in Appeal, &c.

(See Order XLIV., r. 11.)

(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 _____, 19—, against the (order or decree) of the _____ Court of _____, dated the _____ day of _____, 19—, in the said action, having been received by the said Court, counsel on my behalf will, on the _____ day of _____, 19—, 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.

Dated the _____ day of _____, 19—.

Note.—This Form reproduces Form No. 126 in Schedule II. of the old Code.

No. 4.—Notice of Appeal to be served on Respondent or his Proctor.

(See Order XLIV., r. 11 (4).)

(Head as in last Form.)

To (party respondent or his proctor).

You are required to take notice that the petition 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,

(Signed) —, Secretary or Chief Clerk.

Dated the — day of —, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 127 in Schedule II. of the old Code.

No. 5.—Certificate in Appeal.

(See Order XLIV., r. 11 (4) (b).)

Case instituted.	Nature of Action.	Amount involved.	Date of decision.	Decision in whose favour.	Petition of Appeal filed.	Security given on.	Whether Plaintiff or Defendant appeared <i>in forma pauperis</i> .

I, A. B. (Secretary, &c.), do hereby certify that the above statement is correct.

(Signed and dated.)

Note.—This Form reproduces, with additional particulars, Form No. 128 in Schedule II. of the old Code.

No. 6.—Security Bond in Appeal.

(See Order XLIV., r. 12 (a).)

(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.")

Note.—This Form reproduces Form No. 129 in Schedule II. of the old Code.

No. 7.—Security Bond where Execution is stayed.

(See Order XLIV., rr. 7 and 8.)

(Follow the last Form, making this condition: "That if the above-bounden, &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 as those incurred and taxed in the said — Court as those which shall," &c., as in last Form.)

Note.—This Form reproduces Form No. 130 in Schedule II. of the old Code.

No. 8.—Cross Objection to Decree appealed from.

(See Order XLIV., r. 19 (2).)

(Title.)

Whereas the _____ has preferred an appeal to the Supreme Court from the decree of the _____ Court _____ in this action, dated the _____ day of _____, 19—, and whereas notice of the day fixed for hearing the appeal was served on the _____ on the _____ day of _____, 19—, the _____ files this memorandum of cross objection under rule 19, sub-rule (1), of Order XLIV. of the Code of Civil Procedure, 19—, and sets forth the following grounds of objections to the decree appealed from, namely :

1. _____.
2. _____.
3. _____.

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is adapted from Form No. 8 in Appendix G of the new Indian Code.

No. 9.—Decree in Appeal.

(See Order XLIV., r. 22 (2).)

George the Fifth, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith.

In the Supreme Court of the Island of Ceylon.

Supreme Court No. _____.

A. B., Plaintiff and Appellant (or as the case may be)
against

C. D., Defendant and Respondent (or as the case may be).

Action No. _____.

District Court (or Court of Requests) of _____.

This cause coming on for hearing and determination on the _____ day of _____, and on this day, upon an appeal preferred by the plaintiff (or as the case may be) before the Hon. _____, Chief (Puisne) Justice of this Court, in the presence of counsel for the plaintiff (or defendant or both) :

It is considered and adjudged that the decree made in this action by the District Court (or Court of Requests) of _____, and dated the _____ day of _____, be and the same is hereby affirmed, and this appeal is dismissed (or as the case may be).

And it is further ordered and decreed that the plaintiff do pay to the defendant his taxed costs of this appeal (or as the case may be).

Witness the Hon. _____, Chief Justice, at Colombo, the _____ day of _____, in the year of our Lord One thousand Nine hundred and _____, and of Our Reign the _____.

Registrar.

The following is the judgment of the Supreme Court, on the same date pronounced by the Court :

(Here insert a copy of the judgment, if any.)

Note.—This Form is taken from the printed Form (Judicial—A 4) in use for decrees of the Supreme Court.

No. 10.—Application to Appeal in formâ pauperis.

(See Order XLIV., r. 28.)

(Title.)

I, _____, the _____ above-named, present the accompanying petition of appeal from the decree in the above action and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the movable and immovable property belonging to me with the estimated value thereof.

Dated the _____ day of _____, 19—. (Signed) _____.

NOTE.—Where the application is by the plaintiff, he should state whether he applied and was allowed to sue in the court of first instance as a pauper.

Note.—This Form is new, and is adapted from Form No. 10 in Appendix G of the new Indian Code.

No. 11.—Petition for Conditional Leave to Appeal.

(See Order XLV., r. 2.)

In the Supreme Court of the Island of Ceylon.

(Title of Action.)

To the Hon. the Chief Justice and the Justices of the Supreme Court.

———, Plaintiff.

The humble petition of *A. B.*, defendant, appellant above named (appearing by his Proctor *C. D.*).

Showeth as follows :

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the ——— day of ———, 19—, the ———, appellant, is desirous of appealing therefrom.

2. That the said judgment is a final judgment, and the matter in dispute on the appeal amounts to, or is of the value of, Rs. 5,000 or upwards (*or as the case may be*).

3. Wherefore the appellant prays for conditional leave to appeal against the said judgment of this Court dated ——— day of ———, 19—, to His Majesty the King in Council.

N.B.—If the appellant desires, the petition can embody an application for settlement of security under rule 3 of Order XLV.

Note.—This Form reproduces Form (a) in Schedule II. of the Appellate Procedure (Privy Council) Order, 1910. See notes to Order XLV., r. 2.

No. 12.—Bond where Security is by Deposit with Registrar.

(See Order XLV., r. 3 (2).)

In the Supreme Court of the Island of Ceylon.

Know all men by these presents that I, *A. B.*, the appellant above-named, am held and firmly bound to *E. F.*, Registrar of the Supreme Court, or to the Registrar of the said Court for the time being, in the sum of rupees ———, which amount I deposited with the said Registrar on the ——— day of ———, 19—, and for the payment of which sum I bind myself, my heirs, executors, and administrators firmly by these presents.

And for further securing the payment of the said sum of ——— rupees, I do hereby specially mortgage and hypothecate unto the said *E. F.* and his successors in the said office of Registrar the said sum of ——— rupees so deposited with him as aforesaid.

Dated at ———, this ——— day of ———, 19—.

Whereas the said *A. B.*, on the ——— day of ———, 19—, obtained leave to appeal to His Majesty the King in his Privy Council against the judgment and decree of the Supreme Court pronounced on the ——— day of ———, 19—:

And whereas such leave to appeal was granted subject (*inter alia*) to the condition that the said *A. B.* should within three months from the date of the hearing of the application deposit with the Registrar of the Supreme Court the sum of ——— rupees.

Now the condition of this obligation is such that if the above-bounden appellant shall duly prosecute the said appeal to His Majesty in Council, and shall and will well and truly pay or cause to be paid all such costs as may become payable to the respondents in the event of the appellant not obtaining an order granting him final leave to appeal, or if the appeal be dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondent's costs of appeal (*as the case may be*), then this obligation to be void and of no effect; otherwise to remain in full force.

Signed and delivered in the presence of ———.

Note.—This Form reproduces Form (c) in Schedule II. of the Appellate Procedure (Privy Council) Order, 1910. See notes to Order XLV., r. 3.

No. 13.—Petition for Final Leave to Appeal.

(See Order XLV., r. 5.)

In the Supreme Court of the Island of Ceylon.

(Title of Action.)

The humble petition, &c.

Showeth as follows :

1. That the appellant on the ——— day of ———, 19—, obtained conditional leave from this Honourable Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the ——— day of ———, 19—.

2. That the appellant has in compliance with the conditions of which such leave was granted (*here set out in what manner security has been given, the Registrar's fees deposited, and any other condition complied with*).

Wherefore the appellant prays that he be granted final leave to appeal against the said judgment of this Court dated the ——— day of ———, 19—, to His Majesty the King in Council.

Note.—This Form reproduces Form (b) in Schedule II. of the Appellate Procedure (Privy Council) Order, 1910. See notes to Order XLV., r. 5.

Appendix H.—MISCELLANEOUS.

No. 1.—Authority for the Appearance of one or more of several Plaintiffs or Defendants on behalf of the other or others of them.

(See Order I., r 16.)

(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 and act for me (us) therein.

Witness my (our) hand (hands) this _____ day of _____, 19—.

(Signed) _____
Address _____

Note.—This Form reproduces, with amendments, Form No. 4 in Schedule II. of the old Code.

No. 2.—General Power of Attorney.

(See Order II., r. 2 (b).)

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 _____, 19—.

(Signed) _____
Address _____

Note.—This Form reproduces, with verbal amendment, Form No. 5 in Schedule II. of the old Code.

No. 3.—Appointment of a Proctor.

(See Order II., r 4 (1).)

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 _____), 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, showing 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 to 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 _____, 19—.

The address for service of the said Proctor is at _____.

(Signature) _____

Note.—This Form reproduces Form No. 7 in Schedule II. of the old Code.

No. 4.—Appointment of a Proctor by the Attorney-General.

(See Order II., r. 4 (4).)

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 (a Proctor of the District Court of _____), to appear for me before the 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 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 _____, 19—
The address for service of the said Proctor is at _____.

(Signature) _____.

Note.—This Form reproduces Form No. 6 in Schedule II. of the old Code.

No. 5.—Revocation of such Appointment.

(See Order II., r. 4. (3).)

(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 (&c.), 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 _____, 19—.

Signed as the Proxy

Note.—This Form reproduces, with verbal amendment, Form No. 8 in Schedule II. of the old Code.

No. 6.—Notice to Appoint a new Proctor in place of one ceasing to act.

(See Order II., r. 5.)

(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 _____, 19—, and cause notice of such new appointment to be given to the undersigned at the under written address.

(Signed) _____,
Party (or Proctor).

The _____ day of _____, 19—.

Address _____.

Note.—This Form reproduces, with verbal amendments, Form No. 9 in Schedule II. of the old Code.

No. 7.—Notice of Substitution of new Proctor in place of one ceasing to act.

(See Order II., r. 5.)

(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.

(Signed) _____,
Party (or Proctor).

The _____ day of _____, 19—.

Address _____.

Note.—This Form reproduces, with verbal amendments, Form No. 10 in Schedule II. of the old Code.

No. 8.—Appointment of Agent to accept Service of Summons and other Process (General and Special).

(See Order II., r. 7.)

(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 _____, 19—.

The address for service of the said _____ is at _____.

(Signed) _____
Address _____

Note.—This Form reproduces, with verbal amendments, Form No. 11 in Schedule II. of the old Code.

No. 9.—Register of Civil Actions.

(See Order IV., r. 3 (2).)

Number of Case.	Date of Institution.	Names and Residences of Parties.	Nature of Action.	Value.	Judgment and Date thereof.	Judgment in Appeal (if any) and Date thereof.	Remark.

Note.—This Form is adapted from Judicial D 17, which seems suited to its purposes. The Form actually in use is of course printed in a larger form.

No. 10.—Abstract of Plaintiff's or Defendant's Title in Land Cases.

(See Order IV., r. 5 (1).)

Nature of Document.	* Dated.	By whom made or executed.	In whose favour.	Area or Fraction of Land dealt with.	Boundaries.	When registered.	Consideration, if any.	Original, Duplicate, or Copy.

Note.—This Form reproduces Schedule A to the Civil Procedure Rules, 1909. with slight alterations.

No. 11.—List of Documents produced by Plaintiff with his plaint.

(See Order VII., r. 10 (1).)

(Title.)

No.	Description of Document.	Date (if any) which it bears.	Signature of Party or Proctor.

Note.—This Form reproduces Form No. 35 in Schedule II. of the old Code. "Produced by plaintiff" As to these words see the notes to O. XX., r. 9, and also Form No. 17 in this Appendix.

No. 12.—Receipt Book for Returned Exhibits.

(See Order XV., r. 3 (2).)

Description of Exhibit.	By whom presented.	No. of Action.	Date on which Time for Appeal elapsed or Appeal disposed of.	Cost of Copy paid.	Signature of Person to whom Exhibit returned.	Date of return.	Signature of Officer by whom returned.
Enter description merely and not substance of exhibit.							(Should be signed by officer in charge of this register.)

Note.—This Form reproduces Form No. 36 in Schedule II. of the old Code.

No. 13.—Certificate of Judge as to Competency of Translator.

(See Order XV., r. 6 (2).)

I, _____, certify that A. B. is competent to perform the duties of a Sinhalese (or Tamil) translator.

(Signed) C. D.,
Judge of the District Court
or
Commissioner of the Court of Requests } of _____.

Note.—This Form is new.

No. 14.—Oath or Affirmation of Translator of Documents.

(See Order XV., r. 6 (2).)

I, A. B., do swear (or affirm) that I will, to the best of my skill, knowledge, and judgment, perform the duties of a translator of _____.

(Signed) A. B.

Sworn (or affirmed) before me the _____ day of _____, 19—.

(Signed) C. D.,
Judge of the District Court
or
Commissioner of the Court of Requests } of _____.

Note.—This Form is new.

No. 15.—Notice of Motion for Transfer of an Action or Matter.

(See Order XVIII., r. 1 (1).)

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 _____, 19—, 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 _____, 19—, (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 of the affidavit on which motion is to be made. See Form No. 16 in this Appendix.

Note.—This Form reproduces, with verbal amendments, Form No. 1 in Schedule II. of the old Code.

No. 16.—Affidavit in support of Motion for Transfer.

(See Order XVIII., r. 1 (1).)

(For formal parts see Form No. 18.)

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 other the following : (here state the question 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.

Note.—This Form reproduces Form No. 2 in Schedule II. of the old Code.

No. 17.—List of Documents admitted in Evidence.

(See Order XX., r. 9 (4).)

Nature of Document.	Dated.	By whom made or executed.	In whose favour.	Purpose for which made.	Distinguishing Mark or Letter.

(Signed) _____,
Proctor for Plaintiff (or Defendant).

Note.—This Form is new, but is based upon the existing practice.

No. 18.—Formal Parts of an Affidavit in an Action.

(See Order XXI.)

In the Supreme Court of the Island of Ceylon.

or

In the { District Court
 { Court of Requests } of Colombo (or as the case may be).

(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 deponents) A. B. and C. D. at _____, this _____ day of _____, 19—.

Before me (name and office of person administering the oath or affirmation).

Note.—This Form reproduces, with verbal amendments, Form No. 75 in Schedule II. of the old Code.

No. 19.—Bills of Costs for Taxation.

(See Order XXIII., r. 5 (2).)

(1)

In the Supreme Court of the Island of Ceylon.

135 Interlocutory, D. C. Colombo, 25,630.

A. B., Plaintiff-Appellant.

vs.

C. D., Defendant-Respondent.

Date of S. C. decree : June 24, 1912.

Nature of action : Damages (or as the case may be).

Amount involved : Rs. 1,000.

Defendant-respondent's bill of costs payable by the plaintiff-appellant :

1912.	Disbursements.	
	Advocate's fees.	
	Proctor's fees.	

(Signed) _____,
Proctors for Defendant-Respondent.

Received Rs. _____
L. M.,
Advocate.

Colombo, _____, 1912.

(2)

In the District Court of *Colombo*.

No. —.

A. B., Plaintiff.

Vs.

C. D., Defendant.

Nature of action: Damages (*or as the case may be*).

Amount involved: Rs. —.

Defendant's bill of costs payable by the plaintiff:

1912.	Disbursements.		
	Advocate's fees.		
	Proctor's fees.		

Received Rs. —.

Advocate.

Proctors for Defendant.

Colombo, —, 1912.

(3)

The same as (2) adapted to the Court of Requests.

Note.—These Forms are new. It seems desirable to have some uniformity in the forms of bills of costs.

No. 20.—Application for Reconsideration of Taxation by Taxing Officer.

(See Order XXIII., r. 7 (2).)

(*Title.*)

In the matter of the taxation of the plaintiff's (*or the defendant's*) costs.

Whereas —, the plaintiff (*or the defendant*) in the above-entitled action, is dissatisfied with the allowance (*or disallowance*) of the items specified in the subjoined list for the reasons therein mentioned, I, —, Proctor for the said —, do hereby apply for a reconsideration of the taxation of the said items.

(*Signed*) —,

Proctor for the Plaintiff (*or the Defendant*).

Dated the — day of —, 19—.

The List above referred to.

Items objected to.

Reasons for objections.

Note.—This Form is new, and is based upon the practice introduced by Order XXIII., r. 7.

No. 21.—Application for Review of Taxation by Court.

(See Order XXIII., r. 8.)

(*Title.*)

In the matter of the taxation of the plaintiff's (*or the defendant's*) costs.

Whereas —, the plaintiff (*or the defendant*) in the above-entitled action, being dissatisfied with the allowance (*or disallowance*) of the items specified in the subjoined list for the reasons therein mentioned, duly filed an application with the Registrar (*or the Secretary or the Chief Clerk*) to reconsider the taxation of the said items, and whereas —, the plaintiff (*or the defendant*), is dissatisfied with the decision of the Registrar (*or the Secretary or the Chief Clerk*) upon such reconsideration, I, —, Proctor for the said —, do hereby apply to have the said taxation referred to the Honourable the Supreme Court (*or to the District Judge or Commissioner of Requests*) for determination.

(*Signed*) —,

Proctor for the Plaintiff (*or the Defendant*).

Dated the — day of —, 19—.

The List above referred to.

Items objected to.

Reasons for objections.

Note.—This Form is new, and is based upon the practice specified in Order XXIII., r. 8.

No. 22.—Application for Permission to withdraw from an Action.

(See Order XXVIII., r. 1.)

(Title.)

I, _____, plaintiff in the above-named action, hereby request 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.

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 72 in Schedule II. of the old Code.

No. 23.—Notice of Payment into Court.

(See Order XXIX., r. 2.)

(Title.)

To (*plaintiff*).

Take notice that the defendant in the above-named action has paid into Court _____ rupees, and that that sum is sufficient to satisfy your claim (*or your claim for _____*).

(Signed) _____,
Party (*or* Proctor).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 73 in Schedule II. of the old Code.

No. 24.—Security for Defendant's Costs where Plaintiff resides out of Jurisdiction of the Court.

(See Order XXX., r. 1.)

(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 _____, 19—.

Whereas by an order of the said _____ Court of _____, dated the _____ day of _____, 19—, 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.)

Note.—This Form reproduces Form No. 74 in Schedule II. of the old Code.

No. 25.—Order for Commission to examine absent Witness.

(See Order XXXI., r. 3.)

(Title.)

Upon hearing Proctors on both sides, and upon reading the affidavit of _____ filed herein the _____ day of _____, 19—, and _____ :

It is ordered that _____, a witness on behalf of _____, be examined *vivâ voce* on oath or affirmation before _____, (the _____'s Proctor), giving to the _____'s Proctor notice in writing of the time and place of such examination.

And it is further ordered that the examination so taken shall form part of the record of the action, and may be read and given in evidence at the trial, saving all just exceptions to its admissibility, and that the costs of this application and of the examination of the said witness be _____.

(Signed) _____,
District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is based upon Form No. 35 in Appendix K of the English R. S. C.

No. 26.—Commission to examine absent Witness.

(See Order XXXI., r. 3.)

(Title.)

To _____.

Whereas the evidence of _____ is required by the _____ in the above action; and whereas _____; you are requested to take the evidence on interrogatories (or *viva voce*) of such witness _____, and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents, if in attendance, who will be at liberty to question the witness on the points specified; and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of _____ rupees, being your fee in the above, is herewith forwarded.

District Judge (or as the case may be).

Note.—This Form is new, and is adapted from Form No. 7 of Appendix H of the new Indian Code.

No. 27.—Notice to Parties of the Day fixed for the Examination of a Witness about to leave the Jurisdiction.

(See Order XX., r. 20 (2).)

(Title.)

To (plaintiff or defendant).

Whereas application has been made to this Court by the (defendant or plaintiff; or as the case may be) 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 _____, 19—, at _____ o'clock.

By order of Court,

(Signed) _____,
Secretary (or as the case may be.)

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 40 in Schedule II. of the old Code.

No. 28.—Commission for Examination of Person not residing within the Colony.

(See Order XXXI., r. 6 (2).)

(Title.)

To _____.

Whereas the evidence of _____ is required by the _____ in the above action; and whereas _____; you are requested to take the evidence on interrogatories (or *viva voce*) of such witness _____, and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents, if in attendance, who will be at liberty to question the witness on the points specified; and you are further requested to make return of such evidence as soon as it may be taken.

A sum of _____ rupees, being your fee in the above, is herewith forwarded.

District Judge (or as the case may be).

Note.—This Form is new, and is adapted from Form No. 7 of Appendix H of the new Indian Code.

No. 29.—Letter of Request.

(See Order XXXI., r. 6 (2) and (3).)

(Title.)

(Heading To the President and Judges of, &c., or as the case may be.)

Whereas an action is now pending in the _____, in which A. B. is plaintiff and C. D. is defendant: And in the said action the plaintiff claims—

(Abstract of Claim.)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of _____;
G. H., of _____; and
I. J., of _____.

And it appearing that such witnesses are resident within the jurisdiction of your Honourable Court:

Now I, _____, as the _____ of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said _____, or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as, according to the procedure of your Court, is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the list of questions which accompany this letter of request (*or viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(NOTE.—If the request is directed to a Foreign Court, the words "through His Majesty's Secretary of State for Foreign Affairs for transmission" should be inserted after the words "other witnesses" in the last line of this Form.)

Note.—This Form is new, and is adapted from Form No. 8 in Appendix H of the new Indian Code, and Form No. 37B in Appendix K of the English R. S. C.

No. 30.—Order under the Foreign Tribunals Evidence Act, 1856.

(See Order XXXI., r. 12.)

In the Supreme Court of the Island of Ceylon.

In the matter of the Foreign Tribunals Evidence Act, 1856 (19 and 20 Vict. c. 13).

And in the matter of a (*civil or commercial or criminal*) proceeding now pending before _____ (*description of foreign tribunal*) intituled as follows:

Between _____ plaintiff, and _____ defendant.

Upon reading the affidavit (*if any*) of _____, filed the _____ day of _____, 19____, and the certificate of _____ (*name and description of the Ambassador, Minister, Diplomatic Agent, or Consul of the foreign country*), that proceedings are pending in the _____ (*description of foreign tribunal*) in _____ (*name of foreign country*), and that such Court is desirous of obtaining the testimony of _____ (*names of witnesses*):

It is ordered that the said witness _____ do attend before _____ (*name and address of examiner*), who is hereby appointed examiner herein, at _____ (*place appointed for examination*) on the _____ day of _____, 19____, at _____ o'clock, or such other day and time as the said examiner may appoint, and do there submit to be examined upon oath or affirmation touching the testimony so required as aforesaid, and do then and there produce _____ (*description of documents, if any, required to be produced*).

And it is further ordered that the said examiner do take down in writing the evidence of the said witness or witnesses, according to the rules and practice of the Court pertaining to the examination and cross-examination of witnesses (*or as may be otherwise directed*); and do cause each and every such witness to sign his or her depositions in the said examiner's presence; and do sign the depositions taken in pursuance of this order, and when so completed, do transmit the same, together with this order, to the Registrar of the Supreme Court for transmission to the President of the said tribunal desiring the evidence of such witness or witnesses.

Dated the _____ day of _____, 19____.

Note.—This Form reproduces Form No. 1 in the Schedule to the Rules under the Foreign Tribunals Evidence Act, 1856 (see the *Ceylon Government Gazette* No. 6,274 of November 13, 1908.)

No. 31.—Certificate under the Foreign Tribunals Evidence Act, 1856.

(See Order XXXI., r. 14.)

I, _____, Registrar of the Supreme Court of the Island of Ceylon, hereby certify that the documents annexed hereto are (1) the original order of the said Court dated the _____ day of _____, 19—, made in the matter of _____ pending in the _____ at _____ in the _____ of _____, directing the examination of certain witnesses to be taken by the said _____; and (2) the examination and depositions taken by the said _____ pursuant to the said order, and duly signed and completed by him on the _____ day of _____, 19—.

(Signed) _____,
Registrar, Supreme Court, Ceylon.

Dated the _____ day of _____, 19—.

Note.—This Form reproduces Form No. 2 in the Schedule to the Rules under the Foreign Tribunals Evidence Act, 1856 (see the *Ceylon Government Gazette* No. 6,274 of November 13, 1908).

No. 32.—Commission for Local Investigation or to Examine Accounts.

(See Order XXXI., rr. 18, 20.)

(Title.)

To _____.

Whereas it is deemed requisite, for the purposes of this action, that a commission for _____ should be issued: You are hereby appointed Commissioner for the purpose of _____.

Process to compel the attendance before you of any witnesses or for the production of any documents whom or which you may desire to examine or inspect will be issued by any Court having jurisdiction on your application.

A sum of _____ rupees, being your fee in the above, is herewith forwarded.

(Signed) _____,
District Judge (or as the case may be).

Dated the _____ day of _____, 19—.

Note.—This Form is new, and is taken from Form No. 9 in Appendix H of the new Indian Code.

No. 33.—Notice to Attorney-General or Public Officer of the Institution of an Action.

(See Section 32 of the Ordinance.)

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.

Dated the _____ day of _____, 19—.

(Where the notice is issued by a Proctor, alter the wording accordingly.)

Note.—This Form reproduces Form No. 79 in Schedule II. of the old Code.

No. 34.—Authority to Sue or Defend given by an Officer, Sailor, or Soldier on Service.

(See Order XXXIII., r. 1.)

I, A. B., presently of _____, being a (rank) in His 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) an 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.

Dated the _____ day of _____, 19—.

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.

Note.—This Form reproduces Form No. 80 in Schedule II. of the old Code.

No. 35.—Order for the Personal Appearance of a Plaintiff, or of the Director or Secretary or other Principal Officer of a Corporation.

(See Order XXXIV., r. 3.)

(Title.)

To _____, of _____, plaintiff in the above-named action (or Director, or Secretary, or other principal officer, of the _____ 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 _____, 19—.

Dated the _____ day of _____, 19—. (Signed) _____,
(Name and Office of Judge.)

Note.—This Form reproduces, with verbal amendments, Form No. 34 in Schedule II. of the old Code.

No. 36.—Notice to Minor Defendant and Guardian.

(See Order XXXVII., r. 3 (4) (a).)

(Title.)

To _____ Minor Defendant.
_____ Natural Guardian.

Whereas an application has been presented on the part of the plaintiff in the above action for the appointment of a guardian for the action to the minor defendant, you, the said minor, and you (*here insert the name of the guardian*), are hereby required to take notice that unless within _____ days from the service upon you of this notice an application is made to this Court for the appointment of you (*here insert the name of the guardian*), or of some friend of you, the minor, to act as guardian for the action, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said action.

Dated the _____ day of _____, 19—. (Signed) _____,
Secretary (or Chief Clerk).

Note.—This Form is new, and is taken from Form No. 11 in Appendix H of the new Indian Code.

No. 37.—Application for Permission to Sue as a Pauper.

(See Order XXXVIII., r. 2.)

(Heading of 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 Order XXXVIII., r. 3.)

Note.—This Form reproduces, with verbal amendments, Form No. 76 in Schedule II. of the old Code. Form No. 77, Certificate of Proctor Referee, has been omitted in consequence of the alteration in the procedure in pauper actions effected by Order XXXVIII., r. 7.

No. 38.—Notice to Opposite Party of Day fixed for hearing Evidence of Pauperism.

(See Order XXXVIII., r. 7.)

(Title.)

To _____.

Whereas _____ has applied to this Court for permission to institute an action against _____ *in forma pauperis* under Order XXXVIII. of the Code of Civil Procedure, 19—: and whereas the Court sees no reason to reject the application; and whereas the _____ day of _____, 19—, has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof:

Notice is hereby given to you that in case you may wish to offer any evidence to disprove the pauperism of the applicant you may do so on appearing in this Court on the said _____ day of _____, 19—.

Dated the _____ day of _____, 19—. (Signed) _____,
Secretary (or Chief Clerk).

Note.—This Form is new, and is adapted from Form No. 12 in Appendix H of the new Indian Code.

No. 39.—Notice to Party permitted to sue or defend *in formâ pauperis* of Motion by the Opposite Party that he be dispaupered.

(See Order XXXVIII., r. 12 (2).)

(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 rule 12, sub-rule (1)*): This is to give you notice that the said motion will be heard and determined in this Court on the _____ day of _____, 19—, at _____ o'clock of the forenoon.

(Signed) _____,
Secretary (or Chief Clerk).

Dated the _____ day of _____, 19—.

Note.—This Form reproduces, with verbal amendments, Form No. 78 in Schedule II. of the old Code.

No. 40.—Summons to Person accused of Contempt of Court.

(See Order XLVI., r. 2.)

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 rule 17 of Order XVI. of the Code of Civil Procedure, 19— (*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 _____, 19—, at _____ o'clock of the forenoon, to answer to the said charge.

(Signed and dated) _____,
District Judge (*or as the case may be*).

Note.—This Form reproduces, with verbal amendments, Form No. 132 in Schedule II. of the old Code.

No. 41.—Warrant in the like case.

(See Order XLVI., r. 3 (1).)

(Heading as in last Form.)

To _____ Fiscal, &c.

Whereas _____, of _____, has been summoned to attend in person before this Court on the _____ day of _____, 19—, 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 _____, 19—, at _____ o'clock on 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.)

Note.—This Form reproduces Form No. 133 in Schedule II. of the old Code.

No. 42.—Conviction for Contempt.

(See Order XLVI., r. 5 (2) and (3).)

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) _____,
District Judge (*or as the case may be*).

Note.—This Form reproduces Form No. 134 in Schedule II. of the old Code.

Appendix J.—COSTS.

Explanatory Memorandum.

The scales of costs and charges contained in Schedule III. of the old Code have been retained for the most part without alteration, but the following amendments require notice :—

(a) An inclusive fee of Rs. 7.50 has been introduced to meet proctors' fees in appeals from Courts of Requests. Under the old Code there is no provision for proctors' fees for work done in connection with appeals from Courts of Requests. It seems only reasonable that some fee should be allowed on taxation.

(b) The existing practice on the taxation of costs in the Supreme Court has been embodied in four "directory paragraphs":—

- (1) *The fee of a junior advocate will not be allowed in appeals from Courts of Requests.*
- (2) *No fees will be allowed for a third advocate in any case.*
- (3) *The brief fee of a junior advocate where two advocates are engaged shall not exceed two-thirds of the senior advocate's brief fee.*
- (4) *Where the appeal is argued on more days than one, a refresher of one-half of the brief fee may be allowed for each succeeding day of argument.*

These paragraphs are to some extent based on similar directions which were contained in Schedule III. of the old Code (and which have been retained in the new Code) with respect to District Court taxations.

(c) The words "subject to appeal" and "subject to review and appeal" have been omitted from the scales of costs as unnecessary, in view of the provisions of the new Code as to "reconsideration" and "review" of, and appeal from, taxations.

(d) The scales of charges under the Civil Procedure Rules, 1909, and the Civil Appellate Rules, 1908 (which are repealed by the new Code), have been included under this Appendix as charges that are to be allowed on taxation.

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.

Where the cause of action, title to land or property, value of estate, or subject-matter of the action is	Class I.	Class II.	Class III.	Class IV.	Class V.
	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. 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 Code ..	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 50	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

* A folio to consist of 120 words.

Where the cause of action, title to land or property, value of estate, or subject-matter of the action is	Class I.	Class II.	Class III.	Class IV.	Class V.
	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. c.	Rs. c.	Rs. c.	Rs. c.
Drawing summons, notice, subpoena, writ, or other process, order of Court, decree, or judgment ..	0 50	0 75	1 0	1 25	1 50½
Making copy or translation thereof ..	0 12½	0 25	0 37½	0 37½	0 37
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 of motion for judgment or any other special motion or application ..	2 0	3 0	4 0	5 0	7 50
Attending Court to support or oppose all necessary or ordinary applications or motions ..	1 0	1 50	2 0	2 50	3 0
Drawing affidavit and fair copy, per folio* ..	0 50	0 50	0 50	0 50	0 50
Drawing probate, letters of administration, interrogatories, cross interrogatories, commissions, special case, injunctions, sequestrations, proclamation bonds, reference, citations, inventories, 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 50	0 50	0 50	0 50
Making copy of pleadings and documents 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 brief), 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 advocate, each sitting (no fees after sixth sitting) ..	2 50	3 75	5 0	5 0	5 0
Attending arbitrator with advocate, each sitting (no fees after sixth sitting) ..	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 without 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 purpose of being used as evidence in any action or proceeding	Such sum as the Secretary shall consider fair and reasonable.				
Examining witnesses preparatory to trial or for instructions for brief ..	1 0	1 50	2 0	2 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 50	2 50

Maps, surveys, plans, or models when necessary, such sum as the Secretary shall deem reasonable.

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.

In all actions involving over Rs. 10,000, the taxable charges to be 1-6th higher than in Class V.

* A folio to consist of 120 words.

Scale of Fees to be paid to Advocates in the District Courts.

Where the cause of action, title to land or property, value of estate, or subject-matter of the action is	Class I.	Class II.	Class III.	Class IV.	Class V.
	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 upwards.
	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.
Retainer	10 50	10 50	21 0	21 0	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	52 50	52 50	105 0
Brief fee where trial or argument is resumed .. .	10 50	21 0	21 0	21 0	31 50

- (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.
- (4) The Secretary may allow any charges or fees as he shall deem reasonable (not otherwise provided for) on special application *in writing* being made to him *after notice to the other side*.

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.

In money cases which have not been contested :	Rs. c.
Rs. 20 and not exceeding Rs. 50 .. .	5 0
Above Rs. 50 and not exceeding Rs. 100 .. .	10 0
Above Rs. 100 and not exceeding Rs. 200 .. .	15 0
Above Rs. 200 and not exceeding Rs. 300 .. .	20 0
In money cases which have been contested :	
Rs. 20 and not exceeding Rs. 50 .. .	10 0
Above Rs. 50 and not exceeding Rs. 100 .. .	15 0
Above Rs. 100 and not exceeding Rs. 200 .. .	20 0
Above Rs. 200 and not exceeding Rs. 300 .. .	25 0
In all land cases :	
Not exceeding Rs. 50 .. .	10 0
Above Rs. 50 and not exceeding Rs. 100 .. .	20 0
Above Rs. 100 and not exceeding Rs. 200 .. .	30 0
Above Rs. 200 and not exceeding Rs. 300 .. .	40 0

Advocates' Fees.

Retainer and brief fee in all cases above Rs. 50 and not exceeding Rs. 200 .. .	Rs. c.	10 50	to	21 0
Retainer and brief fee in all cases above Rs. 200 .. .		21 0	to	31 50

Surveys and plans when necessary, such sum as the Commissioner shall deem reasonable.

Witnesses' expenses, as the Commissioner may determine.

For interpleader, summary, or other incidental proceedings, such costs as the Commissioner in his discretion may allow.

SUPREME COURT.

In Appeal.

Appeals from Courts of Requests :

Proctors' Fees.	Rs. c.	Rs. c.
An inclusive fee of .. .	—	7 50
Advocates' Fees.		
Brief fee on argument .. .	10 50 to	21 0

Appeals from District Courts or Supreme Court :

Advocates' Fees.		
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. and II. Rs. c.	III. Rs. c.	IV. and V. Rs. c.
<i>Appeals from District Courts :</i>			
Proxy	0 75 ..	1 0 ..	1 50
Application for typewritten copies	1 0 ..	1 0 ..	1 0
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*	0 25 ..	0 50 ..	0 50
Close copy of pleadings, evidence, and documents to accompany brief, per folio*	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

- (1) The fee of a junior advocate will not be allowed in appeals from Courts of Requests.
- (2) No fees will be allowed for a third advocate in any case.
- (3) The brief fee of a junior advocate where two advocates are engaged shall not exceed two-thirds of the senior advocate's brief fee.
- (4) Where the appeal is argued on more days than one, a refresher of one-half of the brief fee may be allowed for each succeeding day of argument.
- (5) The Registrar may allow any charges or fees not specially provided for as he shall deem reasonable on special application in writing being made to him after notice to the other side.

Scale of Charges for the Preparation of the Documents specified respectively in Order IV., r. 5, and Order XLIV., r. 1 (2).

DISTRICT COURT.

	Class I.	Class II.	Class III.	Class IV.	Class V.
	Rs. c.	Rs. c.	Rs. c.	Rs. c.	Rs. c.
Abstract of title	1 0 ..	2 0 ..	2 0 ..	3 0 ..	3 0
Pedigree	1 0 ..	1 0 ..	2 0 ..	2 0 ..	2 0
List of documents marked in evidence	0 75 ..	1 0 ..	1 0 ..	1 50 ..	2 0

COURT OF REQUESTS.

Abstract of title	—	—	—	—	1 50
Pedigree	—	—	—	—	1 0
List of documents marked in evidence	—	—	—	—	1 0

N.B.—The above charges are costs in the cause, and shall be allowed on taxation in the District Court, Court of Requests, or Supreme Court, as the case may be.

Scale of Charges for Typewritten Copies furnished under Order XLIV., r. 13 (6)

Final Appeals from District Courts.

	Class I.	Class II.	Class III.	Class IV.	Class V.	Class VI.
	Rs. 500 and under.	Over Rs. 500 and under Rs. 1,000.	Rs. 1,000 and under Rs. 5,000.	Rs. 5,000 and under Rs. 10,000.	Rs. 10,000 and under Rs. 20,000.	Rs. 20,000 and above.
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Where the action or proceeding involves property or rights of the value of						
Payable by the appellant for one copy (including two copies for the Judges)	4	5	6	8	10	15
Payable by the respondent for one copy	4	5	6	8	10	15

In final appeals in partition actions, whatever the value of the land, the copies shall be charged for as in Class III.; in matrimonial cases, as in Class IV.; in actions relating to public charities, as in Class IV.; in actions under the Inventions Ordinance, 1906, as in Class V.

* A folio to consist of 120 words.

Interlocutory Appeals from District Courts.

	In Partition Actions.	Rs.	In all other Interlocutory Appeals.	Rs.
Payable by the appellant for one copy (including two copies for the Judges)	6	..	4
Payable by the respondent for one copy	6	..	4

Appeals from Courts of Requests.

Payable by the appellant for one copy (including one copy for the Judge) ..	..	—	..	3
Payable by the respondent for one copy ..	..	—	..	3

N.B.—The above charges are costs in appeal, and shall be allowed accordingly on taxation in the Supreme Court.

Appendix K.

PART I.

Rules as to the Printing of Records in Appeals to the Privy Council.

1. Records and Cases in Appeals to His Majesty in Council shall be printed in the form known as demy quarto (*i.e.*, 54 ems in length and 42 in width).
2. The size of the paper used shall be such that the sheet when folded and trimmed will be 11 inches in height and 8½ inches in width.
3. The type to be used in the text shall be Pica type, but Long Primer shall be used in printing accounts, tabular matter, and notes.
4. The number of lines in each page of Pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

PART II.

Fees payable in respect of the Preparation of Copies of Records in Appeals to the Privy Council.

(a) Fees to be paid to the Registrar of the Supreme Court for examining and certifying copies of the record for transmission to the Registrar of the Privy Council, whether they are printed or typed or in manuscript :—

	Rs.	c.
Where the record contains 150 folios or under, a fee of ..	105	0
Where the record contains over 150 folios but under 250 folios ..	157	50
For every 25 folios or part thereof in excess of 250 folios, a further sum of ..	10	50

(b) Amounts payable in respect of translating, transcribing, indexing, and transmitting the record :—

For translating where any documents are specially ordered by the Court to be translated :—		Rs.	c.
For every folio ..	..	0	37½
With a minimum charge of ..	..	5	0

For fair copying the record and examining the transcript thereof :—

For every folio ..	..	0	20
With a minimum charge of ..	..	10	0

For examining the record when printed :—

For every folio ..	..	0	7½
With a minimum charge of ..	..	5	0

For transmitting the record, the actual sum paid by the Registrar for transmission by post or otherwise and for insurance.

(A folio to consist of 120 words.)

THE SECOND SCHEDULE.

ADMINISTRATION PROCEEDINGS AND JUDICIAL SETTLEMENT.

CHAPTER I.

Testamentary Actions.

Chapter XXXVIII.]

[516] Deposit of the will of deceased.

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

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

[517] Penalty on neglect.

2. Any person liable to produce any will to any Court under the provisions of the last preceding section, who shall wilfully omit to produce such will, or to furnish the information thereby required, shall be guilty of an offence, and liable to a fine not exceeding one thousand rupees.

[518] Who may apply for probate or administration.

3. When any person shall die leaving a will under or by virtue of which any property in Ceylon is in any way affected, any person appointed executor therein may apply to the District Court of the district within which the testator died, or, if the testator died out of Ceylon and the applicant has obtained an order of the Supreme Court appointing any Court to have sole testamentary jurisdiction over his estate or effects, to such Court, to have the will proved, and to have probate thereof issued to him; also any person interested, either by virtue of the will or otherwise, in having the property of the testator administered, may apply to such Court to have the will proved, and to obtain grant to himself of administration of the estate with copy of the will annexed. If any person who would be entitled to administration is absent from the Island, a grant of letters of administration with or without the will annexed, as the case may require, may be made to the duly constituted attorney of such person.

[519] Probate or administration compulsory where estate over one thousand rupees.

4. Upon any such application being made, and, in every case in which the estate of the testator amounts to or exceeds in value one thousand rupees, whether any such application shall have been made or not, it shall be obligatory on the Court to, and the Court shall, issue probate of the will to the executor or executors named therein; or if there is no executor resident in the Island competent and willing to act, the Court shall issue letters of administration with or without the will annexed, as the case may require, to some person who by the provisions of the last preceding section is competent to apply for the same, or to some other person who, in the opinion of the Court, by reason of consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, is a proper person to be appointed administrator; and in every such case letters of administration may be limited or not in manner hereinafter provided, as the Court thinks fit. The grant of such letters shall be subject to the rules and regulations hereinafter provided with regard to such grants in other cases; and in the judgment by which such grant is made the Court shall adjudicate upon the facts which constitute the grounds of the appointment.

[520] When secretary of the Court may be appointed.

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

[521] Security.

6. In every case in which it is found necessary, whether by reason of such executor as aforesaid not applying for probate, or by reason of there being no executor resident in the Island competent and willing to act, or by reason of no person who is competent under section 3 to apply for letters of administration so applying, that any such person as is in section 4 mentioned, or the secretary of the Court, should be appointed administrator, the Court shall take from such person or secretary security for the due administration of the estate in manner in section 23 mentioned, and it shall not in any case be competent for the Court to dispense with such security under the provisions of section 26.

[522] Secretary when allowed to proceed on blank.

7. In every case in which letters of administration have so as aforesaid been granted to the secretary of the Court, it shall be competent for the Court in its discretion to allow such secretary to proceed without supplying the stamps required by law to be supplied by executors and administrators in proceedings taken under this chapter, until such time as assets of the estate sufficient to defray the cost of the same shall have come to his hands. The amount which would have been payable by such secretary as administrator on any proceedings in which he has been so allowed to proceed on blank shall be calculated by the Court, and shall be a first charge on all the assets of the estate.

[523] To whom grant in either case should be made.

8. In the case of a conflict of claims to have the will proved and probate or grant of administration issued, the claim of an executor or his attorney shall be preferred to that of all others, and the claim of a creditor shall be postponed to the claim of a residuary legatee or devisee under the will. And in the like case of a conflict of claims for grant of administration where there is intestacy, the claim of the widow or widower shall be preferred to all others, and the claim of an heir to that of a creditor.

[524] Mode of application and proof in case of a will.

9. Every application to the District Court to have the will of a deceased person proved shall be made on petition *in accordance with the provisions of Order XXVI. of this Code*, which petition shall set out in numbered paragraphs the relevant facts of the making of the will, the death of the testator, the heirs of the deceased to the best of the petitioner's knowledge, the details and situation of the deceased's property, and the grounds upon which the petitioner is entitled to have the will proved; the petition shall also show whether the petitioner claims as creditor, executor, administrator, residuary legatee; legatee, heir, devisee, or in any and what other character.

If the will is not already deposited in the District Court in which the application is made, it must either be appended to the petition, or must be brought into Court and identified by affidavit, with the will as an exhibit thereto, or by parol testimony at the time the application is made.

Every person making, or intending to make, an application to a District Court under this section to have the will of a deceased person proved, which will is deposited in another District Court, is entitled to procure the latter Court to transmit the said will to the Court to which application is to be made, for the purpose of such application.

Application to be made on affidavits.

Also the application must be supported by sufficient evidence either in the shape of affidavits of facts, with the will as an exhibit thereto, or of oral testimony, proving that the will was duly executed according to law, and establishing the character of the petitioner according to his claim.

[525] Affidavit of no opposition.

10. If the petitioner has no reason to suppose that his application will be opposed by any person, he may file with his petition an affidavit to that effect, and may omit to name any person in his petition as respondent.

[526] Court if satisfied with proof, to make order *nisi* declaring will proved. Citations.

11. Upon the application being made, if the Court is of opinion that the evidence adduced is sufficient to afford *prima facie* proof of the due making of the will and of the character of the petitioner, it shall make an order *nisi* declaring the will to be proved, which order shall be served upon the respondent, if any, and upon such other person as the Court shall think fit to direct, and shall come on for final hearing and disposal on a day to be named therein.

[527] Order *nisi* to direct probate.

12. If the applicant claims as the executor or one of the executors of the will, and asks that probate may be issued to him, the order *nisi* shall declare that he is executor, and shall direct the issue of probate to him accordingly.

[528] Grant of administration with copy of will annexed.

13. If the applicant claims in any other character than that of executor, and asks that the administration of the deceased's property be granted to him, then the order *nisi* shall include a grant to the applicant of a power to administer the deceased's property according to the will, with a copy of the will annexed.

[529] When Court may make order absolute in the first instance.

14. In the case of an application for probate if no respondent is named in the petition, the Court may in its discretion make the order absolute in the first instance.

[530] Mode of application and proof for grant of administration in absence of a will.

15. Every application to the District Court for grant of administration of a deceased person's property, where the deceased has died without making a will, or where the will cannot be found, shall be made on petition *in accordance with the provisions of Order XXVI. of this Code*, which petition shall set out in the numbered paragraphs prescribed by section 9 the relevant facts of the absence of the will, the death of the testator, and the heirs of the deceased, to the best of the petitioner's knowledge; the petition shall also show the character in which the petitioner claims and the facts which justify his doing so.

The application shall also be supported by sufficient evidence, either in the shape of affidavits of facts or of oral testimony, to afford *prima facie* proof of the material allegations in the petition, and shall name the next of kin of the deceased as respondents.

[531] Court declaring petitioner's status to make order nisi for issue of grant. Citation.

16. Upon the application for grant of administration being made, if the Court is of opinion that the material allegations of the petition are proved, it shall make an order *nisi* declaring the petitioner's status accordingly, and making the grant prayed for, which order shall be served upon the respondent and upon such other persons as the Court shall think fit to direct, and shall come on for final hearing and disposal on a day to be named therein.

[532] Order nisi to be advertised.

17. In all cases of application for the grant of the administration of the deceased's property, whether with or without a will, the Court shall, whether a respondent is named in the petition or not, direct the order *nisi* to be advertised in the *Gazette*, and twice in a local paper, before the day of final hearing: the paper to be selected by the Court with the object that notice of the order should reach all persons interested in the administration of the deceased's property. Provided that the Court may in its discretion direct such other mode of advertisement in lieu of such publication as to it seems sufficient.

[533] At final hearing on objection, Court shall frame issues.

18. If on the day appointed for final hearing, or on the day to which it may have been duly adjourned, the respondent or any person upon whom the order *nisi* has been directed to be served, or any person then appearing to be interested in the administration of the deceased's property, satisfies the Court that there are grounds of objection to the application, such as ought to be tried on *viva voce* evidence, then the Court shall frame the issues which appear to arise between the parties, and shall direct them to be tried on a day to be then appointed for the purpose under *rule 11 of Order XXVI. of this Code*.

[534] When order nisi shall be made absolute; and

19. 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 discharged.

Proviso.

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.

[535] Who may file a caveat.

Effect thereof.

20. 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.

[536] Power of District Court to recall or revoke probate or grant of administration.

21. 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.

[537] Applications therefor to be by petition.

22. All applications for the recall or revocation of probate or grants of administration shall be made by petition, *in accordance with the provisions of Order XXVI. of this Code*; 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.

[538] Inventory and valuation.

23. 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 *the Appendix* 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 12 given in the said *Appendix*, and where the Court requires it to enter into a bond with two good and sufficient sureties in the form 10 given in the said *Appendix*, 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.

[539] Limited probate and administration.

24. 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 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.

- (e) 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.
- (f) 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.
- (g) The court may grant probate or administration limited to any particular property or for any particular purpose, in any case where it considers that a larger grant is unnecessary.

In all the foregoing cases, the material and relevant facts necessary to justify the Court in making the limited grant must be set out in the petition of application, and must be established by *prima facie* evidence before the order is made, as is prescribed in section 9.

[540] Power of administration when not limited.

25. 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.

[541] Court may dispense with security.

26. 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 23; 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.

Proviso.

[542] Person dying intestate, death to be reported by next of kin.

27. 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.

[543] Penalty for neglect.

28. Every person made liable to report any death under, or to furnish any information required by, section 27, 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.

[544] Who may apply for administration in case of intestacy.

29. 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 8, to appoint such person administrator.

[545] In event of no application, Court may appoint.

30. 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

Compulsory,
where estate is
over one
thousand
rupees.

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 all the provisions of sections 4 to 6, both inclusive, shall apply, so far as the same can be made applicable, to any such appointment.

[546] Issue of letters
ad colligenda.

31. 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 11 in the *Appendix* 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.

[547] 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.

32. 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.

*Estates of
persons dying
intestate before
commencement
of the Code of
1889.*

Provided always that no action for the recovery of, or involving proof of title to, any property, movable or immovable, belonging to or included in the estate or effects of any person who died intestate before the commencement of the *Civil Procedure Code, 1889*, shall be defeated, nor shall the title to such property claimed through such person be deemed invalid, by reason only that letters of administration to the estate or effects of such person have not issued.

Provided further that the transferor and transferee of such property as is mentioned in the foregoing proviso shall not be guilty of the offence created by this section.

[548] Probate when
executor is
appointed for
limited purpose.

33. 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.

[549] Fresh grant,
when allowed.

34. 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.

[550] Rectification of
errors in grant.

35. 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.

[551] Compensation of
executors and
administrators.

36. 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.

[552] Compensation of several executors.

37. 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.

[553] Filing of the account, and payment into Court.

38. 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.

[554] Failure of executor or administrator to administer within the year to make him liable for interest.

39. If any executor or administrator shall fail to pay over to the creditors, heirs, legatees, or other persons the sum 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 II.

Of Aiding, Supervising, and Controlling Executors and Administrators.

[Chapter LIV.]

[712] Proceedings to discover property withheld, &c.

40. 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.

[713] Order to accompany citation.
Service of.
Failure to obey.

41. 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.

[714] Examination of person cited.
Refusal to answer.

42. 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.

[715] Further evidence.

43. 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.

[716] Decree awarding possession to the petitioner, unless security given to prevent.

44. 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.

[717] Disobedience to decree, contempt. Warrant to seize property.

45. Where the decree requires the person cited to deliver money, disobedience thereto may be punished as contempt of Court. 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.

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] Executor, &c., how compelled to return inventory and accounts.

46. A creditor, or any person interested in the estate, may present to the Court in the action in which grant of probate or administration issued, proof by affidavit that an executor or administrator has failed to file in Court the inventory and valuation, and account (or a sufficient inventory and valuation, or sufficient accounts) required by law within the time prescribed therefor. 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.

[719] How executor or administrator may be discharged from commitment.

47. 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 person authorized by the Judge to receive the same.

[720] Petition by creditor or legatee to compel payment.

48. 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.

[721] Citation to issue.

Hearing and decree.

49. 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.

[722] Appeal.

50. Every order or decree made under the provisions of this chapter shall be subject to an appeal to the Supreme Court.

CHAPTER III.

Chapter LV.]

Of the Accounting and Settlement of the Estate.

[723] Intermediate accounting, voluntary.

51. 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.

[724] Intermediate accounting, compulsory.

52. 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.

[725] Judicial settlement of account.

53. In any of the following cases, and either upon the application of a party mentioned in the next section or of its own motion, the Court may from time to time compel a judicial settlement of the account of an executor or administrator—

- (a) Where one year has expired since grant to him of probate or administration ;
- (b) Where such grant has been revoked, or for any other reason his powers have ceased ;
- (c) Where he has sold or otherwise disposed of any immovable property of the testator, or devisable interest therein, or the rents, profits, or proceeds thereof, pursuant to a power in the will, where one year has elapsed since the grant of probate to him.

[726] Who may apply for accounting.

54. 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 subsection (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.

Citation.

[727] Order to account.

55. 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 57, an order shall be made directing him to account within such a time and in such a manner as the court prescribes, and to attend before the Court from time to time for that purpose : And the executor or administrator shall be bound by such order without service thereof, and if he disobeys it the Court may issue a warrant of attachment against him, and the grant of probate or administration issued to him may be revoked. If it appears that there is a surplus, distributable to creditors or persons interested, the Court may at any time issue a supplemental citation, directed to such persons as must be cited upon the petition of an executor or administrator for a judicial settlement of his account, requiring them to attend the accounting.

Supplemental citation.

[728] Person cited may bring in other parties.

56. 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,

[729] Executor, &c., may petition for judicial settlement of his account.

57. 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 present 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.

- [730] Hearing. 58. 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 52 in case the same has not been consolidated under section 56.
- [731] Creditor not cited may appear. 59. 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.
- [732] Executor, &c., whose grant has been revoked may petition. 60. 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 57 may be cited to attend the settlement. The proceedings thereon shall be regulated according to the provisions of the last three sections.
- [733] Affidavit to be annexed to accounts. 61. To each account filed under this chapter shall be appended an affidavit of the accounting party, to the effect that the account contains, according to the best of his knowledge and belief, a full and true statement of all his receipts and disbursements on account of the estate of the testator or intestate, and of all money and other property belonging to the estate which has come to his hands, or which has been received by any other person by his order or authority for his use: and that he does not know of any error or omission in the account to the prejudice of any creditor of, or person interested in, the estate.
- [734] Vouchers to be produced. 62. Upon every accounting by an executor or administrator, the accounting party must produce and file a voucher for every payment, except in one of the following cases:
- (1) He may be allowed, without a voucher, any proper item of expenditure, not exceeding twenty rupees, if it is supported by his own uncontradicted oath or affirmation, stating positively the fact of payment and specifying where and to whom the payment was made: provided that all the items so allowed against an estate, upon all the accountings of all the executors or administrators, shall not exceed two hundred rupees.
 - (2) If he proves, by his own or another's sworn testimony, that he did not take a voucher when he made the payment, or that the voucher then taken by him has been lost or destroyed, he may be allowed any item of which he satisfactorily proves the payment by the testimony of the person to whom he made it, or, if that person is dead or cannot be found, by any competent evidence other than his own or his wife's oath or affirmation.
- But no such item shall be allowed unless the Court is satisfied that the charge is correct and just.
- [735] Accounting party to be examined. 63. 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.
- [736] Court to determine claims. 64. 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.
- [737] Prescription. [No. 22 of 1871.] 65. 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 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.

[738] Court may allow for property lost, &c.

66. 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.

[739] Effect of judicial settlement.

67. 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.

[740] Decree for payment and distribution.

68. 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 55. 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.

[741] When specific property may be delivered.

69. 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 :

- (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 appraisal under oath made by one or more persons appointed by the Court for the purpose.

[742] When money may be retained.

70. 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.

[743] Share of lunatic or minor.

71. 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 *Parts I. and II. of the Third Schedule of this Code* respectively provided with regard to sums coming to his hands as such manager or curator.

[744] Appeal.

72. Every order or decree made under the provisions of this chapter shall be subject to an appeal to the Supreme Court.

APPENDIX TO THE SECOND SCHEDULE.

FORMS.

No. 1.—Form of Affidavit to be produced with Will.

(See Section 1.)

(Formal parts as in Form No. 18 in Appendix H to the First Schedule.)

1.—I knew and was well acquainted with A. B., of _____, who died on the _____ day of _____, 19—, at _____.

2.—The said A. B. duly executed his last will dated the _____ day of _____, 19—.

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.)

No. 2.—Form of Application for Probate or for Administration with the Will annexed.

(See Sections 3–10.)

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 Form No. 1 in Appendix F to the First Schedule.)

1.—A. B., late of _____, died on the _____ day of _____, 19—.

2.—The said A. B. duly executed his last will dated the _____ day of _____, 19— (now deposited in this court, or, and the said will is appended hereto, or as the case is—see section 9).

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 contained 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. 3.—Form of Application for Administration where there is no Will.

(See Section 15.)

(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.)

No. 4.—Form of Order *Nisi* declaring Will proved, &c.

(See Sections 11-14.)

(Title.)

This matter coming on for disposal before (name and office of Judge), on the _____ day of _____, 19— (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. 5.—Form of Order making absolute or discharging the preceding Order.

(See Section 19.)

(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 _____, 19—, 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.)

No. 6.—Form of Probate.

(See Section 4.)

(Title.)

In the District Court of _____.

Be it known to all men that on the _____ day of _____, 19—, 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 _____, 19—, and to file a true and just account of _____ executorship on or before the _____ day of _____, 19—.

Given under my hand and the seal of the Court this _____ day of _____, 19—.

(Signed) _____,
District Judge.

(When probate is limited, insert the limitation.)

No. 7.—Form of Letters of Administration (with the Will annexed and otherwise).

(See Sections 4, 15, &c.)

In the District Court of _____.

To (*widow, widower, 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 _____, 19—, next, and also a true and just account of your administration thereof on or before the _____ day of _____, 19—. 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.) _____.

No. 8.—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 _____, 19—, and that you will file a true account of your executorship (*or administration*) on or before the _____ day of _____, 19—.

Sworn (*or affirmed*), &c.

No. 9.—Form of Affidavit where Deceased is Intestate.

(See Section 26.)

(*Formal parts as in No. 1.*)

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 _____, 19—, 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. 10.—Form of Security Bond to be given by Executor or Administrator when required.

(See Sections 6, 23, 26.)

In the District Court of _____.

Know all men by these presents that we (executor *or administrator*), and _____ and _____ (*sureties*), are held 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 _____, 19—, 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 _____, 19—, and shall well and truly administer the same ; that is to say, shall pay all and singular the debts 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 _____, 19—, 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. 11.—Form of Letters *ad bona colligenda*.

(See Section 31.)

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 _____, 19—.

Secretary.

No. 12.—Form of Verification of Inventory and Valuation.

(See Section 23.)

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. 13.—Form of *Caveat*.

(See Section 20.)

In the District Court of _____.

Let nothing be done in the estate and effects of _____, late of _____, deceased, who died on the _____ day of _____, 19—, at _____, unknown to (Mr. _____, of _____, Proctor for parties having interest, or as the case may be).

(Signed by the party, and dated.)

No. 14.—Form of Citation.

(See Section 40.)

(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 _____, 19—, 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. 15.—Form of Order to be annexed to, or endorsed on, the preceding.

(See Section 41.)

(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 _____, 19—, at _____ o'clock of the forenoon, do issue to _____, requiring him to (*set out as in last form*).

(Signed, &c.) _____,
District Judge.

No. 16.—Form of Affidavit of Failure to return Inventory.

(See Section 46.)

(Formal part as in No. 1.)

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. 17.—Form of Petition for Payment of Debt.

(See Section 48.)

(Title.)

The petition of *A. B.* showeth 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 _____, 19—, 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 _____.

3.—(*Allege claims, as, e.g.:*) On the _____ day of _____, 19—, 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. 18.—Form where Applicant is a Legatee.

(See Section 48.)

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. 19.—Form of Citation on preceding Applications.

(See Section 49.)

(Title as in No. 14.)

Proceed as in No. 14. 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. 20.—Form of Decree on the preceding Citation.

(See Section 49.)

(Title.)

A. B., of _____, having presented to this Court a petition dated the _____ day of _____, 19—, 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 issue 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 _____, 19—, the whole amounting to rupees _____.

(Signed) _____,
District Judge.

No. 21.—Form of Account to be filed by Executor or Administrator.

(See Section 51 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 _____, 19—, (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 _____, 19—, 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 widow, 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 deductions 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. 22.—Form of Affidavit of Accounting Party.

(See Section 61.)

(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 charge made in the foregoing account of proceedings and schedules annexed, for moneys paid by me to creditors, legatees, and 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. 23.—Petition for Judicial Settlement of Executor's Account.

(See Section 54.)

(Adapt form No. 17, 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. 24.—Form of Order on Executor, &c., to render Account.

(See Section 55.)

(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.

No. 25.—Form of Executor's Petition for a Judicial Settlement.

(See Section 57.)

(Title.)

To the District Court, &c. (formal heading).

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. 26.—Form of Citation on such Application.

(See Section 57.)

(Adapt No. 14. The citation is: "to attend the final judicial settlement of the account of the proceedings of _____ as _____, &c., of the said deceased _____.")

No. 27.—Form of Answer by Party contesting an Account.

(See Section 58.)

(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 _____, 19—.

THE THIRD SCHEDULE.

PART I.

PROCEEDINGS IN RELATION TO THE PERSON AND PROPERTY OF LUNATICS.

Preliminary.

Definitions.

1. In this Part, if not inconsistent with the context—

The word "lunatic" means a person of unsound mind and incapable of managing his affairs ;

The word "Court" means a District Court ; and

The word "Judge" means a Judge of a District Court.

Note.—Title. The title of Chapter XXXIX. of the old Code—"Actions in Lunacy"—seems unsuitable to the proceedings dealt with.

This section takes the place of s. 555 of the old Code.

The words "found by due course of law to be" have been omitted in view of the expression "alleged lunatic" used throughout Chapter XXXIX. of the old Code and this Part; and see also s. 1 (4) of Ordinance No. 1 of 1873.

The Inquiry.

District Court may institute an inquiry.

2. (1) Where any person who is possessed of property is alleged to be a lunatic, the Court within whose jurisdiction such person resides may institute an inquiry for the purpose of ascertaining whether or not such person is of unsound mind and incapable of managing his affairs.

Application for—how made.

(2) Application for such inquiry shall be made by petition in accordance with the procedure provided in Order XXVI. of this Code, and shall be accompanied by a certificate signed by a duly registered medical practitioner to the effect that the alleged lunatic has been examined by him, and that he believes him to be of unsound mind.

And by whom.

(3) The petition may be presented—

(a) By any relative of the alleged lunatic ; or

(b) At the instance of the Attorney-General ; or

(c) By the Superintendent of Police of the Province in which the alleged lunatic resides ; or

(d) Where the property of the alleged lunatic consists wholly or in part of land or of any interest in land, by the Government Agent of the Province, or the Assistant Government Agent of the district, in which the land is situate.

Note.—Sub-sections (1), (2), and (3) take the place of s. 556 of the old Code.

Sub-section (2): "shall be accompanied by a certificate signed by a duly registered medical practitioner."

It would seem essential that the Court should have before it a medical certificate when considering the petition.

In an application under s. 5 of Ordinance No. 1 of 1873 a medical certificate is required only where a private person is the applicant, but it is difficult to see how the Court can decide without a certificate or medical testimony.

Sub-section (4) reproduces s. 749 of the old Code so far as that section relates to the subject of this Part.

For s. 750 see sub-section (2) of s. 4.

Procedure upon presentation of a petition for inquiry.

3. (1) Upon the presentation of the petition the Court shall consider the allegations in the petition and the evidence of lunacy appearing by the medical certificate or otherwise.

(2) Where upon such consideration the Court is not satisfied by the medical or other evidence that an inquiry ought to be instituted, it may dismiss the petition, or may, in its discretion, permit or direct the petitioner to adduce further documentary or oral evidence in support of the allegations in the petition.

(3) Where the Court dismisses the petition, it shall record its reasons for so doing in writing.

(4) Where upon such consideration as aforesaid the Court is satisfied that an inquiry ought to be instituted, it shall make an order appointing a time and place for holding the inquiry.

(5) The Court may of its own motion, or on the application of any person presenting a petition under section 2, sub-section (2), make such order as it thinks fit for the interim care and custody of the alleged lunatic.

Note.—Sections 557 and 558 of the old Code, with amendments.

Sub-section (2) expressly enables the Court to either dismiss the petition, or in the alternative to call for further evidence, before making its preliminary order. In this connection compare rule 4 (2) of Order XXVI. of the new Code.

Sub-section (3) is new.

Sub-section (5). It would seem desirable that there should be a provision enabling the Court to make an interim order as to the custody of the alleged lunatic between the date of the preliminary order and the date fixed for the inquiry.

Service on
alleged lunatic.

4. (1) A copy of the petition and of the order made thereon shall be served upon the alleged lunatic ; provided that where it appears to the Court that personal service on him would be ineffectual, the Court may direct such substituted service of the copy of the petition and of the order as it thinks fit.

Or on a relative.

(2) The Court may direct a copy of the petition and of the order to be served upon any relative of the alleged lunatic, and upon any other person or persons whom the Court may consider entitled to have notice thereof.

Judge may visit
the alleged
lunatic, or he
may be required
to attend to be
examined.

5. (1) At any time before or pending the inquiry the Judge may, if it appears necessary, visit the alleged lunatic, or may require him to attend at such time and place as he may appoint for the purpose of being personally examined by him, or by any person from whom he may desire to obtain a report on, or evidence as to, the state of mind or health of the alleged lunatic.

(2) The Judge may by an order in writing authorize any person or persons to have access to the alleged lunatic for the purpose of a personal examination.

Assessors.

6. The Court may, if it thinks fit, appoint two or more persons to act as assessors to the Court in the inquiry.

Proceedings at
the inquiry.

7. (1) The issue to be tried at the inquiry shall be whether the alleged lunatic is of unsound mind and incapable of managing his affairs.

(2) The proceedings at the inquiry shall, unless the Court otherwise directs, be public, and shall be conducted, as nearly as may be, in conformity with the rules prescribed by this Code for the trial of a regular action.

Alleged lunatic
to be present at
the inquiry.

8. (1) The alleged lunatic shall be present at the inquiry, and may be represented by an advocate or proctor, or may conduct his case in person, unless it appears to the Court that by reason of his state of health or behaviour his presence at or participation in the proceedings would be unfitting or unseemly.

(2) The Court may, in its discretion, allow any relative of the alleged lunatic to appear at the inquiry on his behalf.

Adjudication on
the issue.

9. On the completion of the inquiry the Court shall adjudicate whether or not the alleged lunatic is of unsound mind and incapable of managing his affairs.

Costs.

10. The costs of all proceedings in the matter of the inquiry shall be in the discretion of the Court, and the Court may order all or any of such costs to be paid by the person upon whose application the inquiry was instituted, or by the alleged lunatic if he be adjudged to be of sound mind, or out of his estate if he be adjudged to be of unsound mind and incapable of managing his affairs, or by any other party to the proceedings, as the Court may think fit.

When petition
to be dismissed.

11. Where upon such inquiry the alleged lunatic is adjudged not to be of unsound mind and not incapable of managing his affairs, the Court shall dismiss the petition.

Appointment and Duties of Manager and Guardian.

Manager to be
appointed.

12. (1) Where upon such inquiry the alleged lunatic is adjudged to be of unsound mind and incapable of managing his affairs, the Court shall appoint a manager of his estate.

Who may be
appointed manager.]

(2) Any relative of the lunatic, or any other suitable person, may be appointed manager.

Guardian to be
appointed.

(3) Where a manager is appointed under sub-section (1), the Court shall appoint a suitable person to be the guardian of the person of the lunatic, and may appoint such manager to be the guardian.

Remuneration of
manager or
guardian.

13. Where the person appointed to be the manager of the estate, or the guardian of the person of a lunatic, is unwilling to discharge the trust gratuitously, the Court may order such allowance or allowances as, under the circumstances of the case, it considers reasonable to be paid to the manager or guardian out of the estate of the lunatic.

Duties of
guardian.
Allowance for
maintenance of
lunatic.

14. (1) The person appointed guardian shall have the care of the lunatic's person, and shall be responsible for his maintenance.

(2) Where the same person is not appointed both manager and guardian, the Court may, either at the time of the appointment of the guardian, or at any subsequent time on the application of such guardian, order the manager to pay to the guardian such allowance as the Court may consider suitable for the maintenance of the lunatic and of his family.

(3) Any application by a guardian for an order under sub-section (2) shall be made by petition under Order XXVI. of the Code.

Note.—Sub-section (1) and the first part of sub-section (2) reproduce s. 559 of the old Code, with slight verbal modifications.

“Or upon any other person thereof.” These words represent s. 750 of the old Code, so far as the provisions of that section relate to the subject of this Part.

Note.—Section 560 of the old Code, with verbal amendments.

“May visit.” It is conceivable that it might be necessary for the Judge to visit the alleged lunatic.

Note.—Section 561 of the old Code.

Note.—Sections 562 and 503 of the old Code.

Note.—Section 564 of the old Code, with verbal amendments.

Note.—The first sentence of s. 565 of the old Code.

Note.—The second sentence of s. 565 of the old Code, with verbal amendments.

Note.—Section 566 of the old Code, with verbal amendments.

Note.—Sections 567 and 568 of the old Code, with verbal amendments.

The provision with regard to the heir at law not being appointed manager has been omitted as impracticable in Ceylon.

Note.—Section 569 of the old Code.

Note.—Section 570 of the old Code, with verbal amendments.

Powers of manager.

15. (1) Every manager appointed by the Court under section 12 may exercise the same powers in the management of the estate as might have been exercised by the lunatic if he had been of sound mind, and may recover or discharge all just claims, debts, and liabilities due to or by the estate of the lunatic.

Restrictions.

(2) 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 whatever, without first obtaining an order of the Court in that behalf.

(3) Every order made by the Court under sub-section (2) shall be recorded in writing and shall be signed by the Judge.

Security for due administration of lunatic's estate.

16. (1) The Court shall have the like power to require the manager of a lunatic's estate to give security for the due administration of the estate, as it has in the case of administrators of the estates of deceased persons.

(2) Every security bond entered into or made under or in pursuance of the provisions of sub-section (1) shall, unless otherwise expressly or by implication directed, be expressed to be made with the Secretary of the Court for the time being, and upon every change of Secretary the new Secretary shall be deemed to be substituted for the Secretary, whom he succeeds, as the original party obligee to the contract on the bond.

Inventory.

17. (1) Every manager appointed by the Court under section 12 shall, within such period as the Court may direct, furnish to the Court an inventory of all immovable property to which the lunatic is entitled, and of all movable property, moneys, goods, and effects received by such manager on account of the estate, together with a statement of all debts due by or to the estate.

and Statement. Account.

(2) Every manager appointed by the Court under section 12 shall furnish to the Court annually, within three months before the end of the year, an account of the property in his charge, specifying all sums received and disbursed on account of the estate and the balance remaining in his hands.

(3) Where any relative of the lunatic, or the Attorney-General, by petition to the Court, shall impugn the accuracy of such inventory and statement, or of any annual account, the Court may summon the manager to attend, and may inquire summarily into the matter and may make such order as it thinks fit.

Excess over expenditure to be paid into Kachcheri.

18. All moneys received by a manager on account of an estate in excess of the amount required for the current expenses of the lunatic and of the estate, shall be paid into Court on account of the estate of such lunatic, and shall be dealt with in the manner prescribed by law in the case of suitors' deposits.

Relative may sue for account.

19. Any relative of a lunatic may bring an action for an account against any manager appointed under section 12, or against such person after his removal from office, or against his personal representative in the event of his death, in respect of any estate which is or has been under his care and management or in respect of any moneys or other property received by him on account of the estate.

Manager or guardian may be removed.

20. (1) The Court may, for any sufficient cause, remove any manager appointed by the Court, and may appoint any other suitable person in his stead, and may compel the person so removed to deliver the property of the lunatic in his hands to the person appointed in his stead, and to account to such person for all moneys received or disbursed by him.

(2) Application for such removal and accounting shall be made by petition under Order XXVI. of this Code.

(3) The petition may be presented—

(a) By the guardian or a relative of the lunatic ; or

(b) At the instance of the Attorney-General ; or

(c) By the Superintendent of Police of the Province ; or

(d) Where the property of the lunatic consists wholly or in part of land or of any interest in land, by the Government Agent or Assistant Government Agent.

(4) The Court may in like manner remove any guardian appointed by the Court, and may compel him to account for all moneys received or disbursed by him.

Punishment for neglect or refusal to account.

21. The Court may impose a fine not exceeding Rs. 500 on any manager who wilfully neglects or refuses to deliver his accounts or any property of the lunatic in his hands within the time prescribed by section 17 or fixed by the Court, and the Court may realize such fine by seizure and sale of his movable or immovable property under the procedure in force for the execution of decrees, and may also commit him to prison as a civil prisoner until he shall deliver such accounts or property.

Note.—Section 571 of the old Code.

Sub-section (2): "for any period whatever." These words have been substituted for the words "for any period exceeding five years."

Sub-section (3) is new.

Note.—Sub-section (1) reproduces s. 752 of the old Code.

Sub-section (2) reproduces s. 751 of the old Code, so far as the provisions of that section relate to proceedings under this Part.

Note.—Section 572 of the old Code, with verbal amendments.

Note.—Section 573 of the old Code, with verbal amendments.

Note.—Section 574 of the old Code.

Note.—Section 575 of the old Code in a more convenient form.

Note.—Section 576 of the old Code.

Where not necessary, Court need not appoint manager.

22. Where it appears to the Court, having regard to the 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 his estate, the Court may, instead of appointing a manager, order that the property, if money, or, if of any other description, the proceeds thereof, when realized in such manner, as the Court may direct, be paid to such person or persons as the Court may select, to be applied for the maintenance of the lunatic and his family.

Note.—Section 577 of the old Code.

Judicial Settlement of Accounts.

Compulsory judicial settlement of accounts.

23. (1) A petition praying for the judicial settlement of the account of—

Note.—Section 745 of the old Code so far as it relates to the provisions of this Part of the Third Schedule.

- (a) The manager of the estate of a lunatic ; or
- (b) The guardian of his person ;

and that such manager or guardian may be cited to attend the settlement thereof, may, in every case where such manager or guardian is required by law to file accounts, be presented to the Court having jurisdiction in the manner provided for the judicial settlement of the account of an executor or administrator.

(2) Such petition may be presented by—

- (i.) The lunatic after he has been found by adjudication to have ceased to be of unsound mind ; or
- (ii.) Any relative or friend of the lunatic ; or
- (iii.) The executor or administrator of a deceased lunatic ; or
- (iv.) Under sub-head (a) of the last preceding sub-section by the guardian of the lunatic's person, and under sub-head (b) by the manager of his estate ; or
- (v.) By any public officer mentioned in sub-section (3) of section 2 ;

and in any case by the successor of such manager or guardian.

(3) Where a petition is presented for the judicial settlement of the account of the guardian of the person of a lunatic, proof must be adduced to the satisfaction of the Court that the guardian has received money or property of the lunatic for which he is liable to account, and that he has not so accounted.

Voluntary judicial settlement of accounts.

24. (1) A petition praying for the judicial settlement of his account and a discharge from his duties and liabilities may in like manner be presented by such manager or guardian 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.

Note.—Section 746 of the old Code so far as it relates to the accounts of lunatics.

Sub-section (2) replaces the old provision that the petition itself shall contain a prayer for the citation of all the persons mentioned in section 23 (3). It seems better to leave the matter to the discretion of the Court.

(2) The Court may, in its discretion, direct that any person who might have so presented a petition shall be cited to attend the settlement.

Note.—Section 747 of the old Code.

Section 748 is covered by s. 28 as to appeals.

Procedure.

25. (1) The practice and procedure upon a petition praying for the judicial settlement of the account of an executor or administrator shall, so far as may be practicable, apply, to all proceedings under sections 23 and 24.

(2) The accounting party shall annex to every account produced and filed by him an affidavit verifying the account.

Inquiry on Alleged Recovery of Lunatic.

Further inquiry when lunatic is alleged to have recovered.

26. (1) Where any person has been adjudged to be of unsound mind and incapable of managing his affairs, and such person or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent to the Court, or 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 or not such person is still of unsound mind and incapable of managing his affairs.

Note.—Section 578 of the old Code, with verbal amendments.

(2) The inquiry shall be conducted in the manner provided in sections 5 to 8 of this Part, so far as the same may be applicable.

(3) Where upon such inquiry it shall appear to the Court that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order superseding the order of adjudication under section 3, and may make such further order or orders, as it thinks fit, in relation to the commitment or care of his person or estate.

General.

Saving clause.

27. In all cases to which the provisions of this Part are applicable the procedure herein provided shall be followed, anything in the Lunacy Ordinance, 1873 (No. 1 of 1873), to the contrary notwithstanding.

Note.—Section 579 of the old Code with verbal amendments.

Appeals.

28. (1) Every order made or decree passed by the Court under the provisions of this Part shall be subject to an appeal to the Supreme Court.

(2) Such appeal shall be prosecuted within the time and in the manner and subject to the rules and practice for or observed in appeals from District Courts.

Proceedings exempt from stamp duty.

29. No stamp duty shall be payable on any application, process, or other document filed in any Court under the provisions of this Part, nor shall it be necessary to attach schedules to processes issued to the Fiscal thereunder.

PART II.

ACTIONS FOR THE APPOINTMENT OF GUARDIANS.

Certificate of right to have charge of minor's property.

1. (1) Any person claiming a right to have charge of property in the Colony in trust for a minor, whether resident or non-resident in Ceylon, 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.

(2) 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, and shall have been duly appointed next friend, or guardian for the action, of the minor, as the case may be, under the provisions of Order XXXVII. in the First Schedule to this Code.

Provided that where the property is below the value of Rs. 1,000, or for any other sufficient reason, any Court having jurisdiction may allow any relative of a minor to institute as his next friend, or defend as his guardian for the action, an action on his behalf, although a certificate of curatorship has not been granted to such relative.

Provided also that the Court may allow any person claiming to have charge of any such property under the provisions of a will, of which probate shall have been duly granted, to institute as next friend, or defend as guardian for the action, any such action without a certificate.

Application for appointment of person to have charge of property or person of minor.

2. (1) Any relative or friend of a minor, in respect of whose property a certificate under section 1 has not been granted, may apply, in accordance with the provisions of Order XXVI., to the District Court to appoint a fit person to take charge of the property, and, if such minor is resident in Ceylon, of the person of the minor; or of either the property or the person of such minor.

To be made in district where minor resides.

(2) Where the property is situate in more than one district, the application shall be made to the District Court of the district in which the minor at the time of such application resides.

Charge of property of minor to whom to be granted.

3. (1) Where any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the Court shall grant a certificate of curatorship to such person.

(2) Where there is no person so entitled, or where such person is unwilling to undertake the trust and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a certificate to such relative.

Same person may be appointed guardian of person.

(3) The Court may also, if it think fit (unless a guardian has been appointed by the father), appoint any person to whom a certificate of curatorship shall be granted under sub-section (1) or sub-section (2); or any other relative or friend of the minor, to be guardian of the person of a minor who is resident in Ceylon.

Court may call upon headman to report on qualification.

(4) 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 of being, or willing to be, entrusted with the charge of the property or person of such minor, and who resides in the division of such headman.

When charge of property may be granted to any fit person.

4. Where no title to a certificate is established to the satisfaction of the Court by a person claiming under a will or deed, and where there is no near or other relative or friend willing and fit to be entrusted with the charge of the property of the minor, and the Court shall think it necessary in the interest of the minor that provision should be made for the charge of the property and person of such minor, the Court may grant a certificate to any fit person whom it may appoint for the purpose.

Note.—Section 580 of the old Code re-drafted. As every order made by the Court under the foregoing provisions is appealable, it seems unnecessary to specify who may be the appellant.

Sub-section (2). It seems unnecessary to say that "the Supreme Court shall take cognizance of the appeal," or that it "shall make such order as to the said Court shall seem fit," &c.

Note.—Section 581 of the old Code.

Note.—This section reproduces s. 582 of the old Code, with amendments in drafting, and with further amendments giving effect to the decision in *Gunasekera v. Abubakkar*, (1902) 6 N. L. R. 148, that a curator cannot sue on behalf of the minor without first obtaining the authority of the Court to do so as next friend, and extending the scope of that decision to the defending of actions.

The Explanation added in the old Code to s. 582 that letters of administration do not give the administrator "a right to have charge" within the meaning of the section of the share of a minor heir has been omitted. Administrators do not in practice take out certificates of curatorship, and have charge of all the property of the intestate for purposes of administration.

Note.—This section reproduces, with verbal amendments, ss. 583 and 584 of the old Code.

Sub-section (1). "If such minor," &c. See note to s. 5 *infra*.

Note.—This section reproduces, with verbal amendments, s. 585 of the old Code.

Sub-section (3). "Who is resident," &c. See note to s. 5 *infra*.

Note.—This section reproduces s. 586 of the old Code, with verbal amendments.

"Or other or friend." These words seem necessary in consequence of sub-section (3) of the last preceding section.

Guardian to have charge of the person to be appointed, and allowance for maintenance to be fixed, at the same time.

5. (1) Whenever the Court shall grant a certificate of curatorship to the estate of a minor resident in Ceylon to any person under section 4, it shall at the same time appoint a guardian of the person of the minor.

(2) The person to whom a certificate of curatorship has been granted may be appointed guardian of the person.

(3) Where any person appointed to be guardian of the person of a minor is unwilling to discharge the trust gratuitously, the Court may assign to him such allowance to be paid out of the estate of the minor as, under the circumstances of the case, it may think suitable.

(4) The Court may also fix such allowance as it thinks proper for the maintenance and education of the minor.

(5) Where the Court is satisfied that it will be for the interest of the minor, it may direct the raising of such allowances out of the corpus of the estate, by mortgage or sale or such other mode of realization as it thinks fit.

Note.—This section reproduces, with amendments in drafting, s. 587 of the old Code.

Sub-section (1): resident in Ceylon. These words were added to s. 587 by Ordinance No. 12 of 1904, s. 4.

The words "and maintenance" have been omitted, as the duty of providing for maintenance is expressly imposed on the guardian of the person by s. 13.

In sub-section (2) the provision that the person to whom a certificate of curatorship has been granted may not be appointed guardian of the person if he is the legal heir of the minor at the date of such appointment has been omitted as impracticable in Ceylon.

Costs of inquiries.

6. In all inquiries held by the District Court under this Part the Court may make such order as to the payment of costs by the person on whose application the inquiry was held, or out of the estate of the minor, or otherwise, as it may think proper.

Note.—This section reproduces, with verbal amendments, the first paragraph of s. 588 of the old Code.

Inventory and accounts.

7. Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this Part, 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.

Note.—This section reproduces, with verbal amendments, the second paragraph of s. 588 of the old Code.

Impeachment of the inventory and accounts.

8. Any relative of the minor, or the minor himself by a next friend, or the Attorney-General, may, by an application under the provisions of Order XXVI. of this Code, impeach and falsify the corrections of the inventory and 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.

Note.—This section reproduces, with verbal amendments, s. 589 of the old Code.

Any relative of minor may sue curator for accounts.

9. It shall be lawful for any relative of a minor, with the leave of the Court, or for the minor himself by a next friend, at any time during the continuance of the minority, to sue for an account from any person to whom a certificate shall have been granted under the provisions of this Part, 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.

Note.—This section reproduces, with verbal amendments, s. 590 of the old Code.

Recall of the certificates.

10. (1) The District Court, for any sufficient cause shown on an application under the provisions of Order XXVI. of this Code, 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 Part, 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.

Note.—This section reproduces, with verbal amendments, s. 591 of the old Code.

(2) The Court may also for sufficient cause in like manner remove any guardian appointed by the Court.

Resignation and discharge of curator of property or guardian of person of minor.

11. (1) The District Court may on the application of any person to whom a certificate shall have been granted under this Part or of any guardian appointed by the Court—

Note.—This section reproduces, with verbal amendments, s. 592 of the old Code.

- (a) Permit such person or guardian to resign his trust; and
- (b) Give him a discharge therefrom on his accounting to his successor, duly appointed, for all moneys received and disbursed by him, and making over the property in his hands.

(2) Every application under sub-section (1) shall be made under the provisions of Order XXVI. of this Code by petition, to which a near relative of the minor or the Attorney-General shall be, and any other person whom the Court may direct, may be made a respondent.

Allowance of curator.

12. (1) Every curator other than one deriving title under a will or deed, to whom a certificate shall have been granted under this Part, and who 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 application under Order XXVI. of this Code, think fit to direct.

Note.—Sub-section (1) reproduces, with verbal amendments, s. 593 of the old Code.

Sub-section (2) is new.

(2) The Court may from time to time rescind, vary, or modify any order made under sub-section (1).

Minor's education.

13. (1) Every guardian appointed by the District Court under this Part, who shall have charge of any minor, shall be bound to provide for his education and maintenance in a suitable manner.

(2) The general superintendence and control of the education and maintenance of all such minors shall be vested in the District Court.

Note.—This section reproduces, with verbal amendments, s. 594 of the old Code.

And maintenance. These words are new.

Compulsory judicial settlement of accounts in case of minors.

14. (1) A petition praying for the judicial settlement of the account of—

- (a) The curator of the estate of a minor ;
- (b) The guardian of the person of a minor ;

and that such curator or guardian may be cited to attend the settlement thereof, may in every case where such curator or guardian is required by law to file accounts be presented to the Court having jurisdiction, in the manner provided for the judicial settlement of the account of an executor or administrator, by any of the following persons, respectively, viz. :—

By the minor after he has attained majority, or by the executor or administrator of a deceased minor, or under—

- (a) By the guardian of the person ; and under
- (b) By the curator of the estate of a minor.

And in any case by the successor of any such curator or guardian.

(2) Where a petition is presented for the judicial settlement of the account of the guardian of the person of a minor, proof shall be adduced to the satisfaction of the Court that he has received money or property of the minor for which he is liable to account and has not accounted.

Note.—This section reproduces, with verbal amendments, those of the provisions of s. 745 of the old Code that relate to curators and guardians of the persons of minors.

Voluntary judicial settlement of accounts in the case of minors.

15. (1) 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 either of the persons described under sub-heads (a) and (b) of sub-section (1) of the last preceding section, in any case where a petition for a judicial settlement of his account may be presented thereunder by any other person.

(2) The Court may, in its discretion, direct that any person who might have so presented a petition shall be cited to attend the settlement.

Note.—This section reproduces, with verbal amendments, those of the provisions of section 746 of the old Code that relate to curators and guardians of the persons of minors.

Sub-section (2) replaces the old provision that the petition itself shall contain a prayer for the citation of all the persons above mentioned. It seems better to leave the matter to the discretion of the Court.

Procedure.

16. (1) The practice and procedure upon a petition praying for the judicial settlement of the account of an executor or administrator shall apply, so far as is practicable, to all proceedings under sections 14 and 15.

(2) The accounting party shall annex to every account produced and filed by him an affidavit verifying the account.

Note.—This section reproduces, with verbal amendments, those of the provisions of section 747 of the old Code that relate to curators and guardians of the persons of minors.

Requisites of petitions relating to minors.

17. (1) Every petition by which an application is made to a District Court for the exercise of its powers over or in respect of minors shall state expressly that the petitioner does not know of any person interested in the subject of the petition, or in the minor, who is likely to entertain any objection thereto, other than those who are named as respondents in the petition.

(2) 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.

Note.—This section reproduces, with verbal amendments, those of the provisions of sections 749 and 750 of the old Code that relate to curators and guardians of the persons of minors.

Citations.

Security for due administration.

18. The District Court shall have the like power to make 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.

Note.—This section reproduces, with verbal amendments, those of the provisions of section 752 of the old Code that relate to curators of minors.

Security bonds.

19. (1) All security bonds shall, unless otherwise expressly or by implication directed, be expressed to be made with the Secretary of the Court for the time being.

(2) In the case of every bond 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 the original party obligee to the contract on the bond.

Note.—This section reproduces, with verbal amendments, those of the provisions of section 751 of the old Code that relate to minors.

Appeal.

20. (1) Every order or decree made under the provisions of this Part shall be subject to an appeal to the Supreme Court.

(2) Such appeal shall be prosecuted within the time and in the manner and subject to the rules and practice for or observed in appeals from District Courts.

Note.—Sub-section (1) is based on section 748 of the old Code, the provisions of which have been extended to every order or decree made under this Part of the Third Schedule.

Sub-section (2) is new.

PART III.

MATRIMONIAL ACTIONS.

Explanatory Memorandum.

The sections of Chapter XLIII. of the old Code have been arranged in a more convenient form under the following heads :—

Introductory.—Enacting the general mode of procedure in matrimonial actions (s. 596).

Dissolution of Marriage.—(ss. 597–603, s. 606, and s. 613.)

Nullity of Marriage.—(s. 607.)

Judicial Separation.—(ss. 608–611 and s. 626.)

General.—(ss. 604, 605, decree for dissolution *and nullity* to be decrees *nisi* in the first instance, &c.)

The final paragraph of s. 598 as to damages against co-defendants.

Section 612 as to costs against co-defendant.

Sections 614–616, Alimony.

Sections 617, 618, Settlements.

Sections 619–622, Custody, &c., of children.

Sections 623–627, Miscellaneous matters.

The reason for this arrangement is that the provisions contained under the “General” heading are for the most part applicable to any of the forms of action that may be brought under this Part.

The majority of the amendments are merely verbal, but the following new provisions have been introduced :—

Sub-section (3) of section 3.—The Court is given a discretionary power to direct the person with whom the husband is alleged to have committed adultery to be joined as a co-defendant. This sub-section is based on section 11 of the English Matrimonial Causes Act, 1858, and a provision to this effect in Ceylon might be convenient.

Sections 2 and 10 (1).—The residence of *either* husband *or* wife has been made sufficient to give the Court jurisdiction in actions for dissolution and nullity of marriage as well as in actions for separation. This extends the principle of the decision in *Wright v. Wright*, (1903) 9 N. L. R. 31, to the three forms of action under this Part.

Section 15.—A power has been given to the Court to make a protection order in respect of a deserted wife’s personal earnings or property. The new provision is based on s. 21 of the English Divorce Act, 1857.

It may be remarked that the words “order to protect property obtained by a wife” in s. 626 of the old Code appear to have contemplated an order of this nature.

Sub-section (1) of s. 17 provides that a decree of nullity shall be a decree *nisi* in the first instance. It seems more convenient to assimilate the procedure on a decree of nullity to that on a decree of dissolution, instead of making the nullity decree appealable for three months, and then, if there has been no appeal confirming it. (See s. 625 of the old Code.)

Section 18.—The provisions contained in the final paragraph of s. 598 of the old Code, allowing a claim for damages against a co-defendant in an action for divorce by the husband, have been widened.

Section 25 provides that the Court may appoint trustees of settlements, and may direct that any necessary documents be executed. It seems a necessary provision.

Section 27 gives the Court a discretion to hear the proceedings *in camera*, and to prohibit the publication of reports of the proceedings.

Introductory.

1. *Every action* for—

(a) *Dissolution of marriage*; or

(b) *Judicial separation*; or

(c) *Declaration of nullity of marriage*,

shall be *instituted* by the *presentation* of a *plaint*, and shall, so far as may be *practicable*, be *tried* in accordance with the rules and procedure prescribed by *this Code* for the *trial* of a *regular action*.

Procedure in matrimonial actions.

Note.—This section reproduces s. 596 of the old Code, re-drafted and simplified.

Dissolution of Marriage.

Court of district in which either husband or wife resides to have jurisdiction.

2. A husband or wife may *institute an action* in the District Court, within the jurisdiction of which *either the husband or the wife* 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.

Note.—Section 597 of the old Code.

“*Either the husband or the wife.*” These words extend the principle of the decision in *Wright v. Wright*, (1903) 9 N. L. R. 31, to actions for dissolution of marriage as well as to actions for a judicial separation.

“Jurisdiction dissolved.” The Committee considered the desirability of conferring upon the District Courts of Ceylon the power to divorce Europeans resident in the Colony irrespective of their domicile. It is, however, doubtful whether any such provision in the municipal law of the Colony would be effectual *outside Ceylon* in the case of Europeans who were not domiciled in Ceylon. See the judgment of the Privy Council in *Le Mesurier v. Le Mesurier*, (1895) 1 N. L. R. 160.

Co-defendant.

3. (1) *Where the husband is the plaintiff, he shall join the alleged adulterer as a co-defendant to the action, unless he is excused by the Court from so doing on one of the following grounds:*

- (a) That the defendant is leading the life of a prostitute, and that *he* knows of no person with whom the adultery has been committed;
- (b) That *he does not know* the name of the alleged adulterer, although he has made due efforts to discover it;
- (c) That the alleged adulterer is dead.

Note.—Sub-section (1) reproduces s. 598 of the old Code, with verbal amendments. The final paragraph of s. 598 is dealt with in s. 18 *infra*.

Sub-section (2) reproduces s. 599 of the old Code.

Sub-section (3) is based on s. 11 of the Matrimonial Causes Act, 1858 (21 and 22 Vict. c. 108), and seems a necessary provision,

(2) The prayer to be excused from *joining* the alleged adulterer as a co-defendant shall be embodied in the *plaint*, and shall be supported by affidavit or other sufficient evidence.

(3) *Where the wife is the plaintiff, the Court may, in its discretion, direct that the person with whom the husband is alleged to have committed adultery be joined as a co-defendant.*

Connivance, condonation, countercharge.

4. The Court shall satisfy itself, *so far as it reasonably can*, as to the facts alleged, and also whether or not the plaintiff has been in any manner accessory to or *has connived* at the act or conduct which constitutes the ground on which the dissolution of marriage is prayed for, or has condoned the same, and shall also inquire into any countercharge which may be made against the plaintiff.

Note.—Section 600 of the old Code, with verbal amendments.

Action when to be dismissed.

5. *The action shall be dismissed if* the Court is not satisfied that the plaintiff's case has been proved, or finds that during the marriage the plaintiff has been accessory to or *has connived* at the act or conduct which constitutes the ground on which the dissolution of marriage is prayed for, or has condoned the same, or that the *action* is brought or prosecuted in collusion with either of the defendants.

Note.—Section 601 of the old Code.

Otherwise decree to be passed.

6. *If* the Court is satisfied that the plaintiff's case has been proved, and does not find that the plaintiff has been in any manner accessory to or *has connived* at the act or conduct which constitutes the ground on which the dissolution of marriage is prayed for, or has condoned the same, or that the *action* is instituted or prosecuted in collusion, the Court shall *pass a decree nisi for the dissolution of the marriage.*

Note.—The first and second paragraphs of s. 602 of the old Code.

“Decree *nisi*.” See s. 17 *infra*.

The third paragraph of s. 602 has been made a separate section.

Provided that the Court shall not be bound to *pass* such decree if it finds that the plaintiff has, during the marriage, been guilty of adultery, or of unreasonable delay in *instituting* or prosecuting the *action*, or of cruelty to the defendant, or of having deserted or wilfully separated himself or herself from the defendant before the adultery complained of, and without reasonable excuse, or of such wilful neglect or misconduct of or towards the defendant as has conduced to the adultery.

Condonation.

7. Adultery shall not be deemed to have been condoned unless conjugal cohabitation has been continued or *subsequently resumed.*

Note.—The third paragraph of s. 602 of the old Code.

Defendant when entitled to relief.

8. *Where* the defendant opposes the relief sought on any ground which would have enabled him or her to *institute an action* as plaintiff for dissolution of marriage, the Court may *grant* 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 *instituted an action* seeking such relief.

Note.—Section 603 of the old Code.

Procedure on suspicion of collusion during progress of action in District Court.

9. (1) During the progress of an action for dissolution of marriage, any person suspecting that any of the parties to the action is or has been acting in collusion for the purpose of obtaining a dissolution of marriage may, by petition supported by affidavit or other sufficient evidence, apply to the Court to take such steps in respect of the alleged collusion as may be necessary to enable it to pass a decree in accordance with the justice of the case.

Note.—Sub-section (1) reproduces s. 606 of the old Code. Sub-section (2) reproduces s. 613, which seems more conveniently placed here.

Interventient may be ordered to pay costs.

(2) Where an application is made under sub-section (1), and it appears to the Court that the applicant had no grounds for intervening, the Court may order him to pay the whole or any part of the costs occasioned by the application.

Nullity of Marriage.

Court of district in which either party resides to have jurisdiction.

10. (1) A husband or wife may institute an action in the District Court within the jurisdiction of which either the husband or the wife resides praying that his or her marriage may be declared null and void.

Note.—Section 607 of the old Code.

(2) A decree nisi of nullity of marriage may be passed on any ground which renders the marriage contract between the parties void by the law applicable to this Colony.

Under the new provisions the decree is a decree nisi in the first instance. See the notes to s. 17. Either the husband or the wife. See the note to s. 2 supra. As to domicil, see the note to s. 2 supra.

Judicial Separation.

Court of district in which either party resides to have jurisdiction.

11. (1) A husband or wife may institute an action praying for a judicial separation on any ground on which by the law applicable to this Colony such separation may be granted.

Note.—Section 608 of the old Code.

(2) Such action may be instituted in the District Court within the jurisdiction of which either the husband or the wife resides, and the Court on being satisfied that the allegations made in the plaint are true, and that there is no legal ground why the prayer in the plaint should not be granted, may decree separation accordingly.

Either the husband or the wife resides. These words give effect to the decision in Wright v. Wright, (1903) 9 N. L. R. 31, and see notes to s. 2 supra.

The word "plaint" has been used instead of "application," in view of the fact that the very first section of Chapter XLII. enacts that actions for separation shall be commenced by plaint.

Separated wife's property.

12. Where a judicial separation has been decreed under section 11, the wife shall, from the date of the decree and so long as 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, and such property may be disposed of by her in all respects as if she were an unmarried woman, and on her decease, if she die intestate, shall devolve as it would have devolved if her husband had then been dead.

Note.—Section 609 of the old Code.

Provided that if she again cohabit with her husband, all property to which she may be entitled 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 while separate.

If her husband had then been dead. These words seem preferable to the words "if she had been unmarried" in the old Code, for there may be children of the marriage.

Separate wife's contracts and rights to sue.

13. Where a judicial separation has been decreed under section 11, the wife shall, while the separation continues, be considered as an unmarried woman for the purposes of contract, wrongs, and injuries, and of 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.

Note.—Section 610 of the old Code.

Proviso 1.

Provided that where alimony has been decreed or ordered to be paid to the wife upon such separation, and the same is not duly paid, the husband shall be liable for necessaries supplied for her use.

Proviso 2.

Provided also that nothing herein contained shall prevent the wife from joining, at any time during the separation, in the exercise of a joint power given to herself and her husband.

Reversal of decree for separation.

14. (1) A husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been passed, may, at any time thereafter, apply to the Court, by petition in the manner provided by Order XXVI. of this Code, praying for the reversal of such decree, on the ground that it was obtained in his or her absence at the hearing, and where desertion was the ground of such decree, that there was reasonable excuse for the desertion alleged.

Note.—Section 611 of the old Code.

(2) The party in whose favour the decree of judicial separation sought to be reversed was passed shall be made respondent to the petition, and the Court, on being satisfied of the truth of the allegations of such petition, may reverse the decree accordingly.

The latter portion of s. 611 dealing with the rights of third parties, has been omitted, as those rights are sufficiently protected by s. 16, sub-section (2).

Protection orders,

15. (1) Any wife, in whose property the husband has acquired an interest by virtue of the marriage, may, if deserted by him, apply by petition to the Court in the manner provided by Order XXVI. of the Code for an order to protect any property which she may have obtained after desertion or may thereafter obtain against him and his creditors and any person claiming under him; and such property, while the order is in force, shall belong to the wife as if she were unmarried.

(2) The Court may direct any persons whom it considers necessary to be made respondents to such petition, and if satisfied that the desertion was without reasonable excuse, and that the wife is maintaining herself, may make such order accordingly.

(3) The order shall state the time at which the desertion commenced and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Position of wife.

(4) While any such order is in force, the wife shall be, and shall be deemed to have been from the date of the desertion, in the like position in all respects with regard to property and contracts and suing and being sued as she would have been if she had obtained a decree of separation under section 11.

Discharge or variance of order

(5) The husband or any creditor or person claiming under him may at any time apply to the Court by petition in manner aforesaid for the discharge or variance of the order, and the Court may, if the desertion has ceased, or if for any other cause it thinks fit so to do, discharge or vary the order accordingly.

Action for seizing wife's property.

(6) If the husband or any creditor or person claiming under him seizes or continues to hold any property of the wife after notice of any such order, the wife may by action recover such property and also a sum equal to double its value.

Protection of third parties dealing with wife after decree made and before reversal.

16. (1) Every decree for judicial separation or order to protect property obtained by a wife under this Part shall, until reversed or discharged, be deemed valid so far as necessary for the the protection of any person dealing with the wife.

(2) The reversal, discharge, or variation of such decree or order shall not affect any rights or remedies which a person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of the decree or order and of the reversal, discharge, or variation thereof.

(3) Any person who, in reliance on any such decree or order, makes any payment to, or permits any transfer to be made to or act to be done by, the wife shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or may at some time since the making of the decree or order have been discontinued, be protected and indemnified as if at the time of such payment, transfer, or other act such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued, unless at the time of the payment, transfer, or other act such person had notice of the reversal, discharge, or variation of the decree or order of the cessation or discontinuance of the separation.

General.

Decree nisi when made absolute.

17. (1) No decree nisi for dissolution or for nullity of marriage shall be made absolute till after the expiration of three months from the date thereof, or such longer period as may from time to time be prescribed by any rule or rules made by the Rules Committee constituted by section 58 of the Ordinance.

(2) During such period any person may by petition, to which the plaintiff and the defendants shall, if reasonably possible, be made respondents, show cause why the decree should not be 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.

(3) On cause being so shown, the Court may reverse the decree nisi, or may require further inquiry, or otherwise deal with the case as justice may demand.

Costs.

(4) The Court may order the costs arising from such cause being shown to be paid by the parties or such one or more of them, including the wife, as it thinks fit.

Decree when to be made absolute.

(5) Where a decree nisi has been passed, and no sufficient cause has been shown why the same should not be made absolute, the decree nisi shall on the expiration of the prescribed period be made absolute.

Note.—This section is new, and is based on s. 21 of 20 and 21 Vict. c. 85, and ss. 6 et seq. of 21 and 22 Vict. c. 108, provisions which seem suitable to Ceylon in a modified form.

Note.—Section 626 of the old Code.

Note.—Sub-sections (1) to (4) represent s. 604 of the old Code.

Decree nisi for nullity. The decree has been made a decree nisi in the first instance in order to assimilate the procedure to that on a decree of dissolution; the section has for this reason been put under the "General" heading.

Sub-section (5) reproduces s. 605 of the old Code.

Damages.

18. (1) A husband may claim damages from any person on the ground of his having committed adultery with the wife of such husband.

(2) Such claim may be made either in an action for dissolution of marriage or for judicial separation or by action for that purpose only.

(3) The Court shall ascertain the amount of damages whether the defendant or co-defendants appear or not, and may in every case direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife.

Note.—The final paragraph of s. 598 of the old Code gives a right to claim damages against a co-defendant only in an action for dissolution of marriage.

The new section is based on s. 33 of the English Divorce Act, 1857 (20 and 21 Vict. c. 85).

Sub-section (3) in particular would appear to be a useful provision from the point of view of providing for the children or wife.

Co-defendant may be ordered to pay costs.

19. A co-defendant may be ordered to pay the whole or any part of the costs of the proceedings, in addition to any damages which may be awarded.

Provided that he 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 at the time of the adultery he had no reason to believe, the defendant to be a married woman.

Note.—Section. 612 of the old Code.

Alimony pendente lite.

20. In any action under this Part the wife, whether or not she has obtained a protection order, may present a petition for alimony pending the action, and the Court may, thereupon make such order as it may deem just.

Proviso.

Provided that alimony pending the action shall in no case exceed one-fifth of the husband's average nett income for the three years next preceding the date of the order, and shall continue in the case of a decree nisi for dissolution or nullity of marriage until the decree is made absolute.

Note.—Section 614 of the old Code.

The words "whether it be instituted by the husband or wife" in s. 614 have been omitted as unnecessary in view of the words "any action"

The words whether or not she has obtained a protection order have been introduced in view of the new s. 15. "Exceed one-fifth." The words in s. 614 are "in no case be less than one-fifth," but the wife may have private means, and there may be various circumstances in which the husband cannot even allow one-fifth of his income. It would appear that the words "in no case be less than" in the old Code are an error.

Under the English law alimony pendente lite, is usually calculated at one-fifth of the nett income of the husband, but this is not a strict rule (*Hawkes v. Hawkes*, 1 Hagg. Ecc. 526), and it may be reduced. See rule 92 of the Divorce Rules, and *Cox v. Cox*, 3 Add. 276.

Permanent alimony.

21. (1) On a decree absolute declaring a marriage to be dissolved, or on a decree of judicial separation obtained by a wife, the Court may order the husband to secure to the wife such sum of money as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable.

(2) The Court may direct the alimony to be paid either in a lump sum or in yearly, monthly, or weekly payments for any period not exceeding the life of the wife, and for that purpose may cause a proper instrument to be executed by all necessary parties.

Form of decree for alimony.

(3) The Court may direct the alimony to be paid either to the wife herself or to a trustee to be approved on her behalf by the Court, and may impose such terms and restrictions, and may direct the execution of such trust deeds, as it may think fit, and may from time to time appoint a new trustee.

Note.—Sub-sections (1) and (2) reproduce the first part of s. 615 of the old Code re-drafted in a more convenient form.

Sub-section (3) represents s. 616 of the old Code.

The proviso to s. 615 has been made a separate section dealing with the discharge of an order for alimony.

Discharge or alteration of order for alimony.

22. Where an order has been made for the payment of alimony, and the husband from any cause subsequently becomes unable to make such payments, the Court may discharge or modify or suspend the order in whole or in part, and may again revive the order in whole or in part.

Note.—The proviso to s. 615 of the old Code.

Settlement of wife's property.

23. Where a decree of dissolution of marriage or of judicial separation is passed on account of the adultery of the wife, and the wife is entitled to any property, the Court may, notwithstanding the existence of the disability of coverture, order the whole or any part of such property to be settled for the benefit of the husband, or of the children of the marriage, or of both.

Note.—Section 617 of the old Code.

“Or of judicial separation.” The words are new, and were apparently omitted by an oversight from the old section, for the second paragraph of that section refers specially to “instruments executed after a decree of separation.”

The second paragraph of the old section is covered by the words “notwithstanding the existence of the disability of coverture.”

Power to vary settlements.

24. After a decree absolute for dissolution or nullity of marriage, the Court 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 part of the settled property, whether for the benefit of the husband or wife, or of the children (if any), or of both children and parents, as to the Court seems fit.

Note.—Section 618 of the old Code.

Proviso.

Provided that no order shall be made for the benefit of the parents, or either of them, at the expense of the children.

Powers of the Court as to settlements.

25. Where the Court has power to direct any property to be settled or to vary the terms of an existing settlement, it may appoint trustees of such settlement; and may order the necessary instruments to be prepared containing such provisions as it may think fit, and may order all necessary parties to execute the same, and may from time to time appoint new trustees, and may do all such other acts as it may deem necessary for carrying such directions into effect.

Note.—This section is new. It seems a very necessary provision. Under the old Code there was a provision for the appointment of a trustee in the case of an order for alimony, but no similar provision where the Court ordered or varied a settlement.

Note.—At any stage of the proceedings, or after final decree has been passed.

This section combines the provisions of ss. 619, 620, 621, and 622 of the old Code, and covers—

Custody, &c., of children.

26. In actions for dissolution or nullity of marriage, or for judicial separation, the Court may at any stage of the proceedings, or after final decree has been passed, make such order as it thinks fit, and may from time to time vary or discharge such order, with respect to the custody, maintenance, and education of the minor children of the marriage or for placing them under the protection of the Court.

- (a) Interim orders in action for separation (s. 619);
- (b) Orders after decree for separation (s. 620);
- (c) Orders before decree in actions for dissolution or nullity (s. 621);
- (d) Orders after decree absolute in action for dissolution or nullity (s. 622);

in addition to giving to the Court—

- (e) A power to vary or discharge its orders.

Sittings in camera.

27. The Court may hear the whole or any part of any proceedings under this Part with closed doors, and may prohibit the publication of the whole or any part of such proceedings, or may allow them to be published subject to such restrictions as the Court may see fit to impose.

Note.—This section is new, and was suggested by the recommendations of the recent report of the Divorce Commission in England.

There might be cases in Ceylon in which it would be desirable for the Court to have these discretionary powers.

Adjournment and further evidence.

28. The Court may from time to time adjourn the hearing of any petition or plaint under this Part, and may of its own motion require further evidence thereon.

Note.—Section 623 of the old Code.

Appeal.

29. All decrees and orders passed or made by the Court in proceedings under this Part shall be enforced, and may be appealed from, as if they were decrees or orders made by the Court in the exercise of its ordinary civil jurisdiction

Note.—Section 624 of the old Code.

Provided that appealed therefrom. The proviso is new, and is founded on s. 10 of the Supreme Court of Judicature Act, 1881 (44 and 45 Vict. c. 68).

Provided that no appeal from a decree absolute for dissolution or nullity of marriage shall lie in favour of any party, who, having had time and opportunity to appeal from the decree nisi, shall not have appealed therefrom.

When parties may marry again.

30. When the time limit for appealing against a decree absolute for dissolution or nullity of marriage shall have expired and no appeal has been presented, or when as the result of any such appeal any marriage shall be declared to be dissolved or annulled, but not sooner, it shall be lawful for the parties thereto to marry again as if the prior marriage had been dissolved by death.

Proviso.

Provided that no appeal to His 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 as the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the parties to the marriage to marry again as if the prior marriage had been dissolved by death.

This Part not to apply to certain marriages.

31. Nothing herein contained shall be taken to apply to any marriage between persons professing the Muhammadan faith or to any marriage affected by the provisions of Ordinance No. 3 of 1870.

Note.—Section 625 of the old Code, with amendments rendered necessary by the alterations introduced in ss. 10 and 17 with regard to decrees nisi in nullity cases.

Note.—Section 627 of the old Code.

PART IV.

ACTIONS ON MORTGAGES.

Definition.

1. In this Part the expression—

“Mortgage” means a mortgage of immovable property.

“Mortgagee” includes a person entitled to bring an action for the realization of moneys secured upon a mortgage.

Form of action.

2. No action shall be maintainable for the realization of moneys secured upon a mortgage except under the provisions of this Part.

Note.—The definition of mortgage embodies part of the provisions of s. 640 of the old Code.

Note.—Section 2 is intended to settle the question whether the old Code abolished the Roman-Dutch law *actio quasi Serviana*, regarding which there are conflicting decisions.

Bonser C.J. was of opinion that the Code abolished the *actio quasi Serviana*. See the cases of *Punchi Kira v. Sangu*, (1900) 1 Bro. 113; *Pattiman v. Kanapathipulle*, (1900) 1 Bro. 119. Lawrie J. held contra in the cases of *De Saram v. Perera*, (1900) 1 Bro. 117; *D. C. Kandy 9,810*, (1900) 1 Bro. 121; and *Santiago v. Fernando*, (1901) 2 Bro. 126.

Note.—This section corresponds to s. 640 of the old Code.

Mortgagor to be made a party.

3. The mortgagor, whether he is in possession of the property mortgaged or not, shall be made a party defendant to every action for the realization of moneys secured upon a mortgage.

Note.—Section 4 corresponds to ss. 641 and 642 of the old Code.

Where the mortgagor is dead.

4. (1) Where the mortgagor is dead, his executor or administrator shall be made a party defendant if the estate of the deceased mortgagor amounts to or exceeds Rs. 1,000 in value.

(2) Where in such case no executor or administrator has been appointed, the mortgagee shall, before instituting the action, apply to the Court to appoint an administrator to the estate and effects of the deceased mortgagor under the provisions of the Second Schedule.

(3) Where the estate of the deceased mortgagor is less than Rs. 1,000 in value, and an executor or administrator has been appointed to administer the estate and effects of the deceased mortgagor, such executor or administrator shall be made a party defendant.

(4) Where the estate of the deceased mortgagor is less than Rs. 1,000 in value and no executor or administrator has been appointed, the mortgagee may either apply to the Court to appoint an executor or administrator under the provisions of the Second Schedule or apply to the Court, before instituting his action, to appoint some person to represent the estate of the deceased mortgagor for all the purposes of the action.

Under the old Code a person to represent the estate for the purposes of the action might be appointed where the property mortgaged is less than Rs. 1,000 in value. Under the present section such an appointment is allowed only where the estate of the deceased mortgagor is less than Rs. 1,000 in value.

In sub-section (6) the word “whole” has been inserted before the word “estate” in consequence of the decision in the case of *Mohamedu Lebbe v. Umma Natchia*, (1886) 1 N. L. R. 346, where it was held that a decree in an action against a representative appointed for the purposes of the action could only be executed against the property named in the decree.

(5) An application for the appointment of a person to represent the estate shall be made in accordance with the provisions of Order XXVI. and shall be supported by affidavit showing the value of the property mortgaged and the fitness of the person to be appointed to represent the estate. The person to be appointed and the heirs of the deceased mortgagor shall be made respondents to such application. The Court may direct any person not already named to be made a respondent.

(6) The Court may appoint such person to represent the estate of the deceased for all the purposes of the action, and the order so made and any order consequent thereon shall bind the whole estate of the deceased mortgagor in all respects as if a duly constituted administrator of the deceased mortgagor had been a party to the action.

Death of mortgagor during pendency of action.

5. Where the mortgagor dies during the pendency of the action, his executor or administrator, or if his estate is less than Rs. 1,000 in value, a person appointed to represent his estate for all the purposes of the action, or the executor or administrator of such person, shall be made a party defendant in place of the deceased mortgagor.

Note.—Section 5 has been inserted in consequence of the decision in *De Silva v. Baba Simo*, (1900) 4 N. L. R. 345, where it was held that a representative for the purposes of the action could not be appointed where the mortgagor dies after the institution of an action.

Form of decree if mortgagee is successful.

6. (1) Where the mortgagee succeeds, the Court shall pass a decree in his favour for the principal and interest due under the decree and the costs of the action, and the property mortgaged shall thereupon be liable to seizure and sale in satisfaction of the decree in the manner provided for the seizure and sale of immovable property under a decree to pay money.

(2) Where the property mortgaged does not realize the amount awarded by the decree and the costs of the action, together with the costs of seizure and sale, execution may be levied for the balance due against the other property, movable or immovable, of the mortgagor.

Note.—The provision in the old Code allowing the judgment-debtor a further period to pay the debt after decree is appropriate to actions on mortgage bonds, which have the effect of transferring the title in the property mortgaged to the mortgagee subject to the right of redemption. Such a provision is out of place in Ceylon, where the bond has not the effect of transferring title. The present section supersedes s. 201 of the old Code.

Applications by persons claiming an adverse interest.

7. (1) Any person having an interest in the mortgaged property adverse to the mortgage bond under any deed or instrument or other document mentioned in section 16 of the Land Registration Ordinance, 1891 (No. 14 of 1891), to which the mortgage bond has preference by reason of priority of registration, may before the passing of the decree apply under the provisions of Order I. in this Code to be made a party defendant.

(2) Any person so made a party defendant shall be bound by the decree passed in the action.

Note.—This section is new, and is intended to meet the case, not provided for by Chapter XLVI. of the old Code, of persons whose security has not preference over the mortgage by reason of registration or otherwise. Such persons are enabled by this section to come in and exercise the common law right of redeeming the mortgage.

Provision for registration of addresses.

8. (1) Any mortgagee who has registered his mortgage shall furnish the Registrar of Lands for the district in which the property is situated with an address in Ceylon so as to enable him to receive notice as hereinafter provided.

(2) Where a mortgagee has furnished such address, every person registering, on a date subsequent to the registration of the mortgage, any deed, instrument, or other document mentioned in section 16 of the Land Registration Ordinance, 1891 (No. 14 of 1891), affecting the property mortgaged, shall furnish the Registrar of Lands for the district in which the property is situate with an address in Ceylon for the service of notice of any action which may be instituted to enforce the mortgage, and shall also furnish the mortgagee with a copy of such address, and notify him in writing of the registration of such deed, instrument, or other document.

(3) Every mortgagee shall, on the issue of summons in any action under this Part, issue a notice of the action, with a copy of the summons annexed thereto, to every person who has at any time previous to the institution of the action furnished him with an address for the service of such notice and notified him in writing of the registration of such deed, instrument, or document.

(4) Any person receiving such notice of action may, on the day fixed in the summons for the defendant to appear, apply under the provisions of Order I. of this Code to be joined as a defendant in the action.

(5) Every person so notified who does not apply to be joined as defendant, and every person whose deed, instrument, or document has not been registered, or who has not furnished such aforesaid address or notice to the mortgagee and Registrar of Lands, shall, where the mortgagee has complied with the provisions of sub-sections (1), (2), and (3) of this section, be bound by the judgment in the action in all respects as fully as though he had been a party thereto.

(6) Every notice required by 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.

(7) Every Registrar of Lands shall keep a separate book in such form as may be prescribed by the Registrar-General in which addresses for the service of notices shall be entered.

(8) The provisions of Order XI. with regard to the cure of default in appearance shall, so far as they can be made applicable, apply to any case of intervention under this section.

Note.—Sub-sections (1) to (7), both inclusive, are founded on ss. 643 and 644 of the old Code, re-drafted, it is hoped, in a simpler form.

Sub-section (9) and (10) are entirely new, and are intended to supply the omission under the old practice of any provision for changes of address.

(9) A mortgagee may from time to time change the address furnished by him under sub-section (1) by furnishing to the Registrar of Lands any new address that he may desire to register in lieu thereof, and at the same time furnishing a copy of such new address to every person who has, on a date subsequent to the registration of his mortgage, registered a deed, instrument, or other document and furnished to the Registrar an address for the service of notice of action, as provided for in sub-section (2).

(10) Any person who has registered a deed, instrument, or other document as aforesaid may from time to time change the address for service of notice of action by furnishing to the Registrar the new address that he desires to register, and at the same time furnishing the mortgagee with a copy of such new address.

Sequestration may issue in certain cases.

9. (1) Where, in actions brought for the realization of moneys secured by a mortgage, the Fiscal, in his return to the precept for service of summons, reports that the defendant is not to be found, and the plaintiff verifies his demand on oath or affirmation to the satisfaction of the Court, and further satisfies the Court on oath that, notwithstanding all reasonable effort on his part, the defendant cannot be found, the Court may, on the motion of the plaintiff, make an order directing the Fiscal to seize and sequester the houses, lands, goods, money, or other property which are the subject of the mortgage, and to detain or secure the same till the defendant shall appear or answer.

(2) Every such order of sequestration shall be in the Form prescribed by sub-rule (2) of rule 6 in Order XLII. of this Code, with such variations as circumstances may require.

(3) The Fiscal shall cause due notice in writing of the making of the order to be served on all persons in whose possession or power such property, whether movable or immovable, of the defendant shall be, and shall require all such persons to reserve and retain the same, and all issues, rents, profits, and interests accruing therefrom, to abide the further order of the Court.

(4) Evidence given by a plaintiff under sub-section (1) shall be deemed to be evidence given in a judicial proceeding, within the meaning of section 9 of the Oaths Ordinance, 1895 (No. 9 of 1895).

Notice of sequestration to be published.

10. (1) The property so sequestered shall either remain under sequestration or be sold, as the Court may think fit, regard being had to the nature of such property and the interests of all parties concerned.

(2) As soon as conveniently may be after such sequestration, written notices in English and in the native language or languages of the district shall be affixed at the Court-house of the Court from which the order issued, and at such other public and conspicuous places, or shall be advertised in such public newspapers as the Court shall direct.

(3) Every such notice or advertisement shall state the names and designations of the parties, the cause of action, the making of the order of sequestration, and the description of the property sequestered, and shall call on the defendant to appear.

(4) Proclamation shall also be made on two several days in open Court, at such intervals as the Court shall consider fit, calling on the defendant to appear, and intimating that, in default of such appearance, the Court will proceed ex parte.

Note.—This section is based on s. 645 of the old Code, which has been completely re-drafted.

Note.—This section reproduces s. 646 of the old Code, with numerous amendments in drafting.

Sequestration how dissolved.

11. (1) Where the defendant appears on or before the day of the last proclamation and gives 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 to trial in the ordinary manner.

(2) Where the defendant fails to give such security, he shall be admitted to appear and defend the action, but the property shall remain under sequestration.

(3) Where the defendant does not appear on or before the day of the last proclamation, the Court shall, on the motion of the plaintiff, proceed to hear the case ex parte.

Note.—This section reproduces s. 647 of the old Code, with numerous amendments in drafting.

Property sequestered claimed by third party.

12. Where the property sequestered is claimed by a third party, the right thereto shall be tried between the claimant and the plaintiff under the provisions of Order XXVI. in this Code; and the proceedings in the original action shall be stayed, if the Court shall consider such stay necessary, but not otherwise.

Note.—This section reproduces, with verbal amendments, s. 648 of the old Code.

Where mortgagor insolvent, assignee to be joined.

13. Where an action is brought against a mortgagor against whom proceedings in insolvency are in progress in any Court in the Colony, the assignee in insolvency shall be joined as a co-defendant.

Note.—This section reproduces, with verbal amendments, s. 649 of the old Code.

PART V.

ARBITRATION.

Reference generally.

Civil matters may be referred.

1. In any cause or matter (other than a criminal proceeding) the whole cause or matter or any question or issue of fact arising therein may be referred to arbitration.

Note.—Section 3 of Ordinance No. 15 of 1866.

The word "indictment" seems unnecessary.

"Referred." The word "submitted" in the old Ordinance is more applicable to a voluntary reference.

The word "reference" has been used throughout, as it is used in ss. 676-698 of the old Code. cf. generally the first words of s. 14 of the English Arbitration Act, 1889.

Note.—Section 4 of Ordinance No. 15 of 1866.

"Reference." See note to s. 1 supra.

A reference may be compulsory or voluntary.

2. A reference to arbitration may be compulsory by order of Court, or voluntary by the consent of parties.

Note.—Section 5 of Ordinance No. 15 of 1866.

The new section is based on section 14 of the English Arbitration Act, 1889. It extends the power of compulsory reference to matters requiring prolonged examination of documents or scientific or local investigation.

Compulsory References.

Power of Court to refer.

3. (1) Where in any action the question in dispute—

- (a) Consists wholly or in part of matters of account ; or
- (b) Requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court conveniently be made or conducted by the Court itself or through its ordinary officers ;

the Court may at any time order the whole action or any question or issue of fact arising therein to be referred to one or more arbitrators nominated by the parties.

(2) Where the parties cannot agree, the Court itself shall nominate an arbitrator or arbitrators.

(3) Where the reference is to two or more arbitrators, the provisions hereinafter contained as to the appointment of an umpire in references made by consent under an order of Court shall apply.

(4) The award of the arbitrators or umpire shall be reported to the Court, and shall, subject to the provisions hereinafter contained, be equivalent to a finding of the Court on the matter referred to arbitration.

It may not be out of place in connection with this section to refer to the provisions of O. 36, r. 57, of the English R. S. C., with reference to the ascertainment of damages where the amount is substantially a matter of calculation.

On the whole, such a provision would appear to be suitable only in a country where official referees are available, and it has not been considered desirable to include any provision to this effect in arbitration in Ceylon.

The provision as to "such terms as to the costs and otherwise" in the old section is covered by s. 30 infra.

Questions of law arising on a reference of matters of account.

4. Where a reference has been ordered in respect of matters of account, and the allowance or disallowance of any particular item in such account appears to the Court to depend upon a question of law, the Court may determine such question, and the finding of the Court thereon shall be conclusive.

Note.—Section 6 of Ordinance No. 15 of 1866.

In view of the extended powers given by the preceding section, it has been necessary to alter the wording of this section to some extent.

Where a reference has been ordered. The old section gave the Court this power "at the time of making reference or at any time thereafter," but apparently only "on a report to that effect by the arbitrators."

It is hardly conceivable that the arbitrators would be in a position to make such a report "at the time of making reference," and it seems sufficient to leave it to the Court's discretion, whether the exercise of such discretion is called for by a report of the arbitrators or not.

Conclusive. If the finding of the Court is conclusive, it clearly must be acted upon by the arbitrators. The other words in the old section have, therefore, been omitted.

General power of Court to remit.

5. *Where an order of compulsory reference has been made by the Court under section 3, the Court shall, in addition to the power to remit hereinafter provided, have power to remit any matters referred to arbitration to the reconsideration of the arbitrators or umpire upon such terms as to costs or otherwise, as to the Court may seem fit.*

Rules of procedure upon compulsory references.

6. (1) *So far as may be consistent with the foregoing provisions as to compulsory references, the proceedings upon any compulsory reference shall be conducted in like manner and subject to the same rules as to the powers of the arbitrator and of the Court, the filing of the award, the attendance of witnesses, the production of documents, the enforcing or setting aside the award, and otherwise, as upon a reference made by consent under an order of Court.*

(2) *An appeal shall lie from a decree following upon a judgment pronounced in accordance with an award on compulsory reference.*

Note.—Section 7 of Ordinance No. 15 of 1866.

The old section, giving the Court a wider power to remit in compulsory references, has been retained, with one or two verbal amendments.

Note.—Section 9 of Ordinance No. 15 of 1866.

The form of the old section has been slightly modified.

Sub-section (1) : the filing of the award. These words have been introduced in order to make the provisions for filing an award, and the time for filing it in voluntary references under an order of Court applicable also to compulsory references.

Section 23 of Ordinance No. 15 of 1866 corresponded to s. 685 of the old Code, with the omission of the direction that notice of the filing should be given to the parties.

Section 22 of Ordinance No. 15 of 1866 contained a provision that awards on compulsory reference should be made within three months of appointment, and certain other provisions, e.g., for extension of time.

There seems no reason why the procedure on filing an award should not be the same in compulsory as in voluntary references on order of Court, or why, in compulsory references, the Court should not have the same discretion as to fixing the time for filing an award, or as to granting extension of the time. The latter will, it is conceived, be covered by the words "the powers of the Court" in the proposed section. (See ss. 677 and 683 of the old Code for the time and enlargement of time in voluntary references.) If this view is adopted, ss. 22 and 23 of the Arbitration Ordinance, 1866, will have no separate place in this Part.

Sub-section (2) : "An appeal reference." See the final words of s. 28 of Ordinance No. 15 of 1866. This sub-section retains the right of appeal from a judgment in accordance with an award in compulsory references. The words of the old section have been altered to some extent.

Note.—Section 676 of the old Code.

The first two paragraphs of s. 676 have been re-arranged in what, it is hoped, is a more convenient form. One or two verbal alterations have been introduced.

Parties to action may apply for an order of reference.

Voluntary Reference on Order of Court.

7. (1) *Where in any action all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.*

(2) *Every such application shall be in writing, and shall state the matter sought to be referred.*

(3) *Such application may be made either by the parties in person or by their respective proctors specially authorized in writing in that behalf.*

(4) *Such special authority shall—*

(a) *State expressly the matter to be referred ;*

(b) *Be filed in Court at the time when the application is made ;*

(c) *Be distinct from any power to compromise or refer to arbitration which may be contained in the proctor's general authority to represent his client in the action.*

Appointment of arbitrator.

8. The arbitrator shall be nominated by agreement between the parties.

Note.—The third paragraph of section 676 of the old Code.

It is convenient to deal with the nomination of an arbitrator in a separate section.

The provision contained in the fourth paragraph of s. 676 has been slightly modified and transferred to the section dealing with the power of the Court to appoint the arbitrator in certain cases.

See note to s. 11.

Order of reference.

9. (1) The Court shall by order refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award and shall specify such time in the order.

(2) When once a matter has been referred to arbitration, the Court shall not, save in the manner and to the extent hereinafter provided, deal with such matter in the same action.

Note.—Section 677 of the old Code.

Shall fix such time

Compare also repealed s. 18 of Ordinance No. 15 of 1866 and s. 22 *idem*.

It has already been suggested (see note to s. 6 *supra*) that the time for filing an award should be left to the discretion of the Court in compulsory references, and that this section shall be applicable to compulsory as well as voluntary references.

Making. This word has been substituted for the word "delivery" in order to save the validity of an award made but not reaching the Court within the time limited.

Compare paragraph 3 of the Indian Arbitration Act.

Unless otherwise provided reference shall be to a single arbitrator. Provision for a difference of opinion where more than one arbitrator.

10. (1) Where no other mode of reference is provided, the reference shall be to a single arbitrator.

(2) Where the reference is to two or more arbitrators, the order shall provide for a difference of opinion among the arbitrators—

- (a) By the appointment of an umpire ; or
- (b) By declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail ; 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 may determine.

(3) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

Note.—Section 678 of the old Code.

Compare also repealed ss. 17 and 19 of Ordinance No. 15 of 1866.

Where no other mode of reference is provided single arbitrator. This provision is adopted from paragraph (a) of the First Schedule of the English Arbitration Act, 1889. Its inclusion seems desirable in order to avoid any uncertainty in case of an omission by the parties to specify the mode of reference they desire.

Power of Court to appoint arbitrator or umpire in certain case.

11. (1) In any of the following cases, namely :

- (a) Where the parties cannot agree within a reasonable time with respect to the nomination of an arbitrator, or the person nominated refuses to accept the office of arbitrator ; or
- (b) Where an arbitrator or umpire—
 - (i.) Dies ; or
 - (ii.) Refuses or neglects to act or becomes incapable of acting ; or
 - (iii.) Leaves the Island in circumstances showing that he will probably not return at an early date ; or
- (c) Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served, or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitration, and in such case shall proceed with the action.

Note.—Cf. the fourth paragraph of s. 676 and ss. 679 and 680 of the old Code.

Cf. also repealed s. 16 of Ordinance No. 15 of 1866.

The new section is adapted from the corresponding section in the Indian Arbitration Act (see paragraph 5 of the Second Schedule to the Indian Act, No. V. of 1908).

The amendments of most importance are the introduction of the words "and after giving the other party an opportunity of being heard" in sub-section (2), and the extension of the power of superseding the arbitration to the circumstances mentioned in s. 680.

Powers of arbitrator or umpire appointed after reference.

12. Every arbitrator or umpire appointed under sections 10 and 11 shall have the like powers as if his name had been inserted in the order of reference.

Note.—Section 681 of the old Code.

And the final paragraph of repealed s. 16 of Ordinance No. 15 of 1866.

Court to issue process.

13. (1) The Court shall issue the same processes to the parties and witnesses as the Court may issue in actions tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt of the 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 the arbitrator or umpire, as they would incur for the like offences in actions tried before the Court.

Note.—Section 682 of the old Code.

The clause in that section “whom the arbitrator or umpire desires to examine” has been omitted in order to safeguard the right of the parties themselves to call such witnesses as they desire.

See also s. 20 of Ordinance No. 15 of 1866; and compare paragraph 7 of the Second Schedule of the Indian Act, No. V. of 1908.

Power of arbitrator or umpire to administer oaths or affirmations, and to require production of documents.

14. (1) Unless the Court shall direct otherwise, or the parties shall agree to the contrary, the arbitrator or umpire shall have power to administer oaths to, or to take the affirmations of, the parties and witnesses appearing upon the reference, and to require the production of all deeds, papers, accounts, writings, and documents in the possession of such parties or witnesses respectively.

Punishment for perjury.

(2) Any person who wilfully and corruptly gives false evidence before such arbitrator or umpire shall be guilty of perjury, as if the evidence had been given in open Court, and may be dealt with, prosecuted, and punished accordingly.

Note.—Section 21 of Ordinance No. 15 of 1866.

It seems convenient to insert this section dealing with the powers of arbitrators to administer oaths immediately after the preceding section, and to make it applicable to both voluntary and compulsory references.

The wording of s. 21 of Ordinance No. 15 of 1866 has been modified, and a power to require the production of documents has been introduced.

See generally ss. 7 (a) and 22 of the English Arbitration Act, 1889; and also the First Schedule, paragraphs (f) and (g).

Extension of time for award.

15. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the action.

Note.—Section 683 of the old Code.

See also s. 22 of Ordinance No. 15 of 1866 on enlargement of time for making award.

In s. 683 the words “If from the want of other causes” seem unnecessary, and the wording of the corresponding Indian provision has been followed (paragraph 8 of the Second Schedule of the Indian Act, No. V. of 1908).

“Either before or after the expiration of the period fixed.” These words give effect to the decision in *Utku Naide v. Surendra*, (1899) 4 N. L. R. 118.

Compare generally O. 64, r. 14A, of the English R. S. C.

When umpire may enter on the reference in lieu of arbitrators.

16. Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators—

(a) If they have allowed the appointed time to expire without making an award; or

(b) If they have delivered to the Court or to the umpire a notice in writing stating they cannot agree.

Note.—Section 684 of the old Code.

And compare the concluding words of s. 22 of Ordinance No. 15 of 1866.

Award to be filed in Court.

17. Where 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 or to their proctors.

Note.—Section 685 of the old Code.

And see also s. 23 of Ordinance No. 15 of 1866, and paragraph 10 of the Second Schedule to the Indian Act, No. V. of 1908.

As to the desirability of this section being made applicable to the filing of an award made on a compulsory reference, see note on s. 6 *supra*.

“Or to their proctors.” These words have been introduced in consequence of the decision in *Pitche Tamby et al. v. Fernando et al.*, (1910) 14 N. L. R. 73.

Statement of special case by arbitrators or umpire.

18. Upon any reference by an order of Court, the arbitrator or umpire may, with the leave 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 the Court shall deliver its opinion thereon; and shall order such opinion to be added to and to form part of the award.

Note.—Section 686 of the old Code.

And see also s. 24 of Ordinance No. 15 of 1866.

As to the words "upon notice to the parties" in s. 686, it is suggested that no special "notice" to the parties is necessary; the section provides that the opinion of the Court on the special case shall be added to and form part of the award, and the parties are entitled to notice of the filing of the award under the last preceding section.

Neither does there seem any good reason to retain the provision that the Court should "hear argument" on a case stated under this section.

Compare generally s. 7 (b) of the English Arbitration Act, 1889, and see the corresponding provision of the Indian Act (paragraph 11 of the Second Schedule of the Indian Act No. V. of 1908).

Note.—Section 687 of the old Code.

(Cf. also the first paragraph of s. 25 of Ordinance No. 15 of 1866.)

Except for slight verbal alterations, sub-section (1) is the same as the old s. 687.

The words "by petition" have been omitted, and in this connection see note on s. 25 *infra*.

"Within fifteen days." Compare the second paragraph of s. 27 of Ordinance No. 15 of 1866.

Sub-section (2): "Every application order." The first portion of this sub-section was suggested by O. 52, r. 4, of the English R. S. C.

The introduction of a similar provision seems desirable in order to prevent the filing of indefinite and vague applications in this respect.

Sub-section (3). See notes to s. 24.

Note.—Section 688 of the old Code.

See also s. 25 of Ordinance No. 15 of 1866.

(c) Has been adopted from the Indian Arbitration Act in order to cover the case of an accidental omission not covered by the words "obvious error."

(Paragraph 12 of the Second Schedule of the Indian Act, No. V. of 1908.)

Note.—Section 689 of the old Code.

Compare also the second sentence of s. 25 of Ordinance No. 15 of 1866.

Note.—Section 690 of the old Code.

See also s. 26 of Ordinance No. 15 of 1866.

The words "unless such matter matters referred" have been introduced from the corresponding Indian provision (paragraph 14 of the Indian Arbitration Act), and for reasons which require no explanation.

Application to set aside, correct, or remit the award.

19. (1) Any party to the arbitration may, at any time within fifteen days after receiving notice of the filing of the award, apply to the Court—

- (a) To set aside the award; or
- (b) To modify or correct the award; or
- (c) To remit the award for the reconsideration of the arbitrator or umpire.

(2) Every application to set aside, to modify or correct, or to remit the award shall state in general terms the grounds of the application, and such notice of the application shall be given to the other parties as the Court may direct.

(3) An appeal shall lie from every order refusing or allowing an application made under this section.

Power to modify or correct award.

20. The Court may by order modify or correct an award—

- (a) Where it appears that a part of the award is upon a matter not referred to arbitration, and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) Where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) Where the award contains a clerical mistake or an error arising from an accidental slip or omission.

And make order as to costs.

21. The Court may also make such order as it thinks fit respecting the costs of the arbitration, where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Where award or matter referred to arbitration may be remitted.

22. The Court may remit the award or any matter referred to arbitration for the reconsideration of the same arbitrator 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, unless such matters can be separated without affecting the determination of the matters referred;
- (b) Where the award is so indefinite as to be incapable of execution;
- (c) Where an objection to the legality of the award is apparent upon the face of it.

When an award is void.
When it may be set aside.

23. (1) An award remitted under section 22 becomes void on failure of the arbitrator or umpire to reconsider it.
But 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 proceeding with the action, or after the expiration of the period, or any extension thereof, allowed by the Court for the making of the award, or being otherwise invalid.
(2) Where an award becomes void, or is set aside under sub-section (1), the Court shall make an order superseding the arbitration, and in such case shall proceed with the action.

Judgment to be according to the award.

24. (1) Where the Court itself sees no reason to remit the award or any of the matters referred to arbitration for reconsideration, and where no application to set aside, modify, correct, or remit the award has been made by the parties, or the Court has refused such application, the Court shall, after the expiration of the time for making such application, or for appealing against such refusal, on a day of which due notice shall be given to the parties, proceed to pronounce judgment according to the award.
(2) Upon the judgment so pronounced a decree shall be framed, and such decree shall be enforced in the manner provided for the execution of decrees.
(3) No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

And decree to be framed thereon.

Order of Reference on Agreements to Refer.

Application to file in Court agreement to refer to arbitration.

25. (1) Where any persons agree in writing that any difference between them shall be referred to the arbitration of—
(a) Any person named in the agreement ; or
(b) Any person to be appointed by the Court—
the parties thereto, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates that the agreement be filed in Court.
(2) The application shall be in writing, and shall be numbered and registered as an action between one or more of the parties interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.
(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.
(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement, or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

Note.—Section 691 of the old Code.
Compare s. 27 of Ordinance No. 15 of 1886.
The wording of the corresponding section of the Indian Act has been followed.
“Or after the expiration of the period” These words are rendered necessary in view of the words introduced in s. 19 supra.
Sub-section (2) : “Where an award action.” The wording of this sub-section (2) also depends to some extent on the wording of s. 15 supra ; and see *Punchinona v. Elias Appu*, (1903) 7 N. L. R. 351 ; *Punchirala et al. v. Suddahamy et al.*, (1895) 1 N. L. R. 38 ; and *Ukku Naide v. Surendra*, (1899) 4 N. L. R. 118.

Note.—Section 692 of the old Code.
See also s. 28 of Ordinance No. 15 of 1866.
The form of the section has been modified.
“Modify, correct, or remit.” Section 19 gives a right of application for these purposes as well as for setting aside.
“Or for appealing against such refusal.” These words have been introduced in view of the decision in *Thepanisa v. Allisa*, (1911) 14 N. L. R. 222. In that case it was held that an appeal lies from an order refusing an application under s. 692, that there ought to be an interval between the disallowance of objections and the giving of judgment in terms of the award, and that notice of the day fixed for judgment should be given to the parties.
The provisions relating to the statement of a special case have been adequately dealt with in s. 18.
“No appeal shall lie from” See the penultimate paragraph of s. 28 of Ordinance No. 15 of 1866, and the note on s. 6 supra.

Note.—Sections 693 and 694 of the old Code.
Section 13 of the Arbitration Ordinance of 1866 was one of the sections repealed by the old Code. The provisions of the old s. 13 were altered to some extent by, but in the main were incorporated in ss. 693–695 of the old Code.
Section 693, however (the second paragraph), enacted that the application should be by way of summary procedure.
The procedure indicated in the repealed s. 13 of Ordinance No. 15 of 1866 seems to be more convenient, and has, therefore, been adopted with various alterations in form and wording.
See also the Second Schedule of the Indian Act, No. V. of 1908, paragraph 17.

Stay of action where there is an agreement to refer to arbitration.

26. Where any party to any written agreement to refer to arbitration, or any person claiming under him, institutes any action against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such action may, at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, apply to the Court to stay the action; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the action was instituted, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the action and referring to arbitration the matters so agreed to be referred.

Note.—Section 8 of Ordinance No. 15 of 1866.

The suggested section contains the main provisions enacted by s. 8 of Ordinance No. 15 of 1866. In that Ordinance the section is included under Part II. dealing with "compulsory reference," but it seems more suitable and convenient to insert it under the provisions relating to agreements to refer to arbitration.

The suggested section is adopted from paragraph 18 of the Indian Act.

The following notes on alterations are necessary:—

(1) "Any written agreement to refer to arbitration." These words have been substituted for "any deed or instrument in writing to be hereinafter made or executed agree that, &c."

(2) "At the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement." The introduction of this proviso seems desirable in order to prevent an application under this section from being made at a late and inconvenient stage in the hearing of a case.

(3) The provision as to costs is covered by s. 30, which gives the Court a general power as to costs.

(4) The words in the old section "Provided always may require" have been omitted as unnecessary.

Foregoing provisions applicable to proceedings under section 25.

27. The foregoing provisions, so far as they are consistent with any agreement filed under section 25, shall be applicable to all proceedings under the order of reference made by the Court under that section and to the award and to the enforcement of the decree following thereon.

Note.—Section 695 of the old Code, with slight verbal modifications.

Awards made without the Intervention of the Court.

Filing award in matter referred to arbitration without the intervention of the Court.

28. (1) Where any matter has been referred to arbitration without the intervention of a Court 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 any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

Note.—Sections 696 and 697 of the old Code.

See also the repealed s. 14 of Ordinance No. 15 of 1866.

The new sub-sections (2) and (3). For procedure see the notes to s. 25 supra.

(2) The application shall be in writing, and shall be numbered and registered as an action between the applicant as plaintiff and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause within a time specified why the award should not be filed.

Filing and enforcement of such award.

29. (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in section 22 or section 23 is proved, the Court shall order the award to be filed, and shall proceed to pronounce judgment according to the award.

Note.—Section 698 of the old Code.

Certain alterations have been introduced. See the notes to s. 25 supra.

(2) Upon the judgment so pronounced a decree shall follow, and 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.

Miscellaneous.

Costs.

30. Any order made under the provisions of this Part may be made on such terms as to costs or otherwise as the Court making the order thinks just.

Note.—A general provision of this nature seems desirable, in addition to the provisions contained in ss. 5 and 21 supra. Compare s. 20 of the English Arbitration Act, 1889, and sub-head (i.) of the First Schedule to the same Act.

Remuneration of arbitrators.

31. The remuneration to be paid to any arbitrator or umpire, whether under a compulsory or a voluntary reference, shall be determined by agreement between the parties and the arbitrator, or, in default of such agreement, by the Court, and the Court may direct by whom or in what proportions the same is to be paid, and that the amount so agreed or determined may in case of default in payment thereof be levied by seizure and sale of the movable or immovable property of the party liable for such payment.

Note.—This section is new, and is founded on s. 15 (3) of the English Arbitration Act, 1889. It is necessary that the Court, especially in cases of compulsory reference, should have adequate powers with reference to an arbitrator's fees.

General provision as to procedure on appeals.

32. Where an appeal lies from any order made or decree entered under the provisions of this Part, such appeal shall be prosecuted within the respective times and in the manner and subject to the rules and practice prescribed by Order XLIV. in the First Schedule of this Code.

Note.—This section is new.

How far foregoing provisions affect the Crown.

33. The foregoing provisions shall apply to any arbitration to which the Crown is a party, but nothing therein shall empower the Court to order any proceedings to which the Crown is a party or any question or issue in such proceedings to be referred to arbitration without the consent of the Crown.

Note.—Cf. s. 23 of the English Arbitration Act, 1889.

Pending arbitrations.

34. Every arbitration pending when the provisions of this Part come into force shall, so far as circumstances permit and without prejudice to anything already done therein, be continued in accordance with the provisions of this Part, and the Court may make all necessary orders for that purpose.

Note.—The new provisions will not affect the procedure to any great extent, and therefore no enactment similar to that contained in s. 25 of the English Arbitration Act seems necessary.

Forms.

35. The forms numbered 7 to 16 in the Appendix, with such variations as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Comparative Table showing the disposal of the Provisions of the Arbitration Ordinance, 1866, and of Chapter LI. of the Civil Procedure Code, 1889.

Sections of Part V.	Sections of Ordinance No. 15 of 1866.	Sections of Chapter LI. of Ordinance No. 2 of 1889.
1	3	—
2	4	—
3	5	—
4	6	—
5	7	—
6	9 and the final sentence of 28	—
7	(Repealed 12)	676
8	(Repealed 16, first sentence)	676 third paragraph
9	(Repealed 18)	677
10	(Repealed 19)	678
11	(Repealed 16, from "If the arbitrators... umpire")	676, fourth paragraph; 679; 680
12	(Repealed 16, final sentence)	681
13	20	682
14	21	No corresponding provision
15	22, middle	683
16	22, final sentence	684
17	23	685
18	24	686
19	Cf. 25, and (for time) 27	687
20	25, first para.	688
21	25, second para.	689
22	26	690
23	27, first part	691
24	28	692
25	(repealed 13)	693 and 694
26	8	No corresponding provision
27	(repealed 13, last sentence)	695
28	(repealed 14)	696, 697
29	(repealed 14)	698
30, new section	—	—
31	—	—
32	—	—
33	—	—
34	(Compare repealed 12, final sentence)	—
35	—	—

Appendix to the Third Schedule.

FORMS.

No. 1.—Certificate of Curatorship and Guardianship.

(See Part II., Section 1.)

(Title.)

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 Part II. of the Third Schedule 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 _____, the sum of Rs. _____ 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 10 of Part II., 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 Rs. _____ 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 maintenance and 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 Rs. _____ 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 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 Form may be easily adapted.)

Note.—This Form reproduces Form No. 94 in Schedule II. of the old Code.

No. 2.—Decree for Dissolution of Marriage.

(See Part III.)

(Title.)

(Begin as in an ordinary decree.)

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 *feme sole*).

The Form given under No. 4 may be adapted for orders as to custody, &c., of children, alimony, costs, &c.

Note.—This Form reproduces Form No. 97 in Schedule II. of the old Code.

No. 3.—Decree of Nullity of Marriage.

(See Part III.)

(Title.)

(Proceed as in last Form, and continue—)

And it appearing to this Court that on the _____ day of _____, 19—, 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.*)

(Signed) _____,
District Judge.

Note.—This is Form No. 96 in Schedule II. of the old Code.

No. 4.—Decree for Judicial Separation *a mensâ et thoro*.

(See Part III.)

(Title.)

Begin as in an ordinary decree, 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 mutual 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 the 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*).

(Signed) _____,
District Judge.

Note.—This is Form No. 95 in Schedule II. of the old Code.

No. 5.—Plaint in an Action for the Realization of Moneys due upon Mortgage.

(See Part IV.)

(Title.)

1. By a writing obligatory dated the _____ day of _____, 19—, the defendant bound himself to pay to the plaintiff (his heirs, &c.) the principal sum of Rs. —, 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.*)

4. There is now due from the defendant to the plaintiff the sum of Rs. — 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 Rs. — 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.

Note.—This Form reproduces Form No. 33 (106) in Schedule II. of the old Code.

No. 6.—Plaint in Action for Redemption.

(See Part IV.)

(Title.)

Alter Form No. 5 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 Rs. —, 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 Rs. — 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.

Note.—This Form reproduces Form No. 33 (107) in Schedule II. of the old Code.

No. 7.—Order of Compulsory Reference to Arbitration.

(See Part V., Section 3.)

(Title of Action.)

Whereas it appears that the matter in dispute arising in this action consists (wholly) (in part) of matters of account (or as the case may be) : It is ordered that the (whole) (following) matter in difference, namely : —, be referred for determination to X. and Y., or in case of their not agreeing, then to the determination of Z., who is hereby appointed to be umpire ; and such arbitrators are to make their award in writing on or before the — day of —, 19—, and in case of the said arbitrators not agreeing on an award, the said umpire is to make his award in writing within — months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Given under my hand, this — day of —, 19—.

(Signed) —,

District Judge (or as the case may be.)

Note.—This Form is new, and has been added to meet cases of compulsory reference.

No. 8.—Application for an Order of Reference.

(See Part V., Section 7 (2).)

(Title of Action.)

1. This action is instituted for (state nature of claim).
2. The matter in difference between the parties is (state matter of difference).
3. The applicants, being all the parties interested, have agreed that the matter in difference between them shall be referred to arbitration.
4. The applicants by —, their proctor, specially authorized thereunto by the document A hereto appended, therefore apply for an order of reference.

A. B.
C. D.

Dated the — day of —, 19—.

NOTE.—If the parties are agreed as to the arbitrators, it should be so stated.

Note.—This Form is new.

No. 9.—Authority to Proctors to apply for Reference to Arbitration.

(See Part V., Section 7 (3).)

(Title of Action.)

Whereas we — (plaintiff and defendant) are desirous that (here state the particular matter to be referred) in the action above specified should be referred to the final decision of the arbitrator (or arbitrators) herein below named, viz. (names) :

Therefore we, the said — and —, do hereby specially authorize our proctors, that is to say, — on the part of the 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.

—, Plaintiff.

Witnesses :

—, Defendant.

Note.—This Form reproduces Form No. 106 in Schedule II. of the old Code.

No. 10.—Order of Court referring matter to Arbitration.

(See Part V., Section 9 (1).)

(Title of Action.)

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 Part V. of the Third Schedule to 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.)

Note.—This Form reproduces Form No. 107 in Schedule II. of the old Code.

No. 11.—Order of Reference.

(See Part V., Section 9.)

(Title of Action.)

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.

Note.—This Form reproduces Form No. 108 in Schedule II. of the old Code.

(Signed) _____,District Judge (*or as the case may be*).

No. 12.—Notice to Arbitrators to appoint an Umpire.

(See Part V., Section 11 (1) (c).)

*(Title of Action.)*To (*arbitrators*).

Whereas by an order of Court made in the above-named action on the _____ day of _____, 19—, 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*).

Note.—This Form reproduces Form No. 109 in Schedule II. of the old Code.

No. 13.—Order for Appointment of New Arbitrator.

(See Part V., Section 11 (2).)

(Title of Action.)

Whereas by an order dated the _____ day of _____, 19— (state order of reference and death, refusal, &c., of arbitrator), it is (by consent) ordered that Z. be appointed in the place of X. (deceased, or as the case may be) to act as arbitrator with Y., the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the _____ day of _____, 19—.

Given under my hand, this _____ day of _____, 19—.

(Signed) _____,

District Judge (or as the case may be).

Note.—This Form is new.

No. 14.—Award.

(See Part V., Section 17.)

(Title of Action.)

In the matter of an arbitration between A. B. of _____ and C. D. of _____

Whereas in pursuance of an order of reference made by the _____ Court of _____ and dated the _____ day of _____, 19—, the following matter in difference between A. B. and C. D., namely: _____, has been referred to us for determination:

Now we, having duly considered the matter referred to us, do hereby make our award as follows:

We award—

(1) That _____.

(2) That _____.

Dated the _____ day of _____, 19—.

(Signed) X.
Y.

Note.—This Form is new.

No. 15.—Notice of Filing of Award.

(See Part V., Section 17.)

(Title of Action.)

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.

(Signed) _____,

District Judge (or as the case may be).

Note.—This Form reproduces Form No. 110 in Schedule II. of the old Code.

No. 16.—Special Case.

(See Part V., Section 18.)

(Title of Action.)

In the matter of an arbitration between A. B., of _____, and C. D., of _____, the following special case is stated for the opinion of the Court (here state the facts concisely in numbered paragraphs).

The questions of law for the opinion of the Court are:

First, whether _____.

Secondly, whether _____.

(Signed) X.
Y.

Dated the _____ day of _____, 19—.

Note.—This Form is new.

*THE FOURTH SCHEDULE.*Ordinances, Sections of Ordinances, and Rules and Orders
of Court repealed.

Ordinances, Rules and Orders of Court.	Short Title.	Extent of Repeal.
<i>Ordinances.</i>		
No. 15 of 1866 ..	The Arbitration Ordinance, 1866 ..	The whole.
No. 2 of 1889 ..	The Civil Procedure Code, 1889 ..	The whole, including the Ordinances amending the same.
No. 12 of 1895 ..	The Courts of Requests Amendment Ordinance, 1895 ..	The whole, except section 13.
No. 31 of 1909 ..	The Appeals (Privy Council) Ordinance, 1909 ..	The whole, including the Scheduled Rules.
<i>Rules and Orders.</i>		
Nov. 12, 1908 ..	Rules under the Foreign Tribunals Evidence Act, 1856 ..	The whole.
Jan. 18, 1909 ..	The Civil Appellate Rules, 1908 ..	The whole.
Dec. 14, 1909 ..	The Civil Procedure Rules, 1909 ..	The whole.
April 20, 1910 ..	The Appellate Procedure (Privy Council) Order, 1910 ..	The whole.
Nov. 8, 1910 ..	A further Rule of Court under the Foreign Tribunals Evidence Act, 1856 ..	The whole.
Oct. 10, 1911 ..	Rules of 1911 for Service of Foreign Process ..	The whole.

By His Excellency's command,

Colonial Secretary's Office,
Colombo, January 11, 1917.R. E. STUBBS,
Colonial Secretary.*Statements of Objects and Reasons.*

THIS Bill consists of a Draft Civil Procedure Code. It was prepared by a Committee consisting of the late Chief Justice, the present Chief Justice, and the Additional District Judge of Colombo. It has been considered by a Committee appointed by the General Council of Advocates, and the present draft embodies most of the recommendations of that Committee.

2. Certain other recommendations not embodied in this draft were reserved for further consideration, and will be put before the Select Committee, to whom the Ordinance will in due course presumably be referred.

3. The general nature of the Code is indicated in the explanatory memorandum issued by the Committee which framed it, a copy of which is hereto annexed, and by the marginal notes printed with the draft.

Attorney-General's Chambers,
Colombo, December 20, 1916.ANTON BERTRAM,
Attorney-General.*Explanatory Memorandum.*

HIS Excellency Sir Henry McCallum, by his letter dated March 22, 1912, was pleased to approve of a proposal emanating from the Chief Justice and Mr. Justice Wood Renton that an informal Committee, consisting of the Chief Justice, Mr. Justice Wood Renton, and Mr. Maartensz, the Additional District Judge of the District Court of Colombo, with the Registrar of the Supreme Court as Secretary, should take in hand a revision of the Civil Procedure Code, 1889.

2. It was the intention of the Committee to have submitted the results of their work to Sir Henry McCallum before he left Ceylon. But in this they have been disappointed owing to an unforeseen event.

3. The Committee have now prepared a Draft Code of Civil Procedure. The following explanation of the main principles on which their revision of the existing Code has proceeded and of the more prominent changes which are recommended may be useful.

4. The main objects which the Committee have had in view are (1) to remedy defects which twenty-three years' experience has discovered in the existing Code ; (2) to present the law relating to the general civil procedure of our Courts in a reasonably concise and intelligible shape and without admixture of extraneous matter ; and (3) to provide for the periodical revision of the rules relating to procedure as occasion may require by a Rules Committee.

5. In order to accomplish these objects it has been found necessary, in the first place, to disentangle those portions of the Civil Procedure Code, 1889, which are not connected with the ordinary civil procedure of our Courts from the sections which deal directly with the subject.

In pursuance of this object the Committee have relegated to separate schedules the following matters, each of which admits of being enacted as a separate Ordinance at the convenience of Government :—

- (a) Administration and Judicial Settlement.
- (b) Lunacy.
- (c) Actions for the Appointment of Guardians.
- (d) Divorce and Matrimonial Actions.
- (e) Mortgage Actions.
- (f) Arbitration.

The Committee are fully sensible of the fact that it would have been more desirable that these subjects should not have been retained even temporarily in the Draft Code in any form. But the course adopted will, it is hoped, tend to facilitate the enactment of the Draft Code within a reasonable period.

6. Having relegated to separate schedules so much of the old Code as is not strictly germane to the subject, it next becomes necessary to distinguish between those provisions of the Code which might properly be entrusted to a Rules Committee for periodical revision and those provisions which ought not to be altered without the sanction of a legislative enactment.

The latter provisions, comprising 71 sections, form the body of the Draft Code ; the former provisions, arranged on the model of the English Rules of the Supreme Court of Judicature, are appended as the First Schedule of the Draft Ordinance.

7. It is proposed that the Orders and Rules in the First Schedule should be revised from time to time by a Rules Committee consisting of—

- (a) The Chief Justice or a Judge of the Supreme Court to be nominated by the Chief Justice.
- (b) The Attorney-General or the Solicitor-General or a Crown Counsel.
- (c) A District Judge.
- (d) A practising Advocate.
- (e) A practising Proctor.

The Draft Code provides that rules made by the Rules Committee shall come into force on confirmation by the Governor in Executive Council, but that they shall be liable to disallowance by vote of the Legislative Council.

8. All departures from the old Code (other than mere verbal alterations) are indicated in the notes appended to each section or rule, but it may be useful to refer particularly to the following matters.

9. (a) *Administration and Judicial Settlement*.—An Administration Ordinance, dealing with both administration and judicial settlement, has, it is understood, already been drafted by the Attorney-General. It has, therefore, been thought advisable to retain unaltered in the meantime the chapters of the old Code as to administration and judicial settlement, viz., Chapters XXXVIII., LIV., and LV. These chapters form the Second Schedule.

(b) *Lunacy*.—Sections 555 to 581 of the old Code form the Third Schedule, Part I.

(c) *Actions for the Appointment of Guardians.*—Sections 582 to 594 of the old Code relating to such actions form the Third Schedule, Part II.

(d) *Divorce and Matrimonial Actions.*—The provisions of sections 596 to 627 of the old Code as to such actions will be found in the Third Schedule, Part III.

(e) *Mortgage.*—The procedure in mortgage actions will be found in the Third Schedule, Part IV. It is partly based on sections 640 to 649 of the old Code, but contains new features, provision being made for the abolition of the common law hypothecary action, and for the addition as parties to mortgage actions of persons interested under unregistered instruments.

(f) *Arbitration.*—The Third Schedule, Part V., contains a Draft Arbitration Ordinance, combining the provisions of Ordinance No. 15 of 1866, which is repealed in the Fourth Schedule, as to compulsory references, with those of sections 676 to 698 of the old Code as to voluntary references. Power is given to the Court to refer compulsorily cases other than actions of account. This power is extended to “matters requiring any prolonged examination of documents, or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be made or conducted by the Court itself or through its ordinary officers.”

10. The Rules of Court, embodied in Orders I. to XLVI., form the First Schedule. The principal changes effected by them in the present procedure are these :—

- (a) The English rules as to the requisites of pleadings have been introduced. (Order VI.)
- (b) The practice of the District Courts has been assimilated to that of the Courts of Requests in regard to default in appearance. The cumbrous system of decrees *nisi* and decrees absolute, which at present prevails in the District Court, is abolished. On default of appearance, the case may be disposed of, as in the Court of Requests, without delay, but subject to the right of any party against whom judgment has been entered to apply within a reasonable time to have it set aside on the ground that his default was excusable. (Order XI.)
- (c) Provisions has been made for notice to admit facts—a procedure which frequently effects a considerable saving of time and expense. (Order XIV., r. 4.)
- (d) The procedure in force in England on the taxation of bills of costs has been adopted in substance. (Order XXIII., rr. 5 *et seq.*)
- (e) The existing rules—which are not exclusively contained in the old Code—as to the issue of commissions to take evidence have been consolidated, and, where necessary, amended. (Order XXXI.)
- (f) A new order (Order XXXV.), based on the English and Indian practice, has been added as to actions by and against partners.
- (g) In actions (Order XXXVIII.) and appeals (Order XLIV., r. 28) by or against paupers the system embodied in the old Code of referring every application for leave to sue, defend, or appeal as a pauper to a proctor for inquiry and certification has been abandoned. The proctor's certificate did not, as counsel's opinion in similar cases practically does in England, bind the Court, and there was no provision in Ceylon, as in England, for the assignment of counsel and a proctor to the applicant. As regards both actions and appeals, the question of pauperism will now be determined by the Court.
- (h) As regards ordinary appeals, it has been provided (Order XLIV., r. 1 (3)) that the petition of appeal shall contain no argument or narrative, but merely a plain and concise statement of the grounds of objection to the decree or order appealed from. Petitions of appeal offending against this rule, or containing scandalous or improper comments on any Court or Judge, may be rejected (r. 5 (2)). Under the old Code the petition of appeal has been converted into a brief for counsel.

- (i) The existing practice as to appeals to the Privy Council is contained in the rules scheduled to the Appeals (Privy Council) Ordinance, 1909 (No. 31 of 1909), and the Appellate Procedure (Privy Council) Order, 1910. The whole procedure has been consolidated by, and is embodied in, Order XLV.

11. The Committee considered whether a simpler system of execution against property could be adopted, but decided not to interfere with the existing practice. It has been for a long time in force; its application is well settled, and it is in substantial conformity with both the former and the existing procedure in India.

12. Free use has been made in the preparation of the New Code of Civil Procedure for Ceylon of the New Indian Code (Act V. of 1908) and of the Rules of the Supreme Court of Judicature in England.

13. The question whether the Draft Code should be submitted at this stage to experienced District Judges and leading advocates and proctors for criticism was carefully considered by the Committee. The Committee fully recognize that this procedure is a necessary preliminary to the enactment of the Draft Code, but they are of opinion that it will be time enough to circulate the Draft Code for criticism if and when the Government decide to give the measure a place on its legislative programme. In arriving at this conclusion, the Committee have been partly influenced by the fact that the circulation of the Draft Code and the consideration of the criticism and suggestions which may be expected would involve a delay which would render it impossible for the present Committee to bring their work to a close.

14. In conclusion, the Committee desire to place on record their appreciation of the excellent work done by Mr. Grey Hazlerigg as Secretary of the Committee. On account of the bulk of material which had to be dealt with, and the complete re-arrangement which has been made of the provisions of the old Code, the work of the Secretary has been particularly onerous. It has been carried out with the most satisfactory care and expedition. Mr. Hazlerigg, in addition to his purely secretarial work, including, as it did, the preparation of the Comparative Table of Sections, the arrangement of the Forms in suitable Appendices, and the correction of the voluminous proofs of the new Code, drafted, with explanatory notes, for consideration by the Committee, Parts I. (Lunacy), III. (Divorce and Matrimonial Actions), and V. (Arbitration) of the Third Schedule, and his drafts were adopted by the Committee practically without alteration.

15. Mr. Mervyn Joseph, who was originally appointed shorthand writer to the Committee, found it necessary to resign the appointment as the work interfered with his studies for the Proctors' examinations, and his place, with the approval of Sir Henry McCallum, has been filled by Mr. A. E. Mack, one of the official shorthand writers of the Supreme Court. Mr. Mack has discharged his duties with accuracy and assiduity, and has also rendered valuable assistance to the Committee in the verification and revision of the proofs of the Draft Code.

ALFRED G. LASCELLES,
Chief Justice.

A. WOOD RENTON,
Senior Puisne Justice.

L. M. MAARTENSZ,
Additional District Judge, Colombo.

Colombo, March 13, 1913.

**Comparative Table showing the disposal of the Provisions of the
old Code and the corresponding Provisions of the new Code.**

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
1	1 (1)	—
2	71	—
3	70	—
4 (1st para.)	Omitted	—
4 (2nd para.)	3	—
5	2	—
6	4	—
7	5	—
8	6	—
9 (1st para.)	cf. 12-16	—
9 (2nd para.)	14 (1)	—
10	—	O. XVIII. rr. 1, 2.
11 (1st para.)	—	cf. O. I. r. 1.
11 (2nd para.)	—	O. I. r. 6.
12	—	„ r. 3.
13	—	„ r. 4.
14 (1st para.)	—	„ r. 5.
14 (2nd para.)	—	„ r. 6.
15	—	„ r. 8 (1).
16	—	„ r. 10 (1).
17 (1st para.)	—	„ r. 11 (1).
17 (2nd para.)	Omitted	—
17 (3rd para.)	—	O. I. r. 11 (2).
18 (1st para.)	—	„ r. 12 (1).
18 (2nd para.)	—	„ r. 12 (2).
19 (1st para.)	—	„ r. 13 and r. 12 (3).
19 (final words)	—	„ r. 12 (5).
20	—	„ r. 14.
21	—	„ r. 12 (4).
22	—	„ r. 15.
23	—	„ r. 16.
24	—	O. II. r. 1.
25	—	„ r. 2.
26	—	„ r. 3.
27	—	„ r. 4.
28	—	„ r. 5.
29	—	„ r. 6.
30	—	„ r. 7.
31	—	—
32	—	—
32	Omitted	—
33	—	O. III. r. 1.
34	—	„ r. 2.
35 (1)	—	„ r. 4.
35 (2)	—	„ r. 5.
36 (1st para.)	—	„ r. 3 (1).
36 (2nd para.)	—	cf. O. III. r. 6.
36 (3rd para.)	—	O. III. r. 3 (2).
37	—	—
38	Omitted	—
39	—	O. IV. r. 1.
40 (1st para.)	—	O. VII. r. 1.
40 (2nd para., first sentence)	—	„ r. 2.
40 (remainder of 2nd para.)	—	„ r. 3.
41	—	cf. O. VII. r. 4.
42	—	O. VII. r. 5.
43	—	„ r. 6.
44	—	„ r. 7.
45	—	cf. O. VII. r. 1 (f).
46 (1st para.)	—	O. VI. r. 14.
46 (2nd para.)	—	cf. O. VI. r. 15.
46 (3rd para.)	—	O. VII. r. 12 and cf. r. 14.
47	—	„ r. 11 (1).
48	—	cf. O. VII. r. 13.
49	—	O. VII. r. 10.
50	—	„ r. 15 (1).
51	—	„ r. 15 (2).
52	—	„ r. 16.
53	—	„ r. 17.
54	—	„ r. 18.
55 (1st sentence)	—	O. V. r. 1 (1), cf. r. 1 (3).
55 (2nd sentence)	—	„ r. 2.
56	—	„ r. 3 (1).

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
57	—	O. V. r. 3 (2).
58	—	„ r. 5.
59	—	„ r. 6.
60 (1st sentence)	—	„ r. 8.
60 (2nd sentence)	—	cf. O. V. r. 15 (1).
61	—	O. V. r. 15 (2).
62	—	„ r. 15 (3).
63	—	„ r. 7.
64	—	cf. O. XXXV. r. 3.
65	—	O. V. r. 9.
66	—	„ r. 10.
67	—	„ r. 21.
68 (1st para.)	—	„ r. 17.
68 (2nd para.)	—	„ r. 20 (1).
69	—	„ r. 16 (1), (2).
70	—	„ r. 16 (3).
71	—	„ r. 16 (4).
72	—	O. VIII. r. 1.
72 (Explanation)	Omitted	—
73	—	O. VIII. r. 2.
74	—	cf. O. VIII. r. 3.
75 (a), (b), (c), (d)	—	O. VIII. r. 4.
75 (e)	—	„ r. 9.
76	Omitted	—
77	—	cf. O. VIII. r. 11.
78	—	O. VIII. r. 12.
79	—	cf. O. IX. rr. 2, 3.
80	—	O. X. r. 1 (1), (3).
81	—	„ r. 2.
82 (1st para.)	—	cf. O. X. r. 3.
82 (proviso)	—	„ r. 4.
83 (1st para.)	—	O. X. r. 6.
83 (2nd para.)	—	„ r. 5.
84	—	cf. O. XI. r. 1 (1).
85	—	„ r. 2.
86	—	„ r. 3.
87	—	„ r. 5.
88	—	„ r. 4.
89	—	„ r. 9.
90	—	„ r. 7.
91	—	O. XII. rr. 1, 2, 3.
92	—	O. IV. r. 4.
93	—	O. VI. r. 16.
94	—	O. XIII. r. 1.
95	—	„ r. 3.
96	—	„ r. 4.
97	—	„ r. 6.
98	—	„ r. 7.
99	—	„ r. 9.
100 (1st para.)	—	„ r. 12.
100 (proviso)	Omitted	—
101	—	O. XIV. r. 2.
102 (1st para.)	—	O. XIII. r. 14 (1).
102 (2nd para.)	—	„ r. 15.
103	—	„ r. 16.
104	—	„ r. 17.
105	—	„ r. 19.
106	—	„ r. 20 (1).
107	—	„ r. 20 (2).
108	—	„ r. 22.
109 (1st and 2nd paras.)	—	„ r. 23 (1).
109 (3rd para.)	—	„ r. 23 (2).
110	—	„ r. 24.
111	—	—
112	Omitted	—
113 (1st para.)	—	O. XX. r. 11.
113 (2nd para.)	—	O. XV. r. 1.
114	—	„ r. 2.
115	—	„ r. 3.
116	—	{ O. XIII. r. 26.
117	—	{ O. XV. r. 4.
118	—	O. XV. r. 5.
119	—	„ r. 6.
120	—	„ r. 7.
121	—	O. XVI. r. 1.
122	—	„ r. 2 (1), (2), (3).
123	—	„ r. 3.
124	—	„ r. 4 (1).

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
125	—	O. XVI. r. 4 (2).
126	—	„ r. 5.
127	—	„ r. 6.
128	—	„ r. 7.
129	—	„ r. 8.
130	—	„ r. 9.
131 (1st para.)	—	„ r. 10 (1).
131 (2nd para.)	—	„ r. 10 (2).
131 (3rd para.)	—	„ r. 11.
132	—	„ r. 12.
133	—	„ r. 13.
134	—	„ r. 15.
135	—	„ r. 16.
136	—	cf. O. XVI. r. 17 (1).
137	—	cf. O. XVI. r. 18.
138	—	O. XVI. r. 19.
139	—	cf. O. XVI. r. 18 (2).
140	—	O. XVI. r. 20.
141	—	„ r. 21.
142	62	—
143	—	O. XVII. r. 1.
144	—	„ r. 2.
145	—	„ r. 3.
146	—	cf. O. XIX. rr. 2, 4 (1).
147	—	O. XIX. r. 3.
148	—	„ r. 5.
149	—	„ r. 6 (1).
150 (1st para.)	—	O. XX. r. 2 (1).
150 (Explanation 1)	—	„ r. 1.
150 (Explanation 2)	Omitted	—
151 (1st para.)	—	O. XX. r. 2 (1).
151 (Explanation)	—	—
152	Omitted	—
153	—	—
154 (1st part)	—	O. XX. r. 9 (1), (2), (3).
154 (Explanation)	—	„ r. 10.
155 (1st part)	—	„ r. 13.
155 (Explanation)	Omitted	—
156	—	O. XX. r. 13.
157	—	„ r. 14.
158	—	„ r. 15.
159	—	„ r. 16.
160	—	„ r. 17.
161	—	—
162	Omitted	—
163 (1st para.)	—	O. XX. r. 2 (2), (3).
163 (2nd para.)	—	„ r. 3.
164	—	„ r. 21.
165	—	„ r. 22.
166	—	„ r. 24.
167	—	„ r. 4.
168	Omitted	—
169	—	O. XX. r. 5.
170	—	„ r. 6.
171	—	„ r. 7.
172	—	„ r. 7.
173	—	„ r. 18.
174	—	„ r. 19.
175	—	„ r. 8.
176	—	—
177	Omitted	—
178	—	O. XX. r. 20.
179	—	cf. O. XXI. r. 1.
180	—	cf. O. XXI. r. 2.
181	—	O. XXI. r. 3 (1).
182	Omitted	—
183	—	cf. O. XXI. r. 4.
184 (1st para.)	—	O. XXII. r. 1 (1).
184 (2nd para.)	Omitted	—
185	—	O. XXII. r. 2 (1).
186	—	„ r. 3.
187	—	„ r. 4.
188	—	„ r. 5.
189	17	—
190	—	cf. O. XXII. r. 7.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
191	—	O. XXII. r. 8.
192	—	„ r. 9.
193	—	„ r. 10 (1).
194	—	„ r. 11 (1), (3), (4), (5).
195	—	„ r. 12.
196	—	cf. O. XXII. r. 13.
197	—	„ r. 13.
198	—	O. XXII. r. 14.
199	—	„ r. 15.
200	—	„ r. 16 (1).
201	See the Third Schedule, Part IV.	
202	—	O. XXII. r. 17.
203	—	„ r. 18.
204	—	„ r. 20.
205	—	„ r. 21.
206	—	„ r. 22.
207	cf. 9	—
208	18 (1)	—
209	—	O. XXIII. r. 1.
210	—	„ r. 2.
211	19 (1), (2)	—
212	—	O. XXIII. r. 3.
213.	19 (3)	—
214	—	cf. O. XXIII. r. 5.
215	20	—
216	—	cf. O. XXIII. r. 9.
217	—	O. XXIV. r. 1.
218 (1st para.)	—	„ r. 3.
218 (2nd para.)	21	—
219	—	O. XXIV. r. 4 (1), (3).
220	—	„ r. 4 (2).
221	—	„ r. 4 (5).
222	—	„ r. 5.
223	—	„ r. 6.
224	—	„ r. 2.
225	—	„ r. 7.
226	—	„ r. 8.
227	—	„ r. 9.
228	—	„ r. 10.
229	—	„ r. 11 (1), (2).
230	—	„ r. 12.
231	—	„ r. 13.
232	—	„ r. 14.
233	—	„ r. 15.
234	—	cf. O. XXIV. r. 16.
235	—	O. XXIV. r. 16 (4), (5).
236	22	—
237	—	O. XXIV. r. 17.
238	23	—
239	—	O. XXIV. r. 18.
240	—	„ r. 19.
241 (1st para.)	—	„ r. 20 (1), (2).
241 (proviso)	—	„ r. 21.
242	—	„ r. 20 (3), (4).
243	—	„ r. 22.
244	—	„ r. 23.
245	—	„ r. 24.
246	—	„ r. 25.
247	—	„ r. 26.
248	—	„ r. 27.
249	—	„ r. 28.
250	—	„ r. 29.
251	—	„ r. 30.
252	—	„ r. 31.
253	—	„ r. 32.
254	—	„ r. 33.
255 (1st para.)	—	„ r. 34.
255 (2nd para.)	—	„ r. 35.
255 (3rd para.)	—	„ r. 36.
256	—	„ r. 37.
257	—	„ r. 38.
258 (1st sentence)	—	„ r. 39.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
258 (remaining portion)	—	O. XXIV. r. 40 (1), (2), (3), (4).
259	—	.. .. r. 41.
260	—	.. .. r. 42.
261	—	.. .. r.43(1).
262	—	.. .. r.45(2).
263	—	.. .. r. 44.
264	—	.. .. r. 45.
265	—	.. .. r. 46.
266 (1st words)	—	cf. O. XXIV. r. 44
266 (remainder of)	—	.. .. r. 47.
267	—	O. XXIV. r. 48.
268	—	.. .. r. 49.
269	—	.. .. r. 50.
270 (1st para.)	—	.. .. r. 51.
270 (2nd para.)	—	.. .. r. 52.
271	—	.. .. r. 53.
272	—	.. .. r.54(1), (2).
273	—	.. .. r. 55.
274	—	.. .. r. 56.
275	—	.. .. r. 57.
276	—	cf. O. XXIV. r. 58.
277	—	O. XXIV. r.59(1).
278	—	.. .. r.59(2).
279	—	.. .. r.59(3).
280	—	.. .. r. 60.
281	—	.. .. r. 61.
282 (1st para.)	—	.. .. r. 62.
282 (2nd para.)	—	.. .. r. 63 (1), (2).
282 (3rd para.)	—	.. .. r.63(3).
283	—	.. .. r. 65.
284	—	.. .. r. 64.
285	—	.. .. r. 66.
286 (1st para.)	—	.. .. r. 67.
286 (2nd para.)	—	.. .. r.68(1).
286 (3rd para.)	—	.. .. r.68(2), (3), (4).
287	—	.. .. r. 69.
288	—	.. .. r. 70.
289	24	—
290	—	O. XXIV. r. 71.
291	—	.. .. r. 72.
292	—	.. .. r. 73.
293	—	.. .. r.74(1).
294	—	.. .. r. 75.
295	—	.. .. r. 76.
296	—	.. .. r. 77.
297	—	.. .. r. 78.
298	—	.. .. r.79(1), (3), (4), (5).
298 (proviso 1)	Omitted	.. ..
299	—	O. XXIV. r. 80 (1), (2).
300	—	.. .. r.84(1).
301	—	.. .. r.84(2).
302	—	.. .. r.84(3).
303	—	.. .. r.84(4).
304	—	.. .. r.84(5).
305 (1st para.)	—	.. .. r. 81.
305 (2nd para.)	—	.. .. r. 82.
306	—	.. .. r. 85.
307	—	.. .. r. 86.
308	—	.. .. r. 87.
309	—	.. .. r. 88.
310	—	.. .. r. 89.
311	—	.. .. r. 90.
312	—	.. .. r. 91.
313	—	.. .. r.83(1).
314	—	.. .. r.83(2).
315	—	.. .. r.83(3), (4).
316	—	.. .. r.83(5).
317	—	.. .. r. 92.
318	—	.. .. r. 93.
319	—	.. .. r. 94.
320	—	.. .. r. 95.
321	—	.. .. r. 96.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
322	—	cf. O. XXIV. r. 97.
323	—	O. XXIV. r. 98.
324 (1st sentence)	—	„ r. 99.
324 (remaining portion)	—	„ r. 101.
325	—	„ r. 102.
326	—	„ r. 103.
327	—	„ r. 104.
328 (1st para.)	—	„ r. 105 (1).
328 (2nd para.)	—	„ r. 105 (3).
328 (3rd para.)	—	„ r. 105 (4).
328 (4th para.)	—	„ r. 106.
328 (final para.)	—	„ r. 107.
329	—	cf. O. XXIV. r. 109 (2).
330 (1st para.)	—	O. XXIV. r. 108.
330 (2nd para.)	—	cf. O. XXIV. r. 109 (1).
331	—	O. XXIV. r. 110 (1).
332	—	„ r. 110 (3), (4), (5).
333	—	„ r. 110 (6), (7), (8).
334	—	„ r. 111 (1), (2), (3).
335	—	„ r. 111 (4), (5).
336	—	„ r. 112.
337	—	„ r. 113.
338 (1st para.)	—	„ r. 114 (1), (2).
338 (2nd para.)	—	„ r. 114 (3).
338 (final para.)	—	„ r. 115.
339 (1st para.)	—	„ r. 116 (1).
339 (proviso 1)	—	„ r. 116 (3).
339 (proviso 2)	—	„ r. 116 (4).
339 (proviso 3)	—	„ r. 117.
340	—	„ r. 118.
341	—	„ r. 119.
342	—	„ r. 120.
343	—	„ r. 130.
344	—	„ r. 121.
345	—	cf. O. XXIV. r. 120.
346	—	cf. O. XXIV. r. 120.
347	—	O. XXIV. r. 122.
348	—	„ r. 123.
349	—	„ r. 124 (1), (2), (4), (5).
350	—	„ r. 125.
351	—	„ r. 126.
352	25	—
353	—	O. XXIV. r. 127.
354	—	„ r. 128.
355	—	O. XXV. r. 1.
356	—	„ r. 2.
357	—	„ r. 3 (1).
358	—	„ r. 3 (2).
359	—	cf. O. XXV. r. 4.
360	—	O. XXV. r. 5.
361	—	„ r. 6.
362	26	—
363	27	—
364	—	O. XXV. r. 7.
365	28	—
366	29	—
367	30	—
368	—	O. XXV. r. 8.
369	31	—
370	—	O. XXV. r. 9.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
371	—	O. XXV. r. 10 (1), (3).
372	—	cf. O. XXV. r. 10 (2), (4).
373	—	cf. O. XXVI. r. 1.
374	—	O. XXVI. r. 2 (a) to (e)
375	—	„ r. 3 (1), (2).
376	—	„ r. 4.
377	—	„ r. 5 (1).
378	—	„ r. 5 (2).
379	—	„ r. 6.
380	—	„ r. 7.
381	—	„ r. 8.
382	—	„ r. 9.
383	—	„ r.10(1).
384	—	„ r.11(1), (2), (3).
385	—	„ r.11(4).
386	—	„ r.11(5), (6).
387	—	„ r.12(1).
388	—	„ r.12(2), (3), (4), (5).
389	—	cf. O. XXVI. r. 13 (1).
390	—	cf. O. XXVI. r. 1 (1).
391	—	O. XXVI. r. 3 (3).
392	—	O. XXVII. r. 1.
393	—	„ r. 2.
394 (1st para.)	—	cf. O. XXVII. r. 3 (1).
394 (2nd para.)	—	O. XXVII. r. 6.
395	—	cf. O. XXVII. r. 3 (1).
396	—	cf. O. XXVII. r. 3 (2).
397	—	cf. O. XXVII. r. 5.
398	—	„ r. 4.
399	—	O. XXVII. r. 8.
400	—	„ r. 9(1).
401	—	„ r. 9(2).
402	—	cf. O. XXVII. r. 10.
403	—	O. XXVII. r. 11.
404	—	„ r. 12 (1), (2).
405	—	„ r. 13.
406	—	O. XXVIII. r. 1.
407	—	„ r. 2.
408	—	„ r. 3.
409	—	O. XXIX. r. 1.
410	—	„ r. 2.
411	—	„ r. 3.
412	—	„ r. 4 (1).
413	—	„ r. 4 (2).
414	—	„ r. 5.
415	—	„ r. 6.
416	—	O. XXX. r. 1 (1).
417	—	„ r. 1 (2).
418	—	„ r. 2.
419	—	„ r. 3.
420	—	O. XXXI. r. 1.
421	—	„ r. 4.
422	—	„ r. 5.
423	—	„ r. 6 (1).
424	—	„ r. 7.
425	—	„ r. 8.
426	—	„ r. 9.
427	—	„ r. 10.
428	—	„ r. 18.
429	—	„ r.19(1).
430	—	„ r. 20.
431	—	„ r.21(1).
432 (1st para.)	Omitted	—
432 (2nd para.)	—	O. XXXI. r.19(2).
433	—	„ r. 22.
434	—	„ r. 23.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
435	—	O. XXXI. r. 24(1).
436	—	„ r. 25.
437 (1st part)	—	cf. O. XXI. r. 4.
437 (concluding words)	—	O. XXI. r. 5 (2).
438	—	„ r. 5 (1).
439	—	„ r. 6.
440	—	„ r. 7.
441	—	O. XXXVIII. r. 1.
442	—	cf. O. XXXVIII. r. 6 (2).
443	—	O. XXXVIII. r. 2.
444	—	„ r. 3.
445	—	cf. O. XXXVIII. r. 4.
446	—	O. XXXVIII. r. 6 (1) (a).
447	—	cf. O. XXXVIII. r. 7 (1), (2), (3).
448	—	cf. O. XXXVIII. r. 7 (4).
449	—	O. XXXVIII. r. 8.
450	—	„ r. 9.
451	—	„ r. 10.
452	—	„ r. 13.
453	—	„ r. 11.
454	—	„ r. 12.
455	—	„ r. 14.
456	—	O. XXXII. r. 1.
457	—	„ r. 2.
458	—	„ r. 3.
459	—	cf. O. V. r. 18.
460	—	O. XXXII. r. 4.
461	32	—
462	33	—
463	—	O. XXXII. r. 5(1).
464	—	„ r. 5 (2), (3).
465	—	„ r. 6.
466	34	—
467	35	—
468	36	—
469	37	—
470	—	cf. O. XXXIV. r. 1.
471 (1st para.)	—	O. XXXIV. r. 2.
471 (2nd para.)	—	„ r. 3.
472	—	O. XXXVI. r. 1.
473	—	„ r. 2.
474	—	„ r. 3.
475	—	„ r. 4.
476	—	O. XXXVII. r. 1 (1).
477	—	„ r. 5 (1).
478	—	„ r. 2.
479	—	„ r. 3 (1).
480	—	„ r. 5 (2).
481 (1st para.)	—	„ r. 4 (1).
481 (2nd para.)	—	„ r. 1 (2), (3).
482	—	„ r. 9 (1).
483	—	„ r. 8.
484	—	„ r. 10 (1).
485	—	„ r. 10 (2).
486	—	„ r. 12 (1).
487	—	„ r. 12 (2), (3).
488	—	„ r. 12 (4).
489	—	cf. O. XXXVII. r. 12 (5).
490	—	O. XXXVII. r. 13.
491	—	„ r. 14.
492	—	„ r. 16.
493 (1st para.)	—	„ r. 3 (2), (3).
493 (2nd para.)	Omitted	—
494	—	cf. O. XXXVII. r. 4 (4).
495	—	cf. O. XXXVII. r. 4 (1) (proviso).
496	—	O. XXXVII. r. 11 (1).
497	—	„ r. 11 (2).
498	—	„ r. 15.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
499	—	cf. O. XXXVII. r. 6.
500	—	O. XXXVII. r. 7.
501	—	cf. O. XXXVII. r. 17.
502	—	O. XXXVII. r. 18.
503	—	O. XXXIII. r. 1.
504	—	„ r. 2.
505	—	„ r. 3.
506	—	O. V. r. 19.
507	—	O. XXXIII. r. 4.
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Omitted.

See the Second Schedule.

See the Third Schedule, Part I.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
576	}	See the Third Schedule, Part I.
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586	}	See the Third Schedule, Part II.
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		cf. O. XXXIX. rr. 1, 2.
596	}	See the Third Schedule, Part III.
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628	38	—
629	—	O. XLI. r. 1.
630	—	„ r. 2.
631	—	„ r. 3.
632	39	—
633	—	O. XLI. r. 4.
634	—	„ 5.
635		See final words of subsection (1) of s. 19..
636	40	—
637	41	—
638	42	—
639	50	—
640	}	See the Third Schedule, Part IV.
641		
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650	—	cf. O. XLII. r. 1.
651	—	„ rr. 2, 4.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
652	—	cf. O. XLII. r. 2.
653	—	„ „ r. 5.
654	—	O. XLII. r. 12.
655	—	cf. O. XXI. r. 8.
656	—	O. XLII. r. 13.
657	—	„ „ r. 7.
658	—	„ „ r. 8.
659	—	cf. O. XLII. r. 8.
660	—	O. XLII. r. 10.
661	—	„ „ r. 11.
662	Omitted	—
663	—	O. XLIII. r. 1 (2).
664	—	„ „ r. 3.
665	—	„ „ r. 5.
666	—	„ „ r. 4 (1).
667	43	—
668	—	O. XLIII. r. 6.
669	—	„ „ r. 7 (1).
670	—	„ „ r. 8.
671	—	„ „ r. 10 (1).
672	—	„ „ r. 10 (3).
673	—	„ „ r. 12.
674	—	cf. O. XLIII. rr. 10 (1) (e), 12 (a).
675	—	cf. O. XLIII. r. 10 (2).
676	—	—
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699	—	cf. O. XIX. r. 7.
700	Omitted	—
701	—	—
702	—	cf. O. XIX. r. 8.
703	—	O. XL. r. 1 (1).
704 (1st para.)	—	„ „ r. 1 (2).
704 (2nd para.)	—	cf. O. XL. r. 3 (2).
705	—	O. XL. r. 2.
706	—	„ „ r. 3.
707	—	„ „ r. 4.
708	—	„ „ r. 5.
709	—	„ „ r. 6.
710	—	„ „ r. 7.
711	—	„ „ r. 8.
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See the Third Schedule, Part V.

See the Second Schedule.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
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753	51	
754 (1st para.)	—	O. XLIV. r. 1 (1).
754 (2nd para.)	—	„ r. 4 (1).
755 (1st para.)	—	„ r. 3 (1).
755 (2nd para.)	—	„ r. 5 (1).
756	—	„ r. 11.
757	—	„ r. 12.
758 (1st para.)	—	„ r. 1 (3).
758 (2nd para.)	—	„ r. 2.
759	—	„ r. 5 (2).
760	—	„ r. 6.
761	—	„ r. 7 (1), (2), (3).
762	—	„ r. 7 (5).
763 (1st para.)	—	„ r. 7 (5).
763 (2nd and 3rd paras.)	—	„ r. 8.
764	—	„ r. 9.
765	—	„ r. 25.
766	—	„ r. 26.
767	—	„ r. 27.
768	—	„ r. 13 (1), (2), (3), (4).
769 (1st para.)	—	„ r. 14.
769 (2nd para.)	—	„ r. 15 (1).
770	—	„ r. 16 (2).
771	—	„ r. 18.
772	—	„ r. 19 (1), (2).
773	52	
774 (1st para.)	—	O. XLIV. r. 20 (1).
774 (2nd para.)	—	„ r. 21.
775	53	
776 (1st para.)	—	O. XLIV. r. 22 (1).
776 (2nd para.)	—	„ r. 22 (2).
776 (3rd para.)	—	„ r. 22 (3).
776 (4th para.)	—	„ r. 23.
777	—	„ r. 24.
778	—	„ rr. 28, 29.
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792	—	O. XLVI. r. 1.
793	—	„ r. 2.
794	—	„ r. 3.
795	—	„ r. 4.
796	—	„ r. 5 (1).

See the Second Schedule.

See the Third Schedule, Parts I. and II., and
O. XXXVII. rr. 17-21.

Repealed by Ordinance No. 31 of 1909.

Section of the old Code.	Section of the Ordinance in the new Code.	Order and Rule of the new Code.
797	—	O. XLVI. r. 5 (2),
798	—	(4), (5).
799	—	„ r. 6.
800	63	„ r. 7.
801	—	—
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808	—	—
809	Omitted.	—
810	—	—
811	—	—
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813	—	—
814	—	—
815	—	—
816	—	—
817	68 (1).	—
818	68 (2)	—
819	Omitted	—
820	Omitted	See O. X. r. 1.
821	Omitted	—
822	—	—
823	—	cf. O. XI. rr. 1, 2, 3, 4, 5.
824	—	—
825	—	—
826	—	—
827	Omitted	—
828	—	—
829	—	—
829 A (3)	—	cf. O. XXI. r. 8.
830	—	—
831	Omitted	—
832	—	—
833	—	—
834	61	—
835	64	—
836	65	—
837	66 (1), (2)	—
838	66 (3)	—