



THE

# CEYLON GOVERNMENT GAZETTE

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## PART II.—LEGAL.

*(Separate paging is given to each Part in order that it may be filed separately.)*

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## DRAFT ORDINANCES.

## MINUTE.

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

L. D.—O 284/34

No. 2 of 1889.

**An Ordinance to amend the Civil Procedure Code, 1889.**

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

Short title and date of operation.

1 This Ordinance may be cited as the Civil Procedure Code Amendment Ordinance, No. of 1938, and shall come into operation on such date as the Governor shall appoint by Proclamation published in the Gazette.

Repeal of sections 298 to 312 of Ordinance No. 2 of 1889 and substitution of new sections therefor.

2 Sections 298 to 312 (both inclusive) of the Civil Procedure Code, 1889, (hereinafter referred to as "the principal Ordinance"), are hereby repealed and the following new sections are substituted therefor :—

Issue of warrant for arrest of debtor in execution of decree for money.

298. (1) Where, after the issue of a writ for the execution of a decree for the payment of money, the court is satisfied on the application of the judgment-creditor, after such inquiry as the court may deem necessary, that the judgment-debtor—

- (a) is about to abscond or leave the jurisdiction of the court with intent to defraud the judgment-creditor or with intent to obstruct or delay the execution of the decree ; or
- (b) is about to leave the Island under circumstances affording reasonable probability that the judgment-creditor will thereby be obstructed or delayed in the execution of the decree ; or
- (c) has, on or after the date of the institution of the action in which the writ of execution was issued, concealed, transferred or removed his property or any part thereof with intent to defraud the judgment-creditor or with intent to obstruct or delay the execution of the decree, or has, on or after such date, committed with the like intent any act of bad faith in relation to his property ; or
- (d) has been guilty of any act whereby any creditor, other than the judgment-creditor at whose instance the writ of execution was issued, has been given any undue, unreasonable or fraudulent preference ; or
- (e) has, at any time since the date of the decree, had sufficient means to pay the amount of the decree, or any part of that amount, and has refused or neglected to pay such amount or part thereof ; or
- (f) had incurred, by fraud or breach of trust, the debt or liability in respect of which the decree was entered,

the court may, subject to the other provisions of this Chapter, issue a warrant for the arrest of the judgment-debtor and for his production in court with a view to his committal to jail in execution of the decree.

(2) A decree for the payment of costs only shall, for the purposes of the application of the provisions of sub-section (1), be deemed to be a decree for the payment of money.

Issue of notice on debtor as alternative to warrant.

299. The court may, in its discretion, instead of issuing a warrant under section 298, issue a notice on the judgment-debtor calling upon him to show cause, on a date to be specified in the notice, why he should not be committed to jail in execution of the decree referred to in that section.

Application for warrant to be made by petition and affidavit.

300. Every application under section 298 shall be made by petition supported by affidavit ; and it shall not be necessary to name the judgment-debtor as respondent to any such application.

No arrest for sum under Rs. 200.

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

302. No warrant under section 298 or notice under section 299 shall be issued where the judgment-debtor is a woman; and no woman shall be arrested or committed to jail in execution of any decree for the payment of money or of costs.

Woman not liable to arrest in execution.

303. Where a judgment-debtor to whom a notice under section 299 has been issued fails to appear on the day specified in the notice, the court may issue a warrant for his arrest.

Warrant to issue where debtor fails to appear on notice.

304. Subject to the provisions of Chapter XXIII, a judgment-debtor for whose arrest a warrant has been issued under section 298 or section 303 may 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.

Execution of warrant of arrest.

305. Where a judgment-debtor who has been arrested on a warrant pays the amount of the decree 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.

Officer effecting arrest to release debtor on payment of amount of decree and costs of arrest.

306. Where a judgment-debtor is brought before the court after arrest on a warrant or appears in court in pursuance of a notice issued under section 299, and either—

Discharge of debtor where amount of decree and costs of arrest paid into court.

- (a) pays into court the amount of the decree and, if he has been brought before the court under a warrant, the costs of the arrest, or
- (b) gives security for the payment of the same to the satisfaction of the judgment-creditor,

the court shall release him from arrest or discharge him from such notice, as the case may be. If such payment is not made or if such security is not given, the court shall call upon the judgment-debtor to show cause why he should not be committed to jail.

307. Where the judgment-debtor, on being called upon to show cause under section 306, has no cause to show, the court shall commit him to jail.

Debtor who has no cause to show to be committed to jail.

308. Where the judgment-debtor, on being called upon to show cause under section 306, proves to the satisfaction of the court—

Debtor who has cause to show to be discharged or committed to jail after inquiry.

- (a) that any material allegation of fact, made in the affidavit of the judgment-creditor or given in evidence before the court prior to the issue of the warrant or notice, in consequence of which such warrant or notice was issued, was untrue or incorrect; or
- (b) that for any other reason the warrant or notice should not have been issued, or was irregularly issued in the first instance;

he shall, if under arrest, be released or, if he has appeared on notice, be discharged from such notice; but if he fails or is unable to furnish such proof the court shall commit him to jail:

Provided that if, on the date on which the judgment-debtor is brought or appears before the court, the court is satisfied that a warrant for the arrest of the judgment-debtor may be issued on any ground other than that on which the warrant or notice was issued in the first instance, the court may commit the judgment-debtor to jail.

309. Where a judgment-debtor contends that any material allegation of fact, made in the affidavit of the judgment-creditor or given in evidence before the court prior to the issue of the warrant or notice, is untrue or incorrect, he shall file in court a written statement specifying which of the allegations in such affidavit or in such evidence is impugned as untrue or incorrect; and where a judgment-debtor contends that the warrant or notice should not have been issued or was irregularly issued, he shall file in court a written statement of the grounds on which such contention is based.

Written statement to be filed by debtor who desires to show cause.

310. (1) Where the judgment-debtor desires to show cause why he should not be committed to jail, the court may appoint a date for an inquiry and may, pending such inquiry, order the judgment-debtor to be detained in prison or take sufficient security from him that he will appear in court when called upon.

Debtor to be committed to jail or to give security for appearance, pending inquiry.

(2) A judgment-debtor who is not detained in prison pending the inquiry may be arrested on a warrant issued by the court at any time for the purposes of such inquiry or with a view to his committal to jail.

(3) The inquiry referred to in sub-section (1) may be adjourned from time to time by order of the court.

Issue of warrant of committal to jail.

311. Where a judgment-debtor is committed to jail, the court shall issue a warrant substantially in the form No. 61 in the second schedule.

Debtor discharged under section 306 or section 308 not to be re-arrested.

312. Where a judgment-debtor has been released after arrest on a warrant or discharged from a notice under section 306 or section 308, no further proceedings shall be taken as hereinbefore provided with a view to the committal to jail of that judgment-debtor in execution of the decree in respect of which such warrant or notice was issued.

Insertion of new section 315A in the Principal Ordinance.

3 The following new section is hereby inserted immediately after section 315 of the principal Ordinance and shall have effect as section 315A of that Ordinance :—

Power to vary allowance or order additional payments.

315A. (1) Where a judgment-debtor who has been committed to jail is, with the approval of the Inspector-General of Prisons, either given any special diet on medical advice or admitted to any hospital for examination or treatment, and the monthly allowance fixed under section 314 for the subsistence of that judgment-debtor is insufficient to meet the cost of such special diet, examination or treatment, the court may by order, on application made by the Fiscal, and after hearing such representations as may be made by the party on whose application the decree has been executed and such other evidence as the court may deem necessary—

- (a) vary the monthly allowance fixed under section 314, and specify the period during which the allowance so varied shall be payable, or
- (b) fix such additional sum as may, in the opinion of the court, be necessary to meet the cost of such examination or treatment in hospital and all expenses incidental thereto or connected therewith, and may specify in that order the time and manner of payment of such additional sum.

(2) Any order made by the court under sub-section (1) may at any time be varied or cancelled by the court by a further order, on application made by the Fiscal or by the party on whose application the decree has been executed, and after such inquiry as the court may deem necessary.

(3) The provisions of section 315 shall apply to the monthly allowance as varied under this section, in like manner as those provisions apply to the monthly allowance originally fixed by the court.

(4) Any additional sum for the payment of which an order is made under this section shall be supplied to the Fiscal by the party on whose application the decree has been executed, in the manner and at the time specified in the order of the court.

Amendment of section 316 of the principal Ordinance.

4 Section 316 of the principal Ordinance is hereby amended—

- (1) by the substitution, for the marginal note thereto, of the following :—

“ Disbursements by decree-holder to be deemed costs.” ;

- (2) by the substitution, for the words “ for the subsistence of the judgment-debtor in jail ”, of the following :—

“ under section 315 or section 315A ” ; and

- (3) by the addition, immediately after the proviso thereto, of the following :—

“ Provided, further, that where at the time of the discharge of the judgment-debtor from jail there remains any unexpended balance out of the sum so disbursed, such balance shall be repaid by the Fiscal to the decree-holder and shall not be deemed to be costs in the action.”

Repeal of forms numbered 60 and 61 of the second schedule to the principal Ordinance and substitution of new forms numbered 60, 60A, 60B and 61 therefor.

5 The forms numbered 60 and 61 of the second schedule to the principal Ordinance are hereby repealed and the new forms numbered 60, 60A, 60B, and 61 in the Schedule hereto are hereby substituted therefor.

## SCHEDULE.

## No. 60.—Form of Warrant for Arrest of a Judgment-Debtor.

(See Section 298.)

(Title.)

To the Fiscal of the \_\_\_\_\_ Province.

Whereas \_\_\_\_\_ was adjudged by a decree in the above-named action, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19—, to pay to the above-named plaintiff the sum of \_\_\_\_\_ rupees, as noted in the margin :

And whereas the said sum of \_\_\_\_\_ rupees has not been paid to the said plaintiff in satisfaction of the said decree :

And whereas the court is satisfied (*here specify the grounds on which the warrant is issued*) :

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 as soon as practicable after his arrest.

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.

	Rs.	c.
Principal	..	—
Interest	..	—
Costs	..	—
Execution	..	—
Total	..	—

(Signed) \_\_\_\_\_,  
(Name and office of Judge.)

The \_\_\_\_\_ day \_\_\_\_\_ 19—.

## No. 60A.—Form of Notice on Judgment-Debtor to show cause why he should not be committed to Jail.

(See Section 299.)

(Title.)

To (Judgment-debtor).

Whereas you were adjudged by a decree in the above-named action, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19—, to pay to the plaintiff above-named the sum of \_\_\_\_\_ rupees, as noted in the margin :

And whereas the said sum of \_\_\_\_\_ rupees has not been paid to the said plaintiff in satisfaction of the said decree :

And whereas the court is satisfied (*here specify the grounds on which the notice is issued*) :

Take notice that you are hereby required to appear before the court on the \_\_\_\_\_ day of \_\_\_\_\_, 19—, at \_\_\_\_\_ o'clock in the forenoon to show cause, if any, why you should not be committed to jail in execution of the decree entered in the above-named action.

(Signed) \_\_\_\_\_,  
(Name and office of Judge.)

The \_\_\_\_\_ day of \_\_\_\_\_ 19—.

	Rs.	c.
Principal	..	—
Interest	..	—
Costs	..	—
Total	..	—

## No. 60B.—Form of Warrant for Arrest of a Judgment-Debtor under Section 303.

(See Section 303.)

(Title.)

To the Fiscal of the \_\_\_\_\_ Province.

Whereas \_\_\_\_\_ was adjudged by a decree in the above-named action, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19—, to pay to the above-named plaintiff the sum of \_\_\_\_\_ rupees, as noted in the margin :

And whereas the said sum of \_\_\_\_\_ rupees was not paid to the said plaintiff in satisfaction of the said decree :

And whereas the court was satisfied (*here specify the grounds on which the notice under section 299 was issued*) :

And whereas the said \_\_\_\_\_ was required by a notice issued by this court, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19—, to appear before the court on the \_\_\_\_\_ day of \_\_\_\_\_, 19—, at \_\_\_\_\_ o'clock in the forenoon to show cause (if any) why he, the said \_\_\_\_\_, should not be committed to jail in execution of the decree entered in the above-named action :

And whereas the said \_\_\_\_\_ failed to appear before this court on the day and at the time specified in the notice :

These are to command you to arrest the said \_\_\_\_\_, and unless he, the said \_\_\_\_\_, shall pay to you the said sum of \_\_\_\_\_ rupees, together with \_\_\_\_\_ rupees for the cost of executing this process, to bring the said \_\_\_\_\_ before this court as soon as practicable after his arrest.

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.)

The \_\_\_\_\_ day of \_\_\_\_\_, 19—.

	Rs.	c.
Principal	..	—
Interest	..	—
Costs	..	—
Execution	..	—
Total	..	—

## No. 61.—Form of Warrant of Committal to Jail.

(See Section 311.)

(Title.)

To the Fiscal of the ——— Province.

Receive into your custody the body of ——— who has been committed to jail in execution of a decree of this court dated the ——— day of ———, 19—, entered in the above-named action, for the sum of ——— rupees, together with this warrant, and him safely keep in prison for a period of six months unless he shall in the meantime be discharged by order of this court.

(Signed) ———,

(Name and office of Judge.)

The ——— day of ———, 19—.

*Objects and Reasons.*

The object of this Bill is to give effect to the decision of the State Council that "the Civil Procedure Code should be amended so as to prevent the arrest and imprisonment of honest judgment-debtors who from poverty or adverse circumstances are unable to pay their debts."

2. Prior to the enactment of the Debtors Act, 1869, decrees for payment of money were enforced in England by the attachment of the person of the debtor and then by sequestration of his effects. Under the existing English law no person can be arrested or imprisoned for making default in payment of a sum of money except in the circumstances set out in section 4 of the Debtors Act, which, generally speaking, provides that attachment of the person of a judgment-debtor can be resorted to only in cases where the debtor has been guilty of fraud or breach of trust or conduct calculated dishonestly to defeat the claims of his creditors. In such cases, imprisonment of the judgment-debtor can be ordered for a period not exceeding one year.

3. In point of fact, section 299 of the Civil Procedure Code is the only provision of Ceylon law under which "imprisonment for debt" can be ordered by the court in the sense in which that expression was understood in England prior to the enactment of the Debtors Act.

The Bill accordingly repeals section 299 of the Civil Procedure Code together with section 298 and sections 300 to 312 and substitutes in their place fifteen new clauses, the object of which is to provide that a judgment-debtor cannot be arrested or imprisoned for non-payment of a decree for money unless, as under the English law, he has been guilty of fraud or some dishonest act or conduct intended to defeat or delay the execution of the decree of the judgment-creditor. The defect of the existing procedure is that the inquiry into the conduct and circumstances of the judgment-debtor is postponed till after his arrest. It has therefore been possible for an exacting judgment-creditor to utilise the provisions of the existing law in order to harass a debtor who has been unable to pay his debts owing to poverty or other adverse circumstances not involving any fraud or dishonesty on his part. Under the proposed procedure, the court, on the application of the judgment-creditor, will have to be satisfied that the debtor has been guilty of, or is contemplating, some act of fraud or dishonesty before a warrant is issued. Provision has also been made to enable the court even when so satisfied to direct notice to issue on the debtor as an alternative to the issue of a warrant of arrest. The debtor, when he appears before the court, is given a further opportunity of refuting the allegations of fact on which the court issued the warrant or notice in the first instance. Where, after inquiry by the court, a debtor is released from arrest or discharged from the proceedings, no further attachment against his person can be issued at the instance of the judgment-creditor in execution of whose decree the debtor was called upon to show cause why he should not be committed to jail.

4. It has been pointed out that judgment-debtors who have been committed to jail in execution of civil decrees sometimes fall ill during the period of their imprisonment and have to be given medical treatment either in the prison or in a hospital. Under the existing law, the court has no power to order the judgment-creditor to pay for such treatment or for hospital charges; and such expenses consequently have to be met from Government funds. Clauses 3 and 4 of the Bill amend the relevant provisions of the Civil Procedure Code so as to empower the court to make order that the judgment-creditor should, in addition to the ordinary subsistence allowance, deposit in court such additional sum as may be necessary to defray the cost of medical treatment or hospital charges in the case of a judgment-debtor who has fallen ill after his committal to jail.

Colombo, May 25, 1938.

J. C. HOWARD,  
Legal Secretary.

## MINUTE.

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

**An Ordinance to make better provision for Education and to revise and consolidate the law relating thereto.**

## TABLE OF SECTIONS.

Section.

1. Short title and date of operation.

## PART I.

## CENTRAL AUTHORITY.

2. Department of Education.
3. Officers of the Department.
4. Application of money at disposal of the Department.

## PART II.

## ADVISORY BODY AND COMMITTEES, CENTRAL AND LOCAL.

*Board of Education.*

5. Board of Education.
6. Composition of Board of Education.
7. Board to be advisory.
8. Resignation and vacation of membership.

*Local Advisory Committees.*

9. Local Advisory Committees.
10. Composition of Local Advisory Committees.
11. Resignation and vacation of membership.
12. Local Advisory Committees purely advisory bodies.

## PART III.

## FULL OR PARTIAL CONTROL BY MUNICIPALITIES, DISTRICT COUNCILS AND VILLAGE COMMITTEES.

13. Application of Part III. to Municipalities, District Councils and Village Committees.
14. Dissolution of Local Advisory Committees.
15. An Urban Local authority or Village Committee may vote funds for purposes of this Ordinance.
16. Local education scheme.

*Control of Central Fund.*

17. Control of central fund.
18. Delegation to local education authority.
19. Composition of local education authority.
20. Local education sub-committees.
21. Provision of educational facilities in exceptional cases.
22. Borrowing powers of urban local authorities and Village Committees.
23. Acquisition of land or building.
24. Accounts and audit.
25. Powers of auditor.
26. Every member and officer a public servant.
27. Application of Parts I., IV., V. and VII.

## PART IV.

## RELIGION IN SCHOOLS AND MANAGERS.

28. Religion, &c. no bar for admission.
29. Religious instruction in Government schools.
30. Conscience clause.
31. Managers.

## PART V.

## RULE-MAKING POWERS OF EXECUTIVE COMMITTEE.

32. Rules.
33. Explanation of adequate and suitable provision by parent.

## PART VI

## ESTATE SCHOOLS.

34. Estates governed by this Part.
35. Combined schools.
36. Duty of superintendent as regards education of children on an estate.
37. Parents to see that children attend school.
38. Register of children of school-going age and duty of prosecution.

## No. 61.—Form of Warrant of Committal to Jail.

(See Section 311.)

*(Title.)*

To the Fiscal of the ——— Province.

Receive into your custody the body of ——— who has been committed to jail in execution of a decree of this court dated the ——— day of ———, 19—, entered in the above-named action, for the sum of ——— rupees, together with this warrant, and him safely keep in prison for a period of six months unless he shall in the meantime be discharged by order of this court.

*(Signed)* ———,*(Name and office of Judge.)*

The ——— day of ———, 19—.

*Objects and Reasons.*

The object of this Bill is to give effect to the decision of the State Council that "the Civil Procedure Code should be amended so as to prevent the arrest and imprisonment of honest judgment-debtors who from poverty or adverse circumstances are unable to pay their debts."

2. Prior to the enactment of the Debtors Act, 1869, decrees for payment of money were enforced in England by the attachment of the person of the debtor and then by sequestration of his effects. Under the existing English law no person can be arrested or imprisoned for making default in payment of a sum of money except in the circumstances set out in section 4 of the Debtors Act, which, generally speaking, provides that attachment of the person of a judgment-debtor can be resorted to only in cases where the debtor has been guilty of fraud or breach of trust or conduct calculated dishonestly to defeat the claims of his creditors. In such cases, imprisonment of the judgment-debtor can be ordered for a period not exceeding one year.

3. In point of fact, section 299 of the Civil Procedure Code is the only provision of Ceylon law under which "imprisonment for debt" can be ordered by the court in the sense in which that expression was understood in England prior to the enactment of the Debtors Act.

The Bill accordingly repeals section 299 of the Civil Procedure Code together with section 298 and sections 300 to 312 and substitutes in their place fifteen new clauses, the object of which is to provide that a judgment-debtor cannot be arrested or imprisoned for non-payment of a decree for money unless, as under the English law, he has been guilty of fraud or some dishonest act or conduct intended to defeat or delay the execution of the decree of the judgment-creditor. The defect of the existing procedure is that the inquiry into the conduct and circumstances of the judgment-debtor is postponed till after his arrest. It has therefore been possible for an exacting judgment-creditor to utilise the provisions of the existing law in order to harass a debtor who has been unable to pay his debts owing to poverty or other adverse circumstances not involving any fraud or dishonesty on his part. Under the proposed procedure, the court, on the application of the judgment-creditor, will have to be satisfied that the debtor has been guilty of, or is contemplating, some act of fraud or dishonesty before a warrant is issued. Provision has also been made to enable the court even when so satisfied to direct notice to issue on the debtor as an alternative to the issue of a warrant of arrest. The debtor, when he appears before the court, is given a further opportunity of refuting the allegations of fact on which the court issued the warrant or notice in the first instance. Where, after inquiry by the court, a debtor is released from arrest or discharged from the proceedings, no further attachment against his person can be issued at the instance of the judgment-creditor in execution of whose decree the debtor was called upon to show cause why he should not be committed to jail.

4. It has been pointed out that judgment-debtors who have been committed to jail in execution of civil decrees sometimes fall ill during the period of their imprisonment and have to be given medical treatment either in the prison or in a hospital. Under the existing law, the court has no power to order the judgment-creditor to pay for such treatment or for hospital charges; and such expenses consequently have to be met from Government funds. Clauses 3 and 4 of the Bill amend the relevant provisions of the Civil Procedure Code so as to empower the court to make order that the judgment-creditor should, in addition to the ordinary subsistence allowance, deposit in court such additional sum as may be necessary to defray the cost of medical treatment or hospital charges in the case of a judgment-debtor who has fallen ill after his committal to jail.

J. C. HOWARD,  
Legal Secretary.

Colombo, May 25, 1938.



## MINUTE.

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

**An Ordinance to make better provision for Education and to revise and consolidate the law relating thereto.**

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37. Parents to see that children attend school.
38. Register of children of school-going age and duty of prosecution.

39. Inspection of schools.
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46. Procedure.
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49. Provisions as to orders and schemes.
50. Repeals.
51. Interpretation.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

Short title  
and date of  
operation.

1 This Ordinance may be cited as the Education Ordinance, No. of 1938, and shall come into operation on a date to be appointed by the Governor by Proclamation published in the Gazette:

Provided that different dates may be appointed for different parts of this Ordinance.

## PART I.

## CENTRAL AUTHORITY.

Department of  
Education.

2 (1) The Government Department styled the Department of Education and created under the provisions of the Education Ordinance, No. 1 of 1920, the Head whereof is called the Director of Education, shall continue to function under the provisions of this Ordinance, notwithstanding the repeal of the Education Ordinance, No. 1 of 1920, and shall be charged with the duty of administering all matters relating to education in Ceylon under the direction and control of the Executive Committee.

(2) In all matters in which the Director is vested, by this Ordinance or the rules made thereunder, with discretionary power, it shall be lawful for the Executive Committee, on appeal or otherwise to revise, alter, or amend any order or decision of the Director; and it shall be the duty of the Director to give effect to the decision of the Executive Committee in such matters; and such decision of the Executive Committee shall be binding on all parties.

Officers of the  
Department.

3 (1) The officers of the Department shall consist of the Director of Education and such other officers as may be necessary to carry into effect the provisions of this Ordinance.

(2) It shall be the duty of the Director and the other officers of the Department to carry out the provisions of this Ordinance and the rules prescribed thereunder, and the Director shall be responsible for the carrying out of such provisions.

Application of  
money at the  
disposal of the  
Department.

4 Such moneys as may from time to time be voted and granted by the State Council for the purposes of this Ordinance shall be allocated and paid by the Director, subject to the provisions of this Ordinance and the rules made thereunder.

## PART II.

## ADVISORY BODY AND COMMITTEES, CENTRAL AND LOCAL.

*Board of Education.*

Board of  
Education.

5 There shall be established an advisory body, to be styled the Board of Education, for advising the Executive Committee on any matters relating to education in the Island which may be referred to that body for their advice by the Executive Committee or by the Director.

Composition of  
the Board of  
Education.

6 (1) The Board of Education shall consist of the prescribed number of members nominated by the Governor, of whom the Director and one other officer of the Department shall be two.

(2) Every member of such body, other than the Director shall hold office for a term of three years from the date of his appointment, unless the Governor otherwise directs.

7 The Board of Education shall not be an administrative or executive body but a purely advisory body; and the Minister or in his absence the Director, shall be the Chairman of the Board, provided that in the absence at any of its meetings of both the Minister and the Director, the Board may elect one of its members as Chairman of that meeting.

Board to be advisory.

8 (1) Any member, other than the Director, may resign his seat on the Board by letter addressed to the Governor.

Resignation and vacation of membership.

(2) Any such member as aforesaid who has not on the thirty-first day of December in each year attended at least one-half of the number of meetings of the Board during the preceding twelve months or during his tenure of office in such months shall be considered to have vacated his seat on the Board, unless he has been absent owing to ill-health or with the leave of the Board.

(3) In the case of the absence on leave or owing to ill-health of any member of the Board the Governor may appoint any person to act in his stead.

#### *Local Advisory Committees.*

9 For the purpose of advising the Director upon matters connected with education in any area and the educational needs of that area, local committees (hereinafter referred to as Local Advisory Committees) shall be constituted—

Local Advisory Committee.

- (a) within the administrative limits of Municipal Councils;
- (b) within an area comprising the administrative limits of a District Council or of two or more District Councils;
- (c) within such other areas into which as the Governor may, by Proclamation published in the Gazette, divide the Island: Provided, however, that the administrative limits of a Municipal Council or a District Council falling within such areas shall be excluded from such areas for the purposes of such Proclamation and provided, further, that no such area shall include a part only of the administrative limits of a Local Board, Sanitary Board or Village Committee.

10 (1) A Local Advisory Committee shall consist of twelve members of either sex nominated by the Governor save as provided in sub-section (2).

Composition of Local Advisory Committees.

- (2) (a) in the case of a Local Advisory Committee for an area comprised within the administrative limits of a Municipal Council two of such members shall be nominated on the recommendation of such Council;
- (b) in the case of a Local Advisory Committee for an area comprised within the administrative limits of a District Council or two or more District Councils two members shall be nominated on the recommendation of each District Council.

(3) The Governor may, by Proclamation published in the Gazette, increase the number of members nominated under the last preceding sub-section.

(4) The officer of the Department appointed by the Director for that area to carry into effect the provisions of this Ordinance (hereinafter referred to as the Education Officer) shall be a member of the Local Advisory Committee for that area.

- (5) (a) Every member of a Local Advisory Committee, other than the Education Officer, shall hold office for three years from the date of his appointment unless the Governor otherwise directs;
- (b) A Local Advisory Committee shall at its first meeting and at the beginning of its third year elect a Chairman from among its members and such Chairman shall hold office for a term of two years from his election, subject to such rules as may be prescribed.

11 (1) Any member may resign his seat on the Committee by letter addressed to the Director.

Resignation and vacation of membership.

(2) Any such member as aforesaid who has failed to attend three consecutive meetings of the Committee shall be considered to have vacated his seat on the Committee, unless he has been absent owing to ill-health or with the leave of the Committee first obtained.

(3) In the case of the absence on leave or owing to ill-health of any member of the Committee, the Governor may appoint any other person to act in his stead.

Local Advisory Committees purely advisory bodies.

12 (1) Save and except as hereinafter expressly provided in Part III. of this Ordinance, in the case of a Local Advisory Committee appointed for the administrative limits of a Municipal Council or an area comprising the administrative limits of a District Council or two or more District Councils, such Local Advisory Committee shall not be an administrative or executive body, but shall be a purely advisory body, and the Executive Committee or the Director may refer any matter relating to education to that Committee for their advice.

(2) The meetings of a Local Advisory Committee shall be held according to rules prescribed under this Ordinance.

### PART III.

#### FULL OR PARTIAL CONTROL BY MUNICIPALITIES, DISTRICT COUNCILS, AND VILLAGE COMMITTEES.

Application of Part III to Municipalities, District Councils, and Village Committees.

13 (1) Whenever the Governor with the advice of the Executive Committee of Local Administration is of opinion that a Municipal Council or a District Council or two or more District Councils acting jointly (hereinafter referred to as an urban local authority) shall supply the educational needs of the area comprised within its or their administrative limits either wholly or in part and that such urban local authority shall vote and provide such whole or proportion from the funds at its or their disposal, as hereinafter referred to in Section 15, to the satisfaction of the Executive Committee, the Governor may, by Proclamation, published in the Gazette, apply this part of this Ordinance within the administrative limits of that Municipal Council or District Council, or two or more District Councils, as the case may be.

(2) Whenever a Village Committee is prepared to supply the educational needs of the area within its administrative limits, either wholly or in part and to contribute the whole or a proportion of the total cost of such educational needs, and to vote and provide such whole or proportion from the funds at its disposal, as hereinafter referred to in section 15, to the satisfaction of the Executive Committee, the Governor may, by Proclamation published in the Gazette, apply this part of this Ordinance within its administrative limits.

Dissolution of Local Advisory Committees.

14 Upon any such Proclamation being published the Local Advisory Committee functioning within the administrative limits of the Municipal Council, District Council, or two or more District Councils or Village Committee as the case may be, referred to in Section 9 shall cease to function within such limits: and it shall be the duty of the urban local authority or Village Committee to supply the educational needs, either in whole or in part, of the area within its administrative limits, and the sections following in this Part of this Ordinance shall have effect.

An Urban local Authority or Village Committee may vote funds for purposes of this Ordinance.

15 The purpose for which an urban local authority or a Village Committee may expend funds at its disposal under any Ordinance regulating its powers and duties shall include the contribution of the whole or part of the total cost of the educational needs of the area within its administrative limits; and the urban local authority or Village Committee, when it has the power to levy a rate on property by any Ordinance for any purpose whatsoever, may, for the purpose of this Ordinance, levy a special rate on all such property assessed for the purposes of rates over and above the rates imposed by virtue of the Municipal Councils Ordinance, No. 6 of 1910, or the Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935, or the Local Government Ordinance, No. 11 of 1920, or such other ordinance empowering Village Committees to levy rates on property, as the case may be, and all the relevant provisions of such last mentioned Ordinances, including the provisions relating to the recovery of rates, shall apply to such special rate, in the same manner and for the same purpose as if they had been inserted herein.

Local education scheme.

16 (1) For the purpose of making the contribution referred to in section 13 and discharging the duties referred to in section 14, an urban local authority or Village Committee shall each year when preparing the annual budget, or at any other time, prepare a scheme for the approval of the Executive Committee (hereinafter referred to as the local education scheme), and shall vote and provide from time to time, whenever necessary, a sum or sums from the funds at its disposal, so that such sum or sums, together with any sum contributed by the Director, will form a central fund sufficient to defray the cost which will be incurred in supplying the educational

needs of the area within the administrative limits of the urban local authority or Village Committee as set forth in such scheme.

(2) A local education scheme shall only be valid when it has been confirmed by the Executive Committee and such confirmation has been notified by publication in the Gazette.

*Control of Central Fund.*

17 The local education scheme shall provide—

Control of  
central fund.

- (a) for the control and disposal of the central fund referred to in the preceding section either by the Director or by the urban local authority or Village Committee or by both jointly or severally; and the expenses in carrying such scheme into execution shall be met and defrayed from such fund, subject to the provisions of this Ordinance or the rules prescribed thereunder;
- (b) for the appointment by the Director or by the urban local authority or Village Committee of such officers as may be necessary for the due execution of the local education scheme and for the payment of their salaries, wages, pensions and allowances, if any, and the establishment, if necessary, of a providential fund subject to prescribed rules, from the central fund.

18 The local education scheme—

Delegation to  
local education  
authority.

- (a) shall provide for the delegation by the urban local authority or Village Committee to a Committee (hereinafter referred to as the local education authority), with or without any conditions or limitations as the urban local authority or Village Committee thinks fit, of all the functions conferred or imposed upon, or vested in it by this Part of this Ordinance, and the local education scheme, except the power of voting or providing or borrowing money or levying a rate or appointing officers or keeping and auditing accounts;
- (b) may provide for the discharge, on behalf and subject to the general direction and control of the local education authority, of any of the functions of that authority by a sub-committee (hereinafter referred to as the local education sub-committee) to be appointed for a defined area within the administrative limits of the urban local authority or Village Committee.

19 (1) The local education authority shall be composed of the prescribed number of members for the prescribed period, and each member may resign or vacate his seat in the manner prescribed in the local education scheme.

Composition of  
local education  
authority.

(2) One-half of the local education authority shall consist of members of the urban local authority or Village Committee nominated by such urban local authority or Village Committee and the other half of persons, not being members of the urban local authority or Village Committee, nominated by the Governor.

(3) The local education authority shall elect a chairman, who shall preside at its meetings, and a Vice-chairman, and shall, subject to such rules as may be prescribed, exercise, perform and discharge such functions as may be delegated to it by the urban local authority or Village Committee.

20 (1) When the local education scheme provides for the appointment of local education sub-committees, the administrative limits of the urban local authority or Village Committee shall be divided into such areas as may be specified in that scheme, and for every such area there shall be a local education sub-committee.

Local education  
sub-committees.

(2) Every local education sub-committee shall be constituted in such manner as may be provided for in the local education scheme, and shall consist of the number of members fixed in the scheme for the prescribed period, and each member may resign or vacate his seat in the manner prescribed in the local education scheme, provided that the member or members of the urban local authority or Village Committee for the ward or wards of a Municipality or the electoral division or divisions of a District Council or Village Committee as the case may be, falling wholly or partly within the area, shall be included in such local education sub-committee.

(3) Each local education sub-committee shall elect a chairman, who shall preside at its meetings, and a vice-chairman, and shall, subject to such rules as may be prescribed,

exercise, perform and discharge such functions as may be delegated to it by the scheme under the general direction and control of the local education authority.

Provision of educational facilities in exceptional cases.

21 A local education scheme may, among other matters, provide—

- (a) for the relief financially or otherwise to be given to parents who are too poor to secure for their children adequate educational facilities and industrial training;
- (b) for the medical inspection or treatment of children attending schools and for their health and well-being, and for the supply of free meals and school books to the children of poor parents attending school;
- (c) for the education of blind, deaf, defective and epileptic children.

Borrowing powers of urban local authorities or Village Committees.

22 (1) It shall be lawful for an urban local authority or Village Committee to borrow such sum or sums of money as may be necessary for carrying out any work of a permanent character undertaken under the provisions of this Part of this Ordinance and for the acquisition of any land or building required for the purposes of, or in connection with, such work, on such terms or conditions as may be approved by the Governor.

(2) The limitation of the borrowing powers of an urban local authority or village committee specified by any written law or Ordinance shall not apply to a loan raised under this Ordinance.

Acquisition of land or building.  
No. 3 of 1876.

23 Any private land or building which may be required by an urban local authority or Village Committee for the purpose of this Part of this Ordinance may be acquired by the Crown for such purposes under the provisions of the Land Acquisition Ordinance, 1876, or of any other Ordinance for the time being in force providing for the acquisition of private land or buildings for public purposes. When the urban local authority or village committee has paid the compensation awarded the Governor may vest such land in the urban local authority or village committee by a writing under the hand of the prescribed officer to the effect that the same has been made over to the urban local authority or village committee and any such land or building when no longer required for the purposes of this Ordinance may be dealt with by the urban local authority or village committee as any other land or building vested in it.

Accounts and Audit.

24 (1) Where the urban local authority or village committee has control of the whole or part of the central fund referred to in section 16, separate accounts shall be kept by the urban local authority or village committee of the receipts into and expenditure from, such whole or part, in respect of the functions discharged by such urban local authority or village committee under this part of this Ordinance; and those accounts shall be made up in like manner and subject to the same provisions as in the case of a Municipality or District Council or village committee as the case may be and shall be audited by the Auditor-General or an officer authorised by him (hereinafter referred to as the Auditor).

(2) If any member or officer of an urban local authority, Village Committee, or of a local education authority or of a local education sub-committee or any officer concerned or employed in carrying the provisions of this Ordinance into execution who is liable to account refuses to allow any such auditor, when so authorised or required to make the inspection, or obstructs him in his inspection or conceals any such account or book for the purpose of preventing inspection thereof, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred rupees.

Powers of Auditor.

25 (1) Every auditor of a central fund created under this Ordinance, acting in pursuance of the powers conferred upon him by this or any other Ordinance, shall disallow every item of expenditure which is contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment and shall charge against any person the amount of any deficiency or loss incurred by the negligence or misconduct of that person and any amount which ought to have been, but is not, brought into account by that person, and shall in each case certify the amount due from such person and communicate his decision in writing to such person through the Chairman of the urban local authority or Village Committee, provided that no expenses paid by the urban

local authority or Village Committee, shall be disallowed by any such auditor if such expenses have been sanctioned by the Executive Committee.

(2) Before making any disallowance or surcharge against any person, the auditor shall afford an opportunity to such person to be heard or to make any representation with regard to the matter which he may think fit, and shall in the event of his making such disallowance or surcharge furnish such person in writing, on application being made to him for that purpose, with the reasons for his decision in respect of such disallowance or surcharge.

(3) Any person aggrieved by any such disallowance or surcharge may, within fourteen days after the date of the decision of the auditor being communicated to him, appeal therefrom to the Financial Secretary.

Provided that no such appeal shall be entertained in any case in which the appellant has failed or neglected to make any representation with regard to the matter of such disallowance or surcharge after an opportunity to do so has been afforded to him by the auditor in accordance with the provisions of sub-section (2).

(4) Any such appeal shall be decided by the Financial Secretary according to the merits of the case and the Financial Secretary may by order direct the recovery from the appellant of the whole or any portion of the amount disallowed or surcharged, if he thinks fit to do so; and if he finds that any disallowance or surcharge has been lawfully made, but that the subject-matter thereof was incurred in such circumstances as to make it fair and equitable, that the disallowance or surcharge should be remitted, the Financial Secretary may by order direct that the same shall be remitted, but that the amount of the costs and expenses which may have been incurred by the auditor in the enforcing of such disallowance or surcharge or any portion thereof, shall be recovered from such person.

(5) Any amount directed to be recovered from any such person by any order made by the Financial Secretary under this section may forthwith be recovered by the urban local authority or Village Committee in the same manner as any sum certified to be due by an auditor is recoverable under the provisions of this section.

(6) Every sum certified to be due from any person by any auditor as aforesaid shall be paid by such person to the urban local authority or village committee within fourteen days after the decision of the auditor has been communicated to such person, unless there is an appeal against the decision and if such sum is not so paid and there is no such appeal, it shall be the duty of the urban local authority to recover the same from such person, and any sum so certified, together with all costs and expenses incurred in connection with the enforcement thereof, may, on application to a Police Magistrate having local jurisdiction, be recovered in the same manner as if it were a fine imposed by such Magistrate.

26 Every member of a local education authority or local education sub-committee, and every officer appointed under this Part of this Ordinance, shall be deemed to be a public servant within the meaning of the Ceylon Penal Code.

Every member and officer a public servant.

27 Save in so far as it is otherwise expressly provided for in the local education scheme, Parts I, IV, V and VII of this Ordinance shall apply and have effect within the administrative limits of the urban local authority or Village Committee; and the rules made under Part V of this Ordinance, including penal provisions, relating to the area within such administrative limits shall be legal, valid effectual and binding upon all persons within such area.

Application of Parts I, IV, V and VII.

## PART IV.

### RELIGION IN SCHOOLS AND MANAGERS.

28 No applicant shall be refused admission into any Assisted school on account of the religion, nationality, race, caste, social status or language of such applicant or of either of his parents.

Religion, &c. no bar for admission.

29 Religious teaching shall not form part of the instruction to be given at any Government school by any teacher; but any minister or teacher of religion authorised by the Director by writing under his hand may give religious instruction to the children of the religious denomination to which the minister or teacher belongs, at such times and places as may be agreed upon between him and the Director. Provided however that if religious instruction is given or religious

Religious instruction in Government schools.

classes are held on non-school days, a teacher of a Government school may give religious instruction to a child of the religious denomination to which such teacher belongs, upon the parent of such child signifying his consent thereto in writing.

Conscience  
clause.

30 (1) It shall not be required as a condition of any child being admitted into or continuing in an Assisted school that he shall attend or abstain from attending any Sunday school or any place of religious worship or that he shall attend any religious observance or any instruction in religious subjects in the school or elsewhere, or that he shall attend school on any day exclusively set apart for religious observance by the religious body to which the parent belongs.

(2) The time during which any religious observance is practised or religious instruction is given at any meeting of an Assisted school shall be either at the beginning or at the end, or at the beginning and the end, of such meeting and shall be inserted in a time table to be approved by the Director and be kept permanently and conspicuously affixed in every schoolroom.

(3) No child belonging to a religious denomination other than that to which the proprietor or manager of an Assisted school belongs shall be required to attend or abstain from attending any Sunday school or any place of religious worship or to attend any religious observance or any instruction in religious subjects in the school or elsewhere unless the parent of the child has expressly stated in writing his consent that his child shall attend such place of religious worship or receive instruction in religious subjects in the school.

(4) The Director may for the breach of any of the provisions of this section withhold or refuse to pay any grants from the public funds.

Managers.

31 (1) The proprietor of an Assisted school may, with the approval of the Director first had and obtained, appoint a manager for such school and, with the like approval, discontinue or remove such manager from office.

(2) In the event of the proprietor being unable to appoint a manager for such school to the satisfaction of the Director, it shall be lawful for the Director to appoint a suitable person as manager.

(3) The Director may discontinue or remove a manager so appointed by him from office or require the proprietor to discontinue or remove from office a manager appointed by such proprietor.

(4) Any person who is discontinued or removed from his office as manager under sub-section (1) or sub-section (3) who refuses to vacate his office or obstructs any other person lawfully appointed as manager under this section in entering upon or executing his duties as manager shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees and, in the case of a continuing offence, to an additional fine not exceeding ten rupees per day.

(5) In the event of a proprietor refusing to discontinue or remove from office a manager on the requirement of the Director as provided in sub-section (3), it shall be lawful for the Director to refuse to pay any grants from the public funds in respect of all or any of the Assisted schools belonging to such proprietor, otherwise payable under this Ordinance or the rules made thereunder.

(6) The appointment of any manager of an Assisted school, together with the acceptance thereof in writing by the person so appointed, and the notification of the retirement or removal of any manager, save where the appointment or removal is by the Director, shall be delivered to the Director by the proprietor and all such appointments or removals shall be notified by publication in the Gazette.

(7) Where the manager is in charge of a group of schools he shall be referred to as the general manager.

(8) No teacher of an Assisted school, and no person who derives any profit or emolument from an Assisted school, shall be a manager of a school.

## PART V.

### RULE-MAKING POWERS OF EXECUTIVE COMMITTEE.

Rules.

32 (1) The Executive Committee may make rules, which shall be known as the Code, either for the whole of the Island generally, or for a defined area or areas specially, for the purpose of giving effect to the principles and provisions of this Ordinance.



(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), the Executive Committee may make rules for or in respect of all or any of the following matters :—

I.—*Education.*

- (a) the establishment, taking over, transfer, recognition, maintenance, continuance or discontinuance of schools of different grades, including schools for the education of blind, deaf, defective and epileptic children ;
- (b) the conditions subject to which, and the conditions for the breach of which, grants from the public funds will be paid or stopped in respect of an Assisted school and the purposes for which such grants will be paid ;
- (c) the admission to schools, the course and schedules of studies, and the books and apparatus to be used therein ;
- (d) the discipline to be enforced in such schools
- (e) the inspection and examination of such schools and the manner in which inspecting officers shall perform their duties ;
- (f) the medical inspection or treatment of children attending such schools ;
- (g) the health and well-being of children attending such schools, including the supply of free meals and free books to the children of poor parents attending such schools ;
- (h) the relief, financial and otherwise including grants for the purchase of books to be given to parents who are too poor to secure for their children adequate educational facilities and industrial training ;
- (i) the duties of managers and the manner of their performance ;
- (j) the qualifications required in school teachers of various classes, and the payment of salaries to such teachers ; the registration, appointment, grading, suspension and removal of such teachers ;
- (k) the appointment of officers to secure the attendance of children at schools in areas in which rules for their compulsory attendance are in force and for the payment of the salaries of such officers ;
- (l) the power of such officers to demand and obtain information with regard to children who are required by such rules to attend such schools, and to require the production of such children before them for inspection ;
- (m) the entry by such officers upon any premises and the search thereof for the purpose of gaining or verifying information with regard to any such children ;
- (n) specifying the limits of any area within which efficient provision has been made for education by means of schools situated within or outside such area ;
- (o) requiring, subject to such exemptions and qualifications as may be contained in such rules, the parent of any child between the ages of six and fourteen years or in the case of Muslim girls between the ages of six and ten years, residing within such area to cause such child to attend a school unless he has made adequate and suitable provision for the education of such child ; provided that no such rule shall involve the attendance at any school by any child from any distance exceeding two miles ;
- (p) determining the days on which and the hours during which children shall attend school ;
- (q) provision for the infliction of penalties for the contravention of such rules which may amount to a fine not exceeding rupee one and in the case of a continuing offence, an additional fine not exceeding 50 cents per day ;

II.—*Training of Teachers.*

- (a) the establishment, taking over, transfer, administration, maintenance, continuance or discontinuance of Government and Assisted training schools for teachers ;

III.—*Special Schools.*

- (a) the providing or aiding of special schools which shall be subject to such provisions of the Code as the Director may think fit to apply ;

## IV.—General.

- (a) the award and tenure of exhibitions and scholarships ;
- (b) technical, agricultural and commercial education ;
- (c) the payment or remission of fees, subject to the provisions of the Code in respect of attendance at any school ;
- (d) the standards of accommodation and of sanitation to be maintained in Government and Assisted schools, and also in all other schools or places in which classes attended by children of school-going age are held, and the exhibition of notices in the case of a certified school, that it is a certified school ;
- (e) all matters stated or required in this Ordinance to be prescribed ;
- (f) generally for the regulation and conduct of the business of the Board of Education Local Advisory Committees, local education authorities and local education sub-committees.

(3) No rule made under this section shall have effect until it has been approved by the State Council and ratified by the Governor ; nor until notification of such approval and ratification has been published in the Gazette.

(4) Every rule made by the Executive Committee shall, upon publication of the notification of the approval and ratification of that rule as provided for in sub-section (3), be as valid and effectual as if it were herein enacted.

Explanation of adequate and suitable provision by parent.

33 (1) For the purposes of the rules made under this Ordinance, a parent shall be deemed to have made adequate and suitable provision for the education of his child—

- (a) if he proves that his child is in regular attendance at a school certified by the Director or Education Officer as providing adequate and suitable education ;
- or
- (b) if he proves that he has made such other provision for his child's education as the Director or Education Officer shall certify to be adequate and suitable ; or
- (c) if he produces a certificate from the Director, or Education Officer, recommending that the child shall be exempted from compulsory attendance ; or
- (d) if he produces a certificate from the Director exempting his child from compulsory attendance either because no school is available in the area—
  - (i.) managed by a denomination acceptable to him,
  - or
  - (ii.) where the medium of instruction is given in his home language.

(2) (a) No parent shall be convicted for a breach of any rules made under this Ordinance requiring his child to attend school, if he proves to the satisfaction of the court that he had reasonable cause for not causing such child to attend.

(b) For the purpose of this sub-section, a person shall be deemed to have a reasonable excuse for not causing his child to attend school, if he proves that the child is prevented from attending by sickness or other unavoidable cause.

## PART VI.

## ESTATE SCHOOLS.

Estates governed by this Part.

34 This Part of this Ordinance shall apply only to estates on which children between the ages of six and ten of labourers employed and residing thereon exceed twenty-five in number, provided that whenever it appears that the children of labourers employed and resident on an estate can be more conveniently educated at a school approved by the Director or Education Officer, situated within or near such estate, the Governor may by order published in the Gazette exempt such estate from the provision of this Part of this Ordinance, and the rest of this Ordinance, so far as it is applicable, shall thereupon apply to such estate.

Combined schools.

35 Two or more estates may, with the sanction in writing of the Director, combine for the purpose of providing a common school under a joint-manager for the instruction of the children on such estates.

Duty of superintendent as regards education of children on estate.

36 It shall be the duty of the superintendent of every estate to provide for such education as may be prescribed of the children of the labourers employed and resident on the estate between the ages of six and ten, to appoint competent teachers, and to set apart and keep in repair a suitable school-room.

37 (1) The parent of every child between the ages of six and ten, such parent being employed and residing as a labourer on the estate, shall cause such child to attend the estate school during the hours prescribed by rules.

Parents to see that children attend school.

(2) Any parent who fails to comply with the provisions of this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one rupee, and in the case of a continuing offence, and additional fine not exceeding 50 cents per day.

38 (1) It shall be the duty of the superintendent—

(a) to prosecute or cause to be prosecuted any parent failing to comply with the provisions of the preceding section and

(b) to supply the school teacher with the information necessary to allow of such teacher keeping a register showing the names and ages of the boys and girls, being the children of labourers employed and resident on the estate, between the ages of six and ten.

Register of children of school-going age and duty to prosecute.

(2) It shall be the duty of the school teacher to keep such register, and also to keep an attendance register showing the presence or absence of each child on every day on which school is held.

(3) Such first-named register shall be corrected or renewed on or before the tenth day of each month, and shall be open to inspection as hereinafter provided.

(4) Any superintendent or teacher who acts in contravention of the provisions of this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding twenty rupees, or to imprisonment of either description for any period not exceeding one month.

39 (1) The Director shall from time to time cause estate schools to be inspected, and on such inspection the superintendent shall afford the inspecting officer all reasonable facilities for inspecting the registers hereinbefore required to be kept and the children on the estate, provided, however, that where the inspection is for the purpose of checking returns furnished by estate schools at least fourteen days' clear notice of the inspection shall be given to the superintendent.

Inspection of schools.

(2) Any superintendent who acts in contravention of the provisions of this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred rupees, or to imprisonment of either description for any period not exceeding three months.

40 (1) Whenever provision has not been made to the satisfaction of the Director for the instruction of the children on any estate and for the supply of a suitable schoolroom, the Director may issue a notice to the superintendent calling upon him to make provision for the education of the children or for a schoolroom and if such notice has not been complied with to the satisfaction of the Director within six months from the date when it was given, the Director may authorise some person to enter upon the estate and erect a suitable schoolroom thereon and to provide suitable instruction for such children.

Enforcement of obligation of superintendent to provide for education of children.

(2) The cost of erecting and maintaining a schoolroom and of providing instruction for the children shall from time to time be certified by the person so authorised, and shall be recovered in the manner provided by "The Medical Wants Ordinance, No. 9 of 1912" for the recovery of money payable under section 10 of the said Ordinance.

(3) The provisions of sections 37, 38 and 39 of this Ordinance shall apply to a school established under this section.

41 For the purposes of this Part of this Ordinance—

"estate" means any estate in which labourers are employed and of which ten acres or more are actually cultivated ;

"labourer" means a labourer employed on an estate including a kangani and female labourer and any relative of a labourer resident upon the same estate ;

Interpretation of Part VI.

## PART VII.

### GENERAL.

42 (1) It shall be the duty of any person who desires to open a school or give instruction in English or any other language in any schoolroom or any building not previously used by him for the purpose to any class or classes attended by children of school-going age, at least three months before

Duty of persons opening new schools to report to Director.

the opening of such proposed school or the commencing of such proposed instruction, to report particulars of such school or instruction to the Director, and thereafter supply such information as may be required by the Director with regard to his school or his class or classes, and the courses of instruction he is giving or proposes to give; and the Director may in his discretion refuse to approve of such school, schoolroom or building for the purpose of any grant from the public funds to such schools, schoolroom or building. Provided however that the Director may in special circumstances authorise the opening of a school without the notice required by this subsection being given.

(2) Any person who acts in contravention of the provisions of this section shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding fifty rupees, and such person shall not be entitled to any grant or to claim any grant in respect of his school, schoolroom or building from State funds.

Power of inspection

43 (1) It shall be lawful for the Director, or any inspecting officer of the Department, or the Education Officer or any other person generally or specially authorised by the Director, to enter and inspect any school and inspect and examine the pupils therein and all the registers of admission and attendance of any such school.

(2) Any person obstructing the Director or any such inspecting officer or Education Officer, or any other person so authorised by the Director, acting in pursuance of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees.

Jurisdiction in respect of offences.

44 (1) All offences under this Ordinance or under any rules made thereunder shall be triable by a Police Magistrate; or in the case of any offence committed within the jurisdiction of any Village Tribunal or Village Committee, by the Village Tribunal or Village Committee.

(2) The Village Tribunal or Village Committee shall have jurisdiction to award the maximum punishment prescribed therefor, anything in the Criminal Procedure Code, 1898, or in the Village Communities Ordinance, No. 9 of 1924, to the contrary notwithstanding.

No. 15 of 1898.

Power of Magistrate in certain cases to order child to be sent to certified industrial school.

45 (1) If within the jurisdiction of any Police Magistrate, any child of school-going age neglects habitually, and without reasonable excuse, to attend school, or is found habitually wandering about the streets and not under proper control, or in the company of disorderly or immoral persons or of reputed criminals, it shall be the duty of the prescribed officer, after due warning to the child and to the parents of the child, if they can be found, to present a written report to the Magistrate.

(2) The Magistrate shall summon such child and the parents (if they can be found) before him, and, if satisfied of the truth of the report, may order such child, if a male, to be caned in accordance with the provisions of "The Flogging Regulation Ordinance, 1904", or order any such child to be sent to any school or institution certified by the Governor under "The Youthful Offenders Ordinance, 1886" (hereinafter referred to as "a certified industrial school"), for such period (subject to the limitations prescribed by section 19 (d) of the said Ordinance) as to such Magistrate shall seem proper.

(3) The costs of maintaining and educating the child at the certified industrial school shall be defrayed, in the first instance, by the Department, but the magistrate may in his discretion issue an order to the parent of such child requiring such parent to pay the whole or any part of the costs of such maintenance, provided that such order may be made on the application of the prescribed officer, and shall be made and enforced, so far as is consistent with the provisions of this Ordinance, in the manner provided by sections 32 to 37 inclusive of "The Youthful Offenders Ordinance, 1886".

Procedure.

46 With regard to proceedings under this Ordinance or under any rule made thereunder, the following provisions shall have effect, namely:

(1) The Magistrate, President, or Chairman may, instead of imposing a fine, make an order directing that the child shall attend school, and that if he fails to do so, the person on whom such order is made shall pay a fine not exceeding the fine to which he is liable for failing to cause such child to attend school.

- (2) The Magistrate, President, or Chairman may require by summons any parent of a child required by rule to attend school to produce the child before him, and any parent failing without reasonable excuse, proof whereof shall lie on him, to comply with such summons, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding five rupees.
- (3) When a child is apparently of the age alleged for the purpose of the proceedings, it shall lie on the defendant to prove that the child is not of that age.
- (4) A certificate purporting to be under the hand of the Director or any officer of the Department authorised by him stating that a child has reached a particular standard of education, or is or is not under adequate and suitable instruction, or stating that any school does or does not provide adequate and suitable instruction, shall be sufficient evidence of the facts stated in such certificate.

47 Any private land which may be required for the purposes of, or in connexion with, the erection or extension of school buildings, teachers' houses, offices, or premises, or for the establishment of school gardens or playgrounds, or otherwise for the purposes of this Ordinance, may be acquired by the Crown for such purpose under the provisions of the "Land Acquisition Ordinance, 1876," or of any other Ordinance for the time being in force providing for the acquisition of private land for public purposes.

Acquisition of land for purposes of Ordinance.

No. 3 of 1876.

48 (1) If any difficulty arises in connexion with the application of this Ordinance or of any Part of this Ordinance within the administrative limits of any urban local authority, Village Committee, or of an area under section 9 (c) of this Ordinance or in bringing into operation any of the provisions of this Ordinance, the Governor may make such order for removing the difficulty as he may judge to be necessary for that purpose, and any such order may modify the provisions of this Ordinance so far as may appear to him necessary for carrying the order into effect.

Power to remove difficulties.

(2) Every order made under this section shall come into operation upon the date specified therein in that behalf, but shall be laid before the State Council as soon as may be after it is made and shall cease to have effect upon the expiration of a period of three months from the date upon which it came into operation, unless at some time before the expiration of that period it has been approved by a resolution passed by the State Council and ratified by the Governor.

49 (1) Any order or scheme under this Ordinance may contain such incidental, consequential, or supplemental provisions as may appear necessary or proper for the purposes of the order or scheme.

Provisions as to orders and schemes.

(2) Any order or scheme made under this Ordinance may be altered or revoked by an order or scheme made in like manner and subject to the like provisions as the original order or scheme.

50 So much of "The Rural Schools Ordinance, 1907" as is still in force and "The Education Ordinance, No. 1 of 1920" are hereby repealed.

Repeals.  
No. 8 of 1907.  
No. 1 of 1920.

Provided that—

- (a) nothing in this repeal shall affect any regulation or by-law made under the Ordinances hereby repealed, but any such regulation or by-law shall continue in force and shall have effect as if it were a rule made by the Executive Committee under this Ordinance and shall cease to be operative as and from the date on which rules made by the Executive Committee under this Ordinance in substitution for such regulation or by-law shall come into force; and any reference to a District School Committee or District Committee in any such regulation or by-law shall be construed as a reference to the Director;
- (b) the property and funds of which a District School Committee or District Committee shall be possessed, or which a District School Committee or a District Committee shall own, under or by reason of the provisions of the Ordinances hereby repealed, and all the rights, duties, liabilities and obligations of any such District School Committee or District Committee, shall be deemed to be transferred to the Department;

- (c) all officers, clerks and other servants in the employment of a District School Committee or a District Committee under the Ordinances hereby repealed shall cease to be so employed without prejudice to any rights, liabilities and obligations acquired or incurred by them in respect of such Committees under the aforesaid Ordinances which said rights, liabilities, and obligations shall be dealt with under the last preceding paragraph :

Provided, however, that—

- (a) such officers, clerks, and servants shall continue to officiate in their several capacities as officers, clerks and servants in the employment of the Department on a new monthly contract of service terminable on a month's notice ; and
- (b) such officers, clerks and servants who may be discontinued within a period of six months from such date shall not be entitled to any gratuities pensions or allowances save as provided by prescribed rules ; and
- (c) such officers, clerks and servants who are not discontinued from service within the aforesaid period of six months shall be deemed to be employed by the Department under this Ordinance on the expiration of such six months and shall be entitled to claim that their past services under the District School Committee or District Committee as the case may be shall be reckoned as service under the Government for purposes of pension.

Provided, further, that in any case in which doubts shall arise—

- (i) as to the extent to which the property or funds or the rights, powers, duties, debts, liabilities or obligations of a District School Committee or a District Committee vest in the Government or
- (ii) as to the terms of the contract of service of any officer, clerk or servant with a District School Committee or a District Committee, the Director shall refer the matter in the case of (i) for the decision of the Executive Committee and in the case of (ii) for the decision of the Chief Secretary and the decision of the Executive Committee or Chief Secretary, as the case may be, shall be final and binding upon all persons whomsoever.

**Interpretation.**

**51** (1) In this Ordinance, unless the context otherwise requires—

- “ Assisted school ” means a school to which aid is contributed from State funds.
- “ Board of Education ” means the body referred to in sections 5 and 6 ;
- “ Department ” means the Department of Education ;
- “ Director ” means the Director of Education and includes any officer of the Department to the extent to which he is, by the authority of the Director, empowered to exercise or perform any of the powers and duties of the Director under this Ordinance ;
- “ District Council ” means an Urban District Council established under the Local Government Ordinance, No. 11 of 1920 ;
- “ educational needs ” means such facilities for adequate educational and industrial training as may be prescribed by rules ;
- “ Education Officer ” means the officer referred to in section 10 (4) ;
- “ Executive Committee ” means the Executive Committee of Education ;
- “ functions ” includes powers and duties ;
- “ Government school ” means a school already or hereafter established, wholly or partly, and maintained entirely from state funds ;
- “ grant ” means any form of subvention from State funds including salaries paid direct to the teacher by the Department ;
- “ Local Advisory Committee ” means the Committee referred to in section 9 ;
- “ Local Board ” means a Local Board established under the Local Boards Ordinance, 1898 ;
- “ Local education authority ” means the Committee referred to in section 18 (a) ;
- “ local education scheme ” means the scheme referred to in section 16 ;

- “ local education sub-committee ” means the sub-committee referred to in section 18 (b) ;
- “ manager ” in relation to an Assisted school means the person who appoints, transfers, or dismisses or discontinues teachers in such Assisted school ;
- “ Minister ” means the Minister for Education ;
- “ officer ” includes any schoolmaster, duly qualified medical practitioner, treasurer, master or matron or warden of an institution or school or any other person who is for the time being employed in carrying this Ordinance or Part III of this Ordinance into execution ;
- “ parent ” includes a guardian and any person who has the legal or actual control of a child or has direct benefit from the wages of a child ;
- “ prescribed ” means prescribed by this Ordinance or by rules made under this Ordinance ;
- “ proprietor ” means any person or corporation in whom, in the opinion of the Director, the legal title of a school, or the land on which a school-building stands, is vested ;
- “ Sanitary Board ” means a Sanitary Board established under the Small Towns Ordinance, 1892 ;
- “ school-going age ” means such age between a prescribed maximum and minimum age at which a child is liable to attend school ;
- “ Village Committee ” means a Village Committee established under the Village Communities Ordinance, No. 9 of 1924.

(2) The occupier of the premises in which any child usually resides shall be deemed to have the actual custody of such child until the contrary is proved.

#### *Objects and Reasons.*

1. This is a consolidating and amending Bill which seeks to re-enact the main provisions of the Education Ordinance, No. 1 of 1920, but with important alterations and additions. Under the existing Ordinance the Board of Education, although not an administrative or executive body, has the power to make regulations known as the Code and may deal with many aspects of the educational policy of the Island. (Section 10 of Ordinance No. 1 of 1920).

Under the Bill the Executive Committee of Education will be responsible for the framing of the Code and for all educational matters, and will act through the Department of Education with the Director of Education at its head (Part V and Clauses 2, 3, and 4).

2. The Board of Education will be replaced by a Central Advisory Committee, (also to be called the Board of Education) the members of which are to be nominated by the Governor, of which the Director and one officer of the Education Department, will always be members.

The new Board of Education will be a purely advisory body and will advise the Executive Committee of Education on any subject which may be referred to it. (See part II, Clauses 5 to 8).

3. The general principle adopted in the Bill is that the Central Government which provides the funds for education, should be responsible for all educational matters in the Island, thereby ensuring a unity of policy “ for the progressive development and comprehensive organization of a national system of public education throughout the whole Island.” (See section 11, English Education Act, 1921). The Governor with the advice of the Executive Committee of Local Administration may, by proclamation, compel a Municipal Council, or a District Council to contribute towards the cost of education within its administrative limits including salaries of staff, &c. and transfer to it control of educational matters within its administrative limits, the extent of the control of the contributing local authority depending on the proportion of its contribution. It may be accorded, as suggested, even plenary recognition if the contribution is high enough to justify such a course, say fifty per cent. A Village Committee is given the option of coming under this part of the Ordinance.

4. Until a local authority or Village Committee is so proclaimed the Island will be divided into areas, for which Local Advisory Committees will be appointed to advise the Executive Committee and the Director on the local educational needs of the areas. (Part II, Clauses 9 to 12).

5. District Committees under Ordinance No. 1 of 1920 will cease to exist and their places will be taken by purely advisory bodies. Such Local Advisory Committees will be

constituted for each area administered by a Municipal Council and an Urban District Council established under Ordinance No. 11 of 1920, or for two or more District Councils. Outside such limits, the Island will be divided into areas for each of which a Local Advisory Committee will be appointed. (Clause 9). Clauses 10 to 12 provide for the constitution and powers of such bodies. (See also Clause 32 (2) IV (f)).

Under Part III when a Municipal Council or an Urban District Council or two or more District Councils should in the opinion of the Governor after consultation with the Executive Committee of Local Administration contribute towards the cost of the educational needs in its area to the satisfaction of the Executive Committee, Part III will be proclaimed as applying to that Municipal Council or District Council or District Councils. (Clause 13). A Village Committee area which seeks to come in under this scheme can also be proclaimed by the Governor. Under Clause 16, provision is made for the preparation of a local education scheme which will be effective only when it has been approved by the Executive Committee.

7. This scheme will give effect to the agreement between the Executive Committee and the urban local authority or the village committee as to the amount of the contribution from the local authority or village committee and the extent of the recognition to be accorded to such local authority or village committee in the control of the educational matters in the area administered by it.

Part III also provides for the delegation under the scheme by the urban local authority or village committee of all its powers and duties to a committee called the local education authority and even to a smaller sub-committee called the local education sub-committee of its powers and duties in respect of a subdivision of the administrative limits of the local authority. (Clause 18).

8. The rest of Part III—

- (a) provides for the constitution of such local education authorities and local education sub-committees (Clauses 19 and 20);
- (b) gives the necessary powers to levy an education rate, if necessary (Clause 15); to acquire land for educational purposes (Clause 23); to borrow money (Clause 22); to keep separate accounts and have a separate audit (Clauses 22 and 25).

9. Under Clause 26, a member of a local education authority or a local education sub-committee and the officers and servants appointed under Part III are made public servants under the Penal Code, and under Clause 27 the power of making rules for the general guidance of such bodies constituted under Part III is conserved in the Executive Committee. (Clause 32 (2), IV (f)).

10. Part IV of the Bill is based on Part III of Ordinance No. 1 of 1920, but power is given to the Director to appoint a manager to an Assisted School and even to remove him. Clauses 30 and 31 have been re-drafted and the necessary sanctions inserted for breaches of the sections.

11. Part V relates to the rule-making powers of the Executive Committee. The Executive Committee is the sole rule-making authority under the Bill and will therefore make rules on subjects on which District Committees made rules under the repealed Ordinance. The various subjects on which the Executive Committee can make rules have been carefully considered and an effort made to meet every contingency, *e.g.*, provision for the medical treatment of school children and the supply of free meals and free books to poor children and the giving of relief to poor parents. The exceptional limitation of age in the case of Tamil girls has been removed owing to the altered outlook on education of that community.

12. Under Clause 32 (2) I (b) the Executive Committee can make rules making grants to Assisted schools dependent on managers and teachers complying with certain conditions and even liable to forfeiture when managers fail to carry out any of the obligations cast on them by the Ordinance or the rules.

13. Part VI is based on Part V of Ordinance No. 1 of 1920, with certain modifications; for instance, the expressions "estate" and "labourer" have been defined for the purposes of that Part.

14. Part VII is based on Part VI of Ordinance No. 1 of 1920, but provision has been made for the transitory stage when the powers of District Committees and District School



Committees will be transferred to and will vest in the Director on the repeal of Ordinance No. 1 of 1920 and No. 8 of 1907. It appears that in Kurunegala, District School Committees are still functioning.

As regards officers and servants employed by District Committees and District School Committees, they will cease to be so employed on the repeal of Ordinance No. 8 of 1907, and No. 1 of 1920, but provision is made for the continuance of their employment under the Department of Education but on the basis of a monthly contract terminable on a month's notice.

15. The reference to the Youthful Offenders Ordinance, 1886, in Clause 45 will require modification if the new Juvenile Offenders Ordinance, now with the Home Ministry, becomes law before this Ordinance is passed.

16. Clause 42 has been redrafted giving power to the Director to refuse grants to schools built or opened without his approval.

17. Clause 43 has been extended to cover compulsory medical inspection of school and Clauses 48 and 49, based on English models, have been inserted to meet unforeseen contingencies.

Colombo, May 23, 1938.

C. W. W. KANNANGARA,  
Minister for Education.

### MINUTE.

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

L. D.—O 14/37

**An Ordinance to amend the Public Trustee Ordinance,  
No. 1 of 1922.**

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

1 This Ordinance may be cited as the Public Trustee Amendment Ordinance, No. of 1938.

Short title.

2 Section 6 of the Public Trustee Ordinance, No. 1 of 1922, (hereinafter referred to as "the principal Ordinance"), is hereby amended in sub-section (1) thereof, by the addition of the following paragraph at the end of that sub-section :—

Amendment of section 6 (1) of Ordinance No. 1 of 1922.

"(g) As the next friend or guardian for the action under Chapter XXXV of the Civil Procedure Code, 1889, of any minor or lunatic referred to in section 14A (1)."

No. 2 of 1889.

3 The following new section is hereby inserted immediately after section 14 of the principal Ordinance and shall have effect as section 14A of that Ordinance :—

Insertion of new section 14A in the principal Ordinance.

14A. (1) The Public Trustee may be appointed as the next friend or guardian for the action—

Appointment of Public Trustee as next friend or guardian *or* *item* of a minor or lunatic in certain cases.

(a) of any minor having an interest in any estate of which the Public Trustee is trustee, or of any minor in respect of whose property a certificate of curatorship has been duly granted to the Public Trustee ; or

(b) of any lunatic having any interest in any estate of which the Public Trustee is trustee or of any lunatic of whose estate the Public Trustee is the duly appointed manager ;

and all the provisions of Chapter XXXV of the Civil Procedure Code, 1889, shall apply accordingly, subject to the following modifications :—

- (i) it shall not be necessary for the Public Trustee to support by affidavit any application made by him for his appointment as next friend or guardian for the action, as the case may be ;
- (ii) it shall not be necessary for any person to aver or for the court to be satisfied that the proposed next friend or guardian for the action, as the case may be, is a fit or proper person or an adult of sound mind or full age ; and
- (iii) it shall not be necessary for the minor or lunatic to whom the application relates to appear before the court in person when any such application is made, unless the court otherwise directs.

(2) No appointment of the Public Trustee under this section shall be made without his consent.

(3) All costs incurred by the Public Trustee in any action as the next friend or guardian for the action of any minor or lunatic shall be a charge upon the property, both movable and immovable, of that minor or lunatic, as the case may be.

(4) In this section "lunatic" means a person adjudged to be of unsound mind under the provisions of any written law for the time being in force.

Amendment of section 38 of the principal Ordinance.

4 Section 38 of the principal Ordinance is hereby amended by the addition at the end of that section of the following new sub-section :—

"(5) Rules made under this Ordinance may provide that interest shall be charged on all or any of the fees due under this section and may specify the circumstances in which and the rate at which such interest shall be charged."

#### *Objects and Reasons.*

The Committee appointed to inquire into the operation of the Public Trustee Ordinance, No. 1 of 1922, recommended in their Report (Sessional Paper XXI of 1936), that legal provision be made whereby the Public Trustee could, with his consent, be appointed as the next friend or guardian *ad litem* of minors and lunatics with whose estates the Public Trustee's Department is concerned or who have an interest in such estates.

2. The object of Clauses 2 and 3 of this Bill is to amend the Public Trustee Ordinance so as to give effect to the recommendation of the Committee. The Bill further provides that where the Public Trustee himself applies to the court to be appointed as next friend or guardian *ad litem*, it will not be necessary that he should support his application by affidavit, or that the minor or lunatic should appear personally in court on the occasion of the application.

3. Although provision exists in the rules made under the principal Ordinance for the payment by instalments of fees charged for certain work done by the Public Trustee, there is no provision whereby interest can be charged on fees which are overdue and unpaid. This results in a loss to general revenue. The object of Clause 4 of this Bill is to enable rules to be made prescribing the circumstances in which and the rate at which interest may be charged on fees which are overdue and unpaid.

Legal Secretary's Office,  
Colombo, May 30, 1938.

J. C. HOWARD,  
Legal Secretary.

#### MINUTE.

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

N 142/37

**An Ordinance to provide for the constitution of a Ceylon branch of the Royal Naval Volunteer Reserve, and for placing at the disposal of His Majesty's Royal Navy for general service officers and men of the Ceylon Naval Volunteer Force and ships of war maintained by Ceylon.**

WHEREAS by the Colonial Naval Defence Act, 1931, (21 Geo. 5 Ch. 9.), it is provided that the legislature of any colony may, with the approval of His Majesty in Council, make provision, either in conjunction with any other colony or not, for maintaining vessels of war; and that where the legislature of any Colony has made provision for raising a force for the naval defence of the colony within its territorial waters, that legislature may, with the approval of His Majesty in Council, further make such provision regarding the discipline and service of officers and men of that force as is contained in this Ordinance :

And whereas by the said Act it is further provided that His Majesty in Council may, on such conditions as he thinks fit, authorise the Admiralty to accept any offer made by the Government of a colony to place at His Majesty's disposal for general service in the Royal Navy, vessels of war maintained, or officers or men of such force as aforesaid raised, by the colony :

And whereas by the Naval Volunteer Ordinance, No. 1 of 1937, provision has been made for raising a force for the naval defence of Ceylon called the Ceylon Naval Volunteer Force :

And whereas by an Order of His Majesty in Council dated the 29th day of July, 1937, intituled "The Ceylon Naval Defence Order, 1937," approval has been given to the making by the legislature of Ceylon of provision as aforesaid :

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

- |  |   |
|--|---|
| <p>1 This Ordinance may be cited as the Ceylon Royal Naval Volunteer Reserve (General Service) Ordinance, No. of 1938, and shall come into operation on such date as the Governor may appoint by Proclamation published in the Gazette.</p>  | <p>Short title and date of operation.</p>                                       |
| <p>2 (1) The Governor may provide, either in conjunction with any other Colony or not, for maintaining and using vessels of war out of such moneys as may be voted for the purpose by the State Council.</p> <p>(2) The Governor may, by agreement with such other Colony, if any, offer to place at His Majesty's disposal for general service in the Royal Navy, any such vessel of war.</p> | <p>Vessels of war.</p>  |
| <p>3 Any training or service for which any officer or other member of the Force is liable under the Naval Volunteer Ordinance, No. 1 of 1937, may take place in any ship, establishment or other place without the limits of Ceylon or its territorial waters whether belonging to Ceylon or not.</p>  | <p>Service and training outside Ceylon.</p>                                     |
| <p>4 All enactments and regulations for the time being in force for the enforcement of discipline in the Royal Navy shall apply, with the modifications set out in the Schedule, to the officers and men of the Force during such period as they are under instruction, training or exercise or in actual service, whether ashore or afloat or within or without the limits of Ceylon.</p>     | <p>Enactments and regulations in force in Royal Navy to apply to the Force.</p> |
| <p>5 All or any of the officers or men of the Force may be entered on the express terms of accepting general service in the Royal Navy in emergency, and officers and men so entered shall form part of the Royal Naval Volunteer Reserve under the designation of the "Ceylon Royal Naval Volunteer Reserve".</p>   | <p>Entry for service with Royal Navy in emergency.</p>                          |
| <p>6 The Governor may offer to place at His Majesty's disposal for general service in the Royal Navy such officers and men of the Force as have been entered on terms of accepting such service.</p>   | <p>General service of the Force in the Royal Navy.</p>                          |
| <p>7 (1) In this Ordinance, "the Force" means the Ceylon Naval Volunteer Force.</p> <p>(2) This Ordinance shall be read and construed as one with the Naval Volunteer Ordinance, No. 1 of 1937.</p>  | <p>Interpretation.</p>  |

#### SCHEDULE.

1. Where in the Naval Discipline Act and in the King's Regulations and Admiralty Instructions, in so far as the same are applicable to the officers or men of the Force, any power or duty is vested in or imposed upon the Admiralty, such power or duty shall, in respect of the Force, be vested in, exercised or performed by the Governor.

2. Where not inconsistent with the subject matter of the Naval Discipline Act, the word "Ceylon" shall be read in place of the words "England" or "United Kingdom" or "United Kingdom of Great Britain and Ireland" wherever they occur.

3. Section 52 of the Naval Discipline Act shall be read as if after the words "from time to time be allowed by the Admiralty" there were inserted the following :—

"(12) Fine not exceeding forty shillings. In default of payment of a fine imposed under this Section, the fine shall be levied and recovered by the distress and sale of the movable property of the offender and a warrant issued by the officer in command of the Force may be executed at any place in Ceylon as though it were a warrant issued by a court of competent jurisdiction under section 312 of the Criminal Procedure Code, 1898. Every such penalty shall be applied as the Governor may direct."

4. In section 56 (2) of the Naval Discipline Act "the officer in command of the ship to which the offender belongs" shall be read to include the officer in command of the Force.

5. Sections 90A and 98A of the Naval Discipline Act shall not apply to the officers and men of the Force.

6. Wherever fines are mentioned in the Naval Discipline Act, the corresponding amounts in local currency shall be substituted for the amounts expressed therein in British currency.

*Objects and Reasons.*

Section 2 of the Colonial Naval Defence Act, 1931, provides that where the legislature of any Colony has made provision for raising a force for the naval defence of the colony within its territorial waters, that legislature may, with the approval of His Majesty in Council, further provide that all or any of the officers and men of that force shall, if entered on the express terms of accepting general service in the Royal Navy in emergency, form part of the Royal Naval Volunteer Reserve.

2. The Naval Volunteer Ordinance, No. 1 of 1937, established a naval volunteer force in Ceylon. By the Ceylon Naval Defence Order, 1937, promulgated by His Majesty in Council on July 29, 1937, and published in *Gazette* No. 8,338 of December 17, 1937, approval was given for the establishment in Ceylon of a branch of the Royal Naval Volunteer Reserve. The same Order in Council authorised the Admiralty to accept any offer made by the Government of Ceylon to place at His Majesty's disposal for general service in the Royal Navy any vessel of war maintained out of funds provided by Ceylon or by Ceylon in conjunction with some other Colony.

3. The object of this Bill is to empower His Excellency the Governor to make arrangements for the maintenance of a vessel of war for general service in His Majesty's Navy out of such funds as the State Council may provide for the purpose and to enable officers and men of the Ceylon Naval Volunteer Force who are entered on the express terms of accepting general service in the Royal Navy in emergency to form part of the Royal Naval Volunteer Reserve under the designation of the Ceylon Royal Naval Volunteer Reserve.

4. Clause 3 of the Bill provides for the training and service outside Ceylon of members of the Ceylon Naval Volunteer Force who will, during the period of such training and service, be subject to the enactments and regulations for the time being in force for the maintenance of discipline in the Royal Navy subject to the modifications set out in the Schedule to the Bill.

Chief Secretary's Office,  
Colombo, May 25, 1938.

G. S. WODEMAN,  
Acting Chief Secretary.

MINUTE.

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

**An Ordinance to provide for the partition and sale of land held in common.**

TABLE OF SECTIONS.

1. Short title and date of operation.  
*Institution of partition action and incidental procedure.*
2. Institution of partition action.
3. Appropriate court.
4. Requisites of plaint.
5. Necessary parties.
6. Application for registration of *lis pendens* and copies of summons to be filed with plaint.
7. Rejection of plaint for failure to comply with section 6.
8. Schedule of costs of survey to be prescribed and exhibited in each court.
9. Procedure on acceptance of plaint.
10. Dismissal of action for failure to deposit survey costs and Fiscal's fee.
11. Registrar of Lands to report to court registration of *lis pendens*.  
*Issue, service and publication of summons.*
12. Issue of summons.
13. Form of summons.
14. Service of summons.
15. Exhibition and publication of summons on the land.  
*Preliminary survey.*
16. Commission to survey land to be issued simultaneously with summons.
17. Survey.
18. Return of surveyor's commission to court.

*Procedure in court after appearance of parties.*

19. Parties to file in court statements of claim and documents of title.
20. Issue of copies of plaint to parties.
21. Consequence of failure to file material document of title.
22. Extension of corpus sought to be partitioned.
23. Notice of trial.
24. Trial.
25. Interlocutory decree.
26. Nature of orders which may be incorporated in an interlocutory decree.

*Commissions.*

27. Commission for sale or partition.
28. Form of commission.
29. Costs of commission.

*Commissions for partition.*

30. Execution of commission for partition.
31. Scheme of partition.
32. Return of commission to court.
33. Manner of partition.
34. Compensation and owelty.
35. Date to be fixed for consideration of scheme of partition.
36. Confirmation or modification of scheme of partition.

*Commissions for sale.*

37. Commission for sale. Valuation of land.
38. Method of valuation and revision by court.
39. Conditions of sale.
40. Notice of sale.
41. Sale.
42. Return to court.
43. Deposit of purchase money in court.
44. Disposal of objections to sale.
45. Confirmation of sale.
46. Certificate of sale.
47. Distribution and withdrawal of money in court.

*Special provisions relating to decrees.*

48. Finality of interlocutory decree.
49. Action for damages by person who is not a party to partition action.
50. Effect of interlocutory decree on servitudes, trusts, &c.
51. Lease or mortgage of undivided share attaches to share allotted to lessor or mortgagor in decree.
52. Registration of final decree and certificate of sale.
53. Delivery of possession of land to parties and purchasers.
54. Power of court to enforce its decrees and orders.

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55. Right of paraveni nilakaraya to institute partition action.
56. Person entitled to permanent interest in plantations is co-owner.
57. Right of pre-emption.
58. Partition of land belonging to partnerships.
59. Personal representatives cannot institute partition action.
60. Partition action in respect of land subject to a life-interest or usufruct.

*Costs.*

61. Recoverable costs.
62. Proctor's costs.
63. Costs of contest.
64. Costs of proving title of defaulting party.
65. One set of costs for parties jointly interested.
66. Security for costs of parties.
67. Costs to be a charge on the share of party from whom they are due.
68. Costs in cases not expressly provided for.
69. Costs of one partition action to be paid before another is instituted.

*Miscellaneous.*

70. Sale, lease or mortgage *pendente lite* is void.
71. Appeals.
72. Proof of deeds.
73. Addition of parties before interlocutory decree.
74. Compulsory sale of small shares.
75. Result of non-prosecution of partition action.
76. Penalty for dishonest non-disclosure of interested persons.
77. Penalty for false return, &c., by surveyor.
78. Surveyors.
79. Partition deeds exempt from stamp duty.
80. *Casus omissus* to be governed by Civil Procedure Code.
81. Forms to be prescribed by rules of court.
82. Schedules may be amended by rules of court.
83. Representation of estate of deceased party or co-owner.
84. Pending actions.
85. Interpretation.
86. Repeals.

**An Ordinance to provide for the partition and sale of  
land held in common.**

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

Short title and date of operation.	<p><b>1</b> This Ordinance may be cited as the Partition Ordinance, No.        of 1938, and shall come into operation on such date as the Governor may appoint by Proclamation published in the Gazette.</p>
Institution of partition action.	<p style="text-align: center;"><i>Institution of partition action and incidental procedure.</i></p> <p><b>2</b> Where land belongs in common to two or more co-owners, any one or more of them may institute an action for the partition or sale of the land.</p>
Appropriate court.	<p><b>3</b> (1) Every partition action shall be instituted by presenting a written plaint to the court within the local limits of whose jurisdiction is situated, in whole or in part, the land which is the subject matter of the action.</p> <p>(2) Where land is situated within the local limits of the jurisdiction of more than one court, or where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more courts any land is situated, any one of those courts may, if satisfied that the land is situated within the territorial jurisdiction of more than one court or that there is ground for the alleged uncertainty, as the case may be, record a statement to that effect and thereupon proceed to entertain and dispose of any partition action relating to the land ; and such action so entertained and disposed of shall for all purposes be deemed to be and to have been duly instituted in a court of competent jurisdiction.</p> <p>(3) Nothing herein contained shall affect or be deemed or construed to affect any provision of any written law other than this Ordinance whereby any pecuniary or other limitation has been prescribed in respect of the jurisdiction of any court.</p>
Requisites of plaint.	<p><b>4</b> In addition to the particulars required to be stated in a plaint by the Civil Procedure Code, 1889, every plaint presented to a court for the purpose of instituting a partition action shall contain the following particulars :—</p> <p>(1) the name, if any, and the extent and value of the land ;</p> <p>(2) a description of the land by reference to physical metes and bounds or by reference to a sketch, map or plan which shall be appended to the plaint ;</p> <p>(3) the names and addresses of all persons who are entitled or claim to be entitled to any right, share or interest in the land or to any improvements made or effected on or to the land, and the nature and extent of any such right, share, interest or improvements, so far as such particulars are known to the plaintiff or can be ascertained by him ; and</p> <p>(4) a statement setting out, with reference to a pedigree which shall be appended to the plaint, the devolution of the title of the plaintiff and, where possible, the devolution of the title of every other person disclosed in the plaint as a person entitled or claiming to be entitled to the land or to any right, share or interest therein.</p>
Necessary parties.	<p><b>5</b> The plaintiff shall include in his plaint as necessary parties to the partition action all persons who, to his knowledge, are entitled or claim to be entitled—</p> <p>(1) to any right, share or interest in the land, whether vested or contingent, and whether by way of mortgage, lease, usufruct, servitude, trust, <i>fidei commissum</i>, life interest, or otherwise ; and</p> <p>(2) to any improvements made or effected on or to the land.</p>
Application for registration of <i>lis pendens</i> and copies of summons to be filed with plaint.	<p><b>6</b> (1) The plaintiff in every partition action shall, together with the plaint, file in court—</p> <p>(a) an application in the form prescribed by the Registration of Documents Ordinance, No. 23 of 1927, for the registration of the partition action as a <i>lis pendens</i> under that Ordinance ; and</p> <p>(b) a summons duly completed in the form prescribed by this Ordinance together with the copies and translations thereof required for service on the parties and exhibition on the land as hereinafter provided.</p> <p>(2) Every application for registration of a <i>lis pendens</i> shall be filed in court in duplicate and shall be accompanied by the fees prescribed by the Registration of Documents Ordinance,</p>

No. 23 of 1927, for the registration of the *lis pendens* to which the application relates; and notwithstanding anything to the contrary in that Ordinance, it shall not be necessary to insert in the form of application for registration of the *lis pendens* a reference to the number of the partition action.

7 Where the plaintiff in a partition action fails to comply with the requirements of section 6, the court shall reject the plaint:

Rejection of  
plaint for  
failure to  
comply with  
section 6.

Provided that nothing herein contained shall affect the right of the court to reject the plaint on any ground specified in section 46 of the Civil Procedure Code, 1889.

8 It shall be the duty of every court to prescribe from time to time a schedule of rates (hereinafter referred to as "costs of survey") approved by the court for the survey of lands which may be the subject matter of partition actions instituted in that court; and such schedule shall be affixed to the notice-board or otherwise conspicuously exhibited in the court-house of each such court.

Schedule of  
costs of survey  
to be prescribed  
and exhibited  
in each court.

9 (1) Where the plaint in a partition action is accepted, the court shall forthwith—

Procedure on  
acceptance of  
the plaint.

- (a) cause to be inserted in each form of application for registration of the *lis pendens* a reference to the number assigned by the court to that partition action and transmit the application in duplicate together with the fee to the Registrar of Lands of each land registry in which the *lis pendens* is to be registered;
- (b) fix a date on or before which the plaintiff shall deposit in court—
  - (i) the costs of survey, and
  - (ii) a sum of five rupees as Fiscal's fee for the performance of the additional duties assigned to the Fiscal under section 15.

10 Where the plaintiff in a partition action fails to deposit the survey costs or Fiscal's fee on or before the date fixed for the purpose, the court shall dismiss the partition action:

Dismissal of  
action for  
failure to  
deposit survey  
costs and  
Fiscal's fee.

Provided that such dismissal shall not operate as a bar to the institution of another partition action by the same plaintiff in respect of the same land.

11 A Registrar of Lands to whom an application for registration of a *lis pendens* has been transmitted by the court, shall, upon registration of the *lis pendens*, return to the court the duplicate of the form of application duly endorsed in the manner prescribed by the Registration of Documents Ordinance, No. 23 of 1927.

Registrar of  
Lands to report  
to court  
registration of  
*lis pendens*.

#### *Issue, service and publication of summons.*

12 (1) When the court is satisfied that the *lis pendens* has been duly registered and that the survey costs and Fiscal's fee have been duly deposited, the court shall order that the copies of the summons together with the translations thereof, if any, which were filed by the plaintiff together with the plaint, shall be issued to the Fiscal for service on the defendants named in the plaint.

Issue of  
summons.

(2) When making an order under sub-section (1), the court shall appoint a date for the appearance of the defendants in court and for compliance with the other requirements of the summons.

(3) The date appointed by the court under sub-section (2) shall be inserted in each copy or translation of the summons by the secretary, clerk, or other officer of the court before such copy or translation is issued to the Fiscal for service.

(4) If the language of any defendant is Sinhalese or Tamil, there shall be attached to the copy of the summons issued for service on that defendant a translation of the summons in Sinhalese or Tamil, as the case may be.

(5) It shall not be necessary to attach to the summons a copy of the plaint or a concise statement thereof.

13 Every summons shall be substantially in the form prescribed in the First Schedule and shall require the person to whom it is addressed—

Form of  
summons.

- (a) to appear in court on a date to be specified in the summons;
- (b) to file a statement of claim if he denies any of the averments in the summons; and
- (c) to disclose the name of any person (not named in the summons as a party to the partition action) who, to his knowledge, has any right, share or interest in the land.

Service of  
summons.

**14** Whenever it is practicable, the service of summons shall be made on the defendant in person; but if, after reasonable exertion, the Fiscal is unable to effect personal service, he shall so report to the court, and it shall be competent for the court to direct any other mode of service as a substitute for personal service.

Exhibition and  
publication of  
summons on  
the land.

**15** In addition to the service of summons on each of the defendants, the Fiscal shall give publicity to the contents and purport of the summons—

- (1) by causing a copy thereof and if the language of any defendant is Sinhalese or Tamil a translation thereof in Sinhalese or Tamil, as the case may be, to be affixed and exhibited in a conspicuous position on the land to which the summons relates; and
- (2) by beat of tom-tom on the land as well as at some public place in the neighbourhood of the land or in the village in which the land is situated:

Provided that the court may, by order communicated to the Fiscal, direct that in any particular case it shall not be necessary to give publicity to the contents and purport of the summons by beat of tom-tom in the manner provided in paragraph (2).

*Preliminary survey.*

Commission to  
survey land to  
be issued  
simultaneously  
with summons.

**16** (1) When the court orders the issue of summons to the Fiscal for service on the defendant, the court shall at the same time order the issue of a commission to a surveyor directing him to survey the land and to make due return to his commission on a date to be fixed therein which shall not be later than the date specified in the summons for the appearance of the defendant:

Provided that the court may, in its discretion, fix a date later than that specified in the summons, or, if necessary, extend the date fixed in the commission from time to time as the circumstances of the case may require.

(2) Every commission issued to a surveyor shall be substantially in the prescribed form and shall have attached thereto a copy of the plaint.

Survey.

**17** (1) On receipt of his commission, the surveyor shall fix a date for commencing the survey of the land referred to therein and shall, at least ten days before that date, issue notice in writing to all the parties named in the plaint that he proposes to commence the survey of the land on that date.

Every such notice shall be in the prescribed form and may be sent by post addressed to the place of residence of any party as stated in the plaint or may be delivered personally to any party by messenger.

(2) In addition to the written notice required to be issued to the parties under sub-section (1), the surveyor shall, at least ten days before the date fixed by him for commencing the survey, notify by beat of tom-tom on the land the fact that he will commence his survey on that date.

Return of  
surveyor's  
commission  
to court.

**18** (1) The surveyor shall duly execute the commission issued to him and shall, on or before the date fixed for the purpose, make due return thereto in the prescribed form and shall forward to the court—

(a) a report, verified by affidavit, stating:—

- (i) the dates on which and the manner in which notice of survey was issued to the parties;
- (ii) the nature and value of the land surveyed and of any buildings, trees, fences, wells or plantations thereon;
- (iii) the name and address of any claimant (not being a party to the action) who, at the time of the survey, preferred any claim to the land, and the nature of his claim;
- (iv) the result of his investigation of any particular fact or matter specifically referred to in the terms of his commission; and
- (v) any fact, matter or circumstance relating to his survey or to the land surveyed which, in his opinion, may be necessary for, or prove of assistance in, the determination of the partition action.

(b) a plan of the land surveyed showing—

- (i) the boundaries of any divisions of the land subsisting at the time of his survey;
- (ii) the location of all buildings and landmarks;



- (iii) the trace or course of any road, path or stream within the boundaries of the land surveyed; and
- (iv) any other physical feature of or on the land which, in his opinion, may be necessary for, or prove of assistance in, the determination of the partition action.

(c) his draft plan and a certified copy of his field notes.

(2) The documents referred to in paragraphs (a), (b), and (c) of sub-section (1) may, without further proof, be used as evidence of the facts stated or appearing therein at any stage of the partition action: Provided, however, that the court may, on the application of any party to the action, order that the surveyor shall be summoned and examined orally on any point or matter arising on or in connexion with any such document or on any statement of fact therein or any relevant fact which is alleged by any party to have been omitted therefrom.

*Procedure in court after appearance of parties.*

19 On the returnable date specified in the summons issued in any partition action or on such later date as the court may fix for the purpose—

- (1) any party may file in court a statement of claim setting out the nature and extent of his right, share or interest in the land;
- (2) every party shall disclose to the court the name of every person, not being a party to the action, who to his knowledge, has any right, share or interest in the land;
- (3) every party shall file in court all deeds or documents in his possession which relate to the land and are material for the purpose of establishing any right, share or interest therein.

Parties to file in court statements of claim and documents of title.

20 Every person named in the plaint, or desiring to be added, as a party to a partition action, shall be entitled, on payment of a fee of one rupee, to obtain a copy of the plaint in the action.

Issue of copies of plaint to parties.

21 Every party who fails duly to file in court under section 19 any deed or document referred to in paragraph (3) of that section shall be liable to pay the costs incurred by any person in procuring such deed or document, whether by process of court or otherwise, or in furnishing to the court proof of the contents of any such deed or document:

Consequence of failure to file material document of title.

Provided that no such liability shall arise unless an order in that behalf is made by the court on being satisfied that such deed or document is material for the purpose mentioned in paragraph (3) of section 19.

22 If, after the institution of a partition action, the court finds that the land described in the plaint is only a portion of a larger land which should have been made the subject matter of that partition action, the court may proceed with the partition action as though it had been instituted in respect of that larger land, and, for such purpose, may make such order as the circumstances of the case may require.

Extension of corpus sought to be partitioned.

23 The court shall fix the date of trial and shall cause notice of the date of trial to be posted and exhibited in a conspicuous position on the land at least ten days before the date so fixed.

Notice of trial.

24 On the date fixed for the trial of a partition action or on any other date to which the trial may be adjourned, the court shall examine the title of each party and shall hear and receive evidence in support thereof and shall try and determine all issues of law and fact arising in the action in regard to the right, share or interest of each party to or in the land.

Trial.

25 At the conclusion of the trial, or on some future date then fixed, the court shall pronounce judgment in open court and shall enter an interlocutory decree in accordance with the findings in that judgment.

Interlocutory decree.

26 (1) in any interlocutory decree entered in a partition action, the court may order—

- (a) a partition of the land;
- (b) a sale of the land;
- (c) a sale of a share or portion of the land and a partition of the remainder;
- (d) that any portion of the land representing the share of any particular party only shall be demarcated and separated from the remainder of the land;

Nature of orders which may be incorporated in an interlocutory decree.

- (e) that any specified portion of the land shall continue to belong in common to specified parties or to a group of parties ;
- (f) that any share shall remain unallotted.

(2) Where in an interlocutory decree the court has ordered the sale of a share or portion of the land and for the partition of the remainder, the court may allot to each of the parties such share in the money to be realised by the sale of the share or portion of land ordered to be sold or in the remainder ordered to be partitioned, or in both such money and land, as the court may consider just in the circumstances of each case.

(3) Where in an interlocutory decree the court has ordered that any share shall remain unallotted, it shall be competent for the court to direct in the decree that such shares shall be sold for the recovery of costs and other charges payable by the owner of such share, whether ascertained or not.

#### *Commissions.*

Commission for sale or partition.

27 (1) At the time of pronouncing judgment the court shall order the issue of a commission for sale, or for partition, or for both sale and partition, as the case may require, to a person to be named in the order and shall fix the returnable date of the commission in the hearing of such parties as are present at the time and shall require them to take notice of the date so fixed :

Provided that in a case where an interlocutory decree is entered for the sale of the land, the court may, instead of ordering the issue of a commission order the Fiscal to sell the land in accordance with the provisions of this Ordinance.

(2) Where, in the interlocutory decree, order is made for the partition of the land or any portion thereof, the commission under sub-section (1) shall be issued to the surveyor who made the preliminary survey unless the court directs that such commission shall be issued to some other surveyor.

(3) The court may from time to time extend the returnable date referred to in sub-section (1).

Form of commission.

28 Every commission issued under section 27 shall be substantially in the prescribed form and shall have attached thereto—

- (1) a copy of the interlocutory decree ; and
- (2) a statement showing the place of residence of each party to whom a share has been allotted in the interlocutory decree.

Costs of commission.

29 (1) Where the court orders a commission to be issued, the court shall—

- (a) determine the amount to be deposited as the costs of the commission according to a schedule of rates which it shall be the duty of the court to prescribe ;
- (b) fix a date on or before which the costs so determined shall be deposited in court ; and
- (c) specify the party by whom the costs are to be deposited.

(2) If the costs are not deposited in court by the party specified on or before the date fixed under sub-section (1) or within such further time as may be allowed by the court on application made in that behalf, the court may order or permit any other party to deposit the costs and fix a date for that purpose.

(3) If the costs are not deposited by the party ordered or permitted so to do under sub-section (2) on or before the date fixed for the purpose or within such further time as may be allowed, the action may be dismissed.

(4) The party depositing costs under this section shall be given credit therefor in such manner as the court may direct.

#### *Commissions for partition.*

Execution of commission for partition.

30 (1) On receipt of a commission to partition the land, the surveyor shall fix a date for partitioning the land and shall at least thirty days before that date, issue notice in writing to each party to whom a share has been allotted in the interlocutory decree that the land will be partitioned on that date.

(2) Every notice under sub-section (1) shall be in the prescribed form and may be sent by post addressed to the place of residence of each such party as shown in the statement attached to the commission or may be delivered personally to any such party by messenger.

(3) In addition to the written notice required to be issued under sub-section (1), the surveyor shall, at least ten days before the date fixed for partitioning the land, notify by beat of tom-tom on the land the fact that the land will be partitioned on that date.

(4) The date fixed under sub-section (1) for partitioning the land may from time to time be altered to a later date by the surveyor by written notice addressed to the parties mentioned in that sub-section. Every such notice may be served in the manner provided in sub-section (2) and a copy of the notice shall, in addition, be exhibited in a conspicuous position on the land.

**31** The surveyor shall, on the date or altered date fixed for partitioning the land, proceed to the land and prepare a scheme of partition in conformity with the interlocutory decree and with any special directions contained therein or in his commission.

Scheme of partition.

**32** (1) The surveyor shall make his return to the commission on or before the returnable date or the extended returnable date (as the case may be) fixed under section 27 and together with such return he shall transmit to the court :—

Return of commission to court.

- (a) the plan of partition prepared by him ;
- (b) a certified copy of his field notes ; and
- (c) a report explaining the manner in which the land has been partitioned in execution of the commission and showing the names of the parties, the nature and extent of their respective shares and interests, the dates on which notices were issued to such parties for the purpose of partitioning the land and the date on which the land was partitioned.

(2) The surveyor shall inform the parties present at the partition of the date on which this commission will be returned to court and shall state in his report under paragraph (c) of sub-section (1) the names of the parties whom he shall have so informed.

**33** (1) The surveyor shall so partition the land that each party entitled to compensation in respect of improvements effected thereto or of buildings erected thereon, will, so far as is practicable, be allotted that portion of the land which has been so improved or built upon, as the case may be.

Manner of partition.

(2) The surveyor shall not be obliged to allot to each party an aliquot share of the superficial area of the land, but shall endeavour to avoid the necessity for the payment of compensation, by extending or restricting, as the case may be, the area to which each party would be entitled under the interlocutory decree.

**34** (1) Where under any scheme of partition prepared by a surveyor, payment has to be made to or by any party to a partition action in respect of compensation for improvements to the land or of owelty, the amount of such payment shall, in the first instance, be assessed by the surveyor.

Compensation and owelty.

(2) The amount finally awarded by the court in respect of compensation for improvements or of owelty shall be a charge on the portion of the land finally allotted to the party made liable for the payment of such compensation or owelty, as the case may be.

**35** (1) On the return of the surveyor's commission to court, the court shall fix a date for the consideration of the scheme of partition proposed by the surveyor.

Date to be fixed for consideration of scheme of partition.

(2) Notice of the date fixed under sub-section (1) shall be given to all parties who are not present when that date is so fixed and have not received notice of the returnable date of the commission under sections 27 and 32 (2).

(3) A notice under sub-section (2) shall be served by the Fiscal in the manner provided in section 14 for the service of summons.

**36** On the day fixed under section 35, or on any later date which the court may fix for the purpose, the court may, after hearing those parties who desire to be heard, either confirm or modify the scheme of partition proposed by the surveyor and enter final decree accordingly or may order a sale.

Confirmation or modification of scheme of partition.

#### *Commissions for sale.*

**37** Where the court orders the issue of a commission for the sale of the land, the court shall fix a date on or before which the person to whom the commission is issued under that section or the Fiscal, as the case may be, shall forward to the court a valuation of the land decreed to be sold.

Commission for sale. Valuation of land.

**38** The valuation shall show separately and in detail the appraised value of the land and of the improvements (if any) thereon, and shall, when received, be approved or revised by the court after such inquiry as it shall consider necessary.

Method of valuation and revision by court.

- Conditions of sale.** 39 After approving or revising the valuation of the land, the court shall issue such orders as it may consider necessary for the conduct of the sale and shall prescribe the conditions of sale including the manner in which notice that the land will be sold shall be given and published by the person responsible for the sale.
- Notice of sale.** 40 The person responsible for the sale shall thereupon give notice that he will, on a date to be specified in such notice, sell the land in terms of his commission and in accordance with the orders issued and the conditions prescribed by the court.
- Sale.** 41 On the day specified in the notice referred to in section 40, the person responsible for the sale shall put the land up for sale among the co-owners thereof, at the value determined by the court under section 38 in terms of his commission and in accordance with the orders issued and the conditions prescribed by the court under section 39, and, if no co-owner is willing to purchase the land at that value or at any higher value, the land shall be offered for sale to the general public and shall be sold to the highest bidder.
- Return to court.** 42 The person responsible for the sale shall thereupon make his return to the court and shall inform the court of the amount for which the land was sold and the name and address of the purchaser thereof and shall pay into court the money deposited with him by the purchaser.
- Deposit of purchase money in court.** 43 The purchaser shall pay into court the money realised at the sale of the land in conformity with the orders issued and the conditions prescribed by the court under section 39 : Provided that the purchaser, if a co-owner of the land, shall be allowed to take credit for his share of that money.
- Disposal of objections to sale.** 44 Any objection to a sale held under section 41 shall be preferred to court within a period of thirty days reckoned from the date of the sale and the court shall, after inquiry, make such order as the court may deem necessary or as the circumstances of the case may require.
- Confirmation of sale.** 45 The court shall confirm a sale if, within the period of thirty days referred to in section 44, no objection is preferred against the sale, or if an objection duly preferred under that section is not upheld by the court after inquiry.
- Certificate of sale.** 46 Upon the confirmation of a sale, the court shall issue a certificate of sale to the purchaser and the certificate so issued under the hand of the Judge of the court shall be conclusive evidence of the purchaser's title to the land as on the date of the certificate.
- Distribution and withdrawal of money in court.** 47 (1) The court shall cause to be prepared a schedule of distribution showing the amount which each party is entitled to withdraw out of the money deposited in court.  
(2) No money shall be withdrawn from court by any party until the schedule of distribution has been approved by the court.  
(3) A party entitled to compensation in respect of a plantation or a building or otherwise shall share proportionately in any gain or loss, as the case may be, resulting from the sale of the land at a figure above or below the value determined by the court under section 38.
- Finality of an interlocutory decree.** 48 An interlocutory decree entered under section 25 shall, subject to the decision of the Supreme Court on any appeal which may be preferred therefrom, be good and sufficient evidence of the title of any person to whom any right, share or interest has been awarded therein and shall, subject as aforesaid, be final and conclusive for all purposes against all persons whomsoever, whatever right, title or interest they have or claim to have in the land and notwithstanding any omission or defect of procedure or in the proof of title adduced before the court or the fact that all persons concerned are not parties to the partition action in which such interlocutory decree has been entered.
- Action for damages by person who is not a party to partition action.** 49 Any person, not being a party to a partition action, whose rights in the land have been extinguished by the interlocutory decree entered in the action, may, by separate action, recover damages from any party to the action by whose act, whether of commission or omission, such damages may have accrued.

*Special provisions relating to decrees.*

- 50 Save as is hereinafter in section 51 provided, an interlocutory decree entered under section 25 shall not affect any right in, to or over the land to which such decree relates whether arising or resulting from any lease, trust, mortgage or servitude, or the right of any fidei commissary in that land, unless any such right has been expressly dealt with in such decree.
- 51 If, at the time an interlocutory decree for partition or sale is entered, any undivided share of the land to which that decree relates is subject to a mortgage or lease, the rights of the mortgagee or of the purchaser of the mortgaged share under a mortgage decree, or of the lessee, shall be limited to the share allotted in such decree to the mortgagor or the lessor, as the case may be.
- 52 The court shall transmit to the Registrar of Lands of the district in which any land is situated a copy of every final decree and of every certificate of sale relating to or affecting that land and the Registrar shall register each such document in the appropriate folios.
- 53 (1) Every party to a partition action who has been duly declared to be entitled to any land by any final decree entered under this Ordinance and every person who has purchased any land at any sale held under this Ordinance and has obtained a certificate of sale in respect of the land so purchased, shall be entitled to obtain from the court, on application made by motion in that behalf, an order for the delivery to him of possession of the land.
- (2) An order made by the court under sub-section (1) shall be deemed to be an order for delivery of possession made under section 287 of the Civil Procedure Code, 1889, and may be enforced in like manner as an order made under that section.
- 54 Every court exercising jurisdiction in any partition action shall have full power to give effect to every order or decree made or entered in that action and to punish as for contempt any person who disobeys any such order or obstructs or resists any person acting under the authority of the court or in virtue of any power conferred upon him by this Ordinance.
- Special cases.*
- 55 (1) Every paraveni nilakaraya shall, for the purposes of this Ordinance, be deemed to be a co-owner of the paraveni panguwa or any divided portion of that panguwa of which he is a shareholder, and shall be entitled to institute a partition action in order to obtain a decree for the partition or sale of that panguwa :
- Provided, however, that the rights of the proprietor of the nindagama shall in no way be affected by the partition or sale of any panguwa under this Ordinance and provided further that any such sale shall be confined to the co-owners.
- (2) In this section, the expressions "paraveni nilakaraya" and "paraveni panguwa" have the meanings respectively assigned to them in section 3 of the Service Tenures Ordinance, 1870.
- 56 Every person having any permanent interest in any plantation on any land shall be deemed to be a co-owner of that land for the purpose of enabling him to institute a partition action ; and, for such purpose, notwithstanding the provisions of Ordinance No. 7 of 1840, a permanent interest in a plantation growing on a land may be established by proof of any agreement with the owner thereof, or of any custom recognised in the locality in which such land is situated.
- 57 In any partition action to which both the owner of the soil and a person having a permanent interest in any plantation on the land are parties, it shall be competent for the owner of the soil on the date of his first appearance in court or so soon thereafter as he shall become aware of the permanent interest of that person in the plantation, to claim a right of pre-emption in respect of that person's interest in the plantation, inclusive of any buildings erected and improvements effected by that person on the land, at a just valuation appraised by a person appointed by the court for that purpose :
- Provided that such valuation shall be subject to the approval of the court and that the amount thereof may be increased or reduced by the court.
- 58 (1) A co-owner shall not be entitled to institute a partition action in respect of a land if there exists a valid deed of partnership which binds such co-owner to cultivate that land or to raise crops or produce thereon for the purpose of selling such crops or produce or for carrying on any trade,

Effect of interlocutory decree on servitudes, trusts, &c.

Lease or mortgage of undivided share attaches to share allotted to lessor or mortgagor in decree.

Registration of final decree and certificate of sale.

Delivery of possession of land to parties and purchasers.

Power of court to enforce its decrees and orders.

Right of paraveni nilakaraya to institute partition action.

No. 4 of 1870.

Person entitled to permanent interest in plantations is a co-owner.

Right of pre-emption.

Partition of land belonging to partnerships.

manufacture or occupation relating to or connected with the joint ownership of that land, if any of the terms, conditions or covenants of that deed of partnership will be avoided, infringed or violated by a partition or sale of the land.

(2) The provisions of sub-section (1) shall not apply in any case in which the right to institute a partition action has been expressly reserved in the deed of partnership referred to in that sub-section.

(3) Any partition, sale or conveyance of any land in respect of which there exists such a deed of partnership as is described in sub-section (1), shall be void unless effected or executed with the consent of all persons bound by that deed of partnership.

Personal representatives cannot institute partition action.

59 No executor or administrator shall institute a partition action in respect of any land belonging to the estate which he is administering.

Partition action in respect of land subject to a life-interest or usufruct.

60 The owner of a land which is subject to a life interest or usufruct in favour of another person may institute an action for the partition or sale of that land under this Ordinance with the prior consent of the person entitled to such life-interest or usufruct.

#### Costs.

Recoverable costs.

61 (1) In any partition action, costs in respect of the following items shall, unless the court otherwise directs, be borne by the parties to the action in the proportion of their respective rights to the land :—

- (a) the costs of the Fiscal, the surveyor or the person to whom a commission for partition or sale of the land has been issued under the Ordinance ;
- (b) the costs of drawing and serving every summons or notice issued by the court.

(2) The costs referred to in sub-section (1) shall be recoverable in the same action by the person who has incurred such costs.

Proctor's costs. Second Schedule.

62 A Proctor's costs in a partition action shall be taxed at the rates set out in the Second Schedule.

Costs of contest.

63 In the event of a contest, the court shall fix the amount of the costs of such contest having regard to the value of the share or interest in dispute ; and the court shall by order direct how and by whom such costs shall be paid.

Costs of proving title of defaulting party.

64 Where a party omits to prove his title, the court may permit one of the other parties to prove the title of the party so in default. The amount allowed by the court as the costs of proving such title, shall be specified in an order and shall be recoverable in the same manner as the costs under section 61.

One set of costs for parties jointly interested..

65 When parties are jointly interested in a contest, the court shall ordinarily allow only one set of costs for all such parties ; and, in the event of an appeal by them to the Supreme Court, only one amount shall be fixed by way of security for costs.

Security for costs of parties.

66 (1) It shall be lawful for the court at any stage of a partition action to order any party to give security for costs if the court is of opinion that the party has been guilty of unreasonable delay in presenting or prosecuting his claim, or that he lives outside the jurisdiction of the court or for other good and sufficient cause of a like nature.

(2) In making an order under sub-section (1) the court may impose such terms and penalties as it may deem proper or necessary for the purpose of securing obedience to or compliance with its order.

Costs to be a charge on the share of party from whom they are due.

67 All costs due from any party to a partition action shall be a charge on the share of land or money allotted to that party in that action and shall take priority over any charge due from him in respect of owelty or compensation.

Costs in cases not expressly provided for.

68 Costs shall ordinarily be borne by the person who incurs such costs except in such cases where it is expressly provided by this Ordinance that any costs or proportion of such costs shall be borne, or may be ordered by the court to be borne, by some other person.

Costs of one partition action to be paid before another is instituted.

69 No person shall be permitted to institute a partition action under this Ordinance unless and until he has paid all costs and charges due from him in respect of any previous action instituted by him under this Ordinance.

*Miscellaneous.*

70 (1) After the institution of a partition action and the registration of that action as a *lis pendens* under the provisions of the Registration of Documents Ordinance, No. 23 of 1927, no voluntary alienation, lease or hypothecation of any share of the land or of any undivided interest therein shall be made or effected until the final determination of that partition action by dismissal thereof, or by the entry of a final decree or by the issue of a certificate of sale.

Sale, lease or mortgage *pendente lite* is void.

(2) Any voluntary alienation, lease or hypothecation made or effected in contravention of the provisions of sub-section (1) shall be void.

(3) Nothing in this section shall apply to a conveyance executed by the court as hereinafter provided in section 74.

71 Save as otherwise expressly provided in this Ordinance, an appeal shall lie to the Supreme Court against any order or decree made or entered by any court in any partition action; and all the provisions of the Civil Procedure Code, 1889, shall apply accordingly to any such appeal as though an order or decree made or entered in a partition action were an order or decree made or entered in any action as defined for the purposes of that Code.

Appeals.

72 It shall not be necessary in any proceedings under this Ordinance to adduce formal proof of the execution of any deed which, on the face of it, purports to have been duly executed, unless the genuineness of that deed is impeached by a party claiming adversely to that deed, or unless the court requires such proof.

Proof of deeds.

73 The court may at any time before interlocutory decree is entered in a partition action add as a party to the action, on such terms as to costs as the court may order—

Addition of parties before interlocutory decree.

- (1) any person who, in the opinion of the court, should be, or should have been made, a party to the action; or
- (2) any person claiming an interest in the land who applies to be added as a party to the action.

74 (1) Where the share of land claimed by any party in a partition action is in the opinion of the court small in extent or in value and the court considers that any other party to the action may reasonably be given an opportunity of purchasing such share, the court may, at any state of the action before interlocutory decree is entered, give such other party the option to purchase such share at such valuation and on such terms as may be approved by the court. If such other party complies with such terms and deposits in court the value of such share together with a draft conveyance and the stamp duty payable thereon, the court shall execute a conveyance of such share in favour of the other party as purchaser; and such conveyance shall for all purposes be deemed to be sufficient to vest in such purchaser the right, title and interest of the party whose share in the land is the subject matter of the conveyance.

Compulsory sale of small shares.

75 No partition action shall abate by reason of the non-prosecution thereof, but, if a partition action is not prosecuted with reasonable diligence after the court has endeavoured to compel the parties to bring the action to a termination, the court may dismiss the action: Provided, however, that in a case where a plaintiff fails or neglects to prosecute a partition action, the court may, by order, permit the defendant to prosecute that action and may substitute him as plaintiff for that purpose.

Result of non-prosecution of partition action.

76 Every party to a partition action who, knowing that any person has any interest in the land, fraudulently or dishonestly fails or omits to disclose the fact that such person has such an interest in the land or that such person is a necessary party to the partition action, shall be guilty of a contempt of court punishable in accordance with the provisions of Chapter LXV of the Civil Procedure Code, 1889.

Penalty for dishonest non-disclosure of interested persons.

77 Any surveyor to whom a commission for the partition of any land has been issued who makes any statement which he knows or has reasonable cause to believe to be false in the return made by him to such commission, or inserts in the plan of partition prepared by him or in his field notes any signs, marks or particulars which he knows or has reasonable cause to believe to be false shall be guilty of an offence and shall, on conviction after summary trial before a Police Magistrate, be liable to a fine not exceeding one thousand rupees, or to imprisonment of either description for a period not exceeding one year, or to both such fine and imprisonment.

Penalty for false return, &c., by surveyor.

- Surveyors.**           **78** Every court having jurisdiction to try a partition action shall from time to time prepare in consultation with the Surveyor-General—
- (a) a list of surveyors to whom commissions may be issued under this Ordinance; and
- (b) a schedule of the fees payable to such surveyors.
- Partition deeds exempt from stamp duty.**           **79** All partition deeds shall be exempt from stamp duty and shall be deemed to have been so exempt from the twenty-first day of December, nineteen hundred and nine, being the date on which section 2 of Ordinance No. 10 of 1897 was repealed by the Stamp Ordinance, 1909.
- Causa ommissa to be governed by Civil Procedure Code.**           **80** In any matter or question of procedure not provided for in this Ordinance, the procedure laid down in the Civil Procedure Code, 1889, in a like matter or question shall be followed by the court, if such procedure is not inconsistent with the provisions of this Ordinance.
- Forms to be prescribed by rules of court.**           **81** Rules of court may be made under section 53 of the Courts Ordinance, 1889, prescribing the forms to be used for the purposes of this Ordinance. Where no form has been prescribed in any particular case or for any particular purpose such form shall be used as the court may approve for use in that case or for that purpose.
- Schedules may be amended by rules of court.**           **82** Rules of court may be made under section 53 of the Courts Ordinance, 1889, amending any provision in the First Schedule or the Second Schedule to this Ordinance or substituting a new Schedule for either of those Schedules.
- Representation of estate of deceased party or co-owner.**           **83** Where a party to a partition action or any other person entitled, or claiming or alleged to be entitled, to any right, share or interest in the land, dies after the institution of that action, the court may, on the *ex parte* application of any other party appoint a person to represent the estate of the deceased for the purposes of the action if the court is satisfied, after such inquiry as the court deems fit, that such appointment is necessary or desirable for the purpose of enabling the court to proceed with the action with a view to its speedy determination or that the grant of representation to the deceased is likely to be unduly delayed; and any decree entered, order made, partition or sale effected or thing done in that action shall, if the person so appointed is a party to the action, be for all purposes as valid and effectual as if the executor or administrator of the deceased or the person lawfully entitled to the right, share or interest of the deceased were a party to that partition action.
- Pending actions.**           **84** Every action for the partition or sale of landed property instituted under the provisions of Ordinance No. 10 of 1863 and pending in any court on the date of the commencement of this Ordinance shall, so far as circumstances permit, be continued and proceeded with to final decree under the provisions of this Ordinance:
- Provided, however, that any such court may order that any such action shall be continued as if this Ordinance had not been enacted, to any stage of such action which the court may specify in its order, if the court is satisfied, on the application of any party to such action, that there are reasonable grounds for making such an order.
- Interpretation.**           **85** In this Ordinance, unless the context otherwise requires—
- “land” when used with reference to a partition action means the land which is the subject matter of that partition action;
- “partition action” means an action instituted under this Ordinance for the partition or sale of land which belongs in common to two or more co-owners;
- “prescribed” means prescribed by or under this Ordinance or by rule of court made under section 53 of the Courts Ordinance, 1889;
- “surveyor” means a surveyor whose name is included in a list prepared under section 78 and for the time being in force.
- Repeals.**           **86** The Ordinances enumerated in the first column of the Third Schedule are hereby repealed to the extent specified in the corresponding entries in the third column of that Schedule.



## FIRST SCHEDULE.

(Section 13.)

Form of Summons.

In the District Court of \_\_\_\_\_.

Court of Requests

No. \_\_\_\_\_.

A. B. .... Plaintiff.

Vs.

1. C. D.

2. E. F.

3. G. H. .... Defendants.

The above-named plaintiff having instituted the above styled action for the partition/sale of the land called \_\_\_\_\_ in extent \_\_\_\_\_ situated at \_\_\_\_\_ in the \_\_\_\_\_ pattu of \_\_\_\_\_ Korale, and bounded as follows:—

North \_\_\_\_\_

East \_\_\_\_\_

South \_\_\_\_\_

West \_\_\_\_\_

on the footing that the said land originally belonged to K. Y. \_\_\_\_\_ and is now owned in the shares set out in the Schedule annexed hereto.

You are hereby required to appear in this court on the \_\_\_\_\_ day of \_\_\_\_\_, 19—, at 10 o'clock of the forenoon and to state whether you dispute the accuracy of the share allotted to you or to any other party and whether you are aware of any other person having a right in the said land.

You are also required on the date aforesaid to produce and file in court all deeds, documents and plans relating to the said land which are in your possession and are material for the purpose of establishing any right, title, claim or interest to or in the land.

You are warned that any person withholding information is liable to be punished.

## SECOND SCHEDULE.

(Section 61.)

Costs recoverable *pro rata*.

	Rs.	c.
For drawing summons (including Schedule) ..	2	50 each
Notice or other process ..	1	0 ..
For every copy or translation of a summons, notice or other process :		
If the number is 10 or under ..	0	20 ..
If the number is over 10 and under 50 ..	0	15 ..
Over 50 ..	0	10 ..

Provided that in no case shall the aggregate cost of the issue of any number of copies or translations of any summons, notice or other process exceed a sum of ten rupees.

## THIRD SCHEDULE.

(Section 85.)

Repeals.

Ordinance.	Short title.	Extent of repeal.
1. No. 10 of 1863 ..	—	.. The whole
2. No. 10 of 1897 ..	—	.. Sections 1, 5 and 6
3. No. 37 of 1916 ..	The Partition (Amendment) Ordinance, No. 37 of 1916	The whole

*Objects and Reasons.*

The object of this Bill is to repeal the Partition Ordinance, No. 10 of 1863, and to substitute in its place a comprehensive code providing more speedy and less expensive procedure for the partition and sale of lands held in common.

2. The provisions of Ordinance No. 10 of 1863 have received extensive judicial interpretation during a period of nearly seventy-five years. The Bill has accordingly been so drawn as to reproduce the essential features of the old enactment so that this considerable body of judge-made law may continue to be of use and assistance in the construction and interpretation of the new Ordinance. The opportunity has, however, been taken to substitute shorter clauses and simpler language for the lengthy sections and archaic phraseology of the Ordinance of 1863. "Land", for instance, is used throughout the Bill instead of the expression "landed property".

3. Effect has been given in the Bill to some of the recommendations embodied in the draft appended to the report of the Commission appointed in 1921 "to enquire into the question of providing a more speedy and less expensive method of partitioning lands" (Sessional Paper No. 1 of 1921), to most of the decisions of Government on the recommendations made in the Final Report of the Land Commission (Sessional Papers XVIII and XXXV of 1929), and to all but one of the principal recommendations made in the Report of the Judicial Commission (Sessional Paper VI of 1936). The only major recommendation of the Judicial Commission which has not been given effect to in the Bill is the proposal that questions of fact in an action for the partition of rural land should be decided on the land itself by a special Commissioner appointed for the purpose. Representations were received that such procedure would result in additional expense and further delay and that unless the Commissioner was a trained lawyer competent to decide issues of fact according to the rules of evidence, it would be dangerous, having regard to the fact that a decree in a partition action is a decree *in rem*, to entrust the determination of such issues to any person other than the Judge of the court in which the action is pending. It is however proposed, in a separate Bill, to give effect to the recommendation of the Judicial Commission that the Courts Ordinance should be amended to permit a Judge to hold court at any convenient place within his territorial jurisdiction (Paragraph 120 of Sessional Paper VI of 1936).

4. Clauses 2 to 11 make provision for the institution of a partition action, the determination of the appropriate court and other incidental procedure. A partition action is defined (Clause 85) as an action for the partition or sale of land held in common and the expression "land" when used with reference to a partition action means the land which is the subject matter of that action. Under the new law, a partition action can be instituted only in the court which has territorial jurisdiction over the land (Clause 3). Together with the plaint, the plaintiff must file in court an application for the registration of the action as a *lis pendens*, a pedigree showing the devolution of the title of the co-owners, and copies of the summons intended for service on the defendants (Clause 6). The application for registration of the *lis pendens* must be accompanied by the fee prescribed by the Registration of Documents Ordinance, No. 23 of 1927, for registration of the *lis* in the books of the appropriate Land Registry. If the plaint is accepted, the court appoints a date for deposit of the costs of survey and a fee of five rupees to defray the cost of the Fiscal in giving publicity to the action by affixing a notice in a conspicuous position on the land and by beat of tom-tom (Clauses 9 and 15). Each court will prescribe its own scale of costs of survey (Clause 8). Clauses 55 to 60 deal with special cases, *e.g.*, the right of a *paraveni nilakaraya* to institute an action in respect of the *paraveni panguwa*.

5. Clauses 12 to 15 deal with the issue, service and publication of the summons. Service, whenever practicable, must be made on the defendant in person and, in addition, a copy of the summons has to be exhibited in a conspicuous position on the land. The summons is in special form (First Schedule) and contains all the averments material to the action. The costs recoverable for drawing the summons and for service of process are set out in the Second Schedule and have been kept low in order to make the procedure as inexpensive as possible. As no copy of the plaint will be attached to the summons, no costs will be recoverable for the preparation of such copies. Prior to the decision of the Supreme Court in the case of *Wickremasinghe v. Seneviratne*, (1936), 28 N. L. R. 225, one of the chief grounds of complaint was that exorbitant charges were included in bills of costs for the preparation of copies of the plaint required to be served on defendants in accordance with the requirements of the Civil Procedure Code. Parties, however, can obtain copies of the plaint from the court, if they require such copies, on payment of a fee of one rupee for each such copy (Clause 20).

6. Clauses 19 to 26 deal with the procedure in court up to the stage of interlocutory decree. The provision (Clause 19) that every party must, on the returnable date of the summons, file in court all deeds and documents of title, is new and has been introduced with the object of saving the delay occasioned by applications for time to examine and produce such deeds and documents. One of the most important of the new Clauses is Clause 26 which deals with the nature of the orders which may be incorporated in an interlocutory decree. It will be possible for the court to order a partition

of one portion of the land and a sale of the remainder or to direct that any specified portion shall continue to be owned in common or that any share shall remain unallotted in a case where it is not possible to determine who is the person entitled to that particular share. One of the difficulties of the existing law is the necessity to prove the title to the whole corpus. Under the new law, it will be possible for the decree to leave unallotted a share of the land to which title was not established in the course of proceedings before the court. Such share, however, may be sold for the recovery of costs payable by the unascertained owner.

7. Clauses 27 to 29 deal generally with commissions for sale or partition and the costs of such commissions. Here too, each court will prescribe its own schedule of rates and the costs of the commission will be deposited in court before the commission is issued. It is considered that the knowledge that his fees are deposited in court and can be drawn on execution of his commission will be an inducement to the Commissioner to expedite his work. Clauses 30 to 36 deal with procedure for execution of commissions for partition and Clauses 37 to 47 make corresponding provision in regard to the execution of commissions for sale.

8. Clauses 48 to 54 contain special provisions relating to decrees. Following the recommendation of the Judicial Commission, the interlocutory decree has been made the conclusive decree for the purposes of the Ordinance, subject, of course, to any appeal which may be preferred therefrom to the Supreme Court. Minor irregularities of procedure will not, in future, vitiate an interlocutory decree. The scope of the action for damages has been widened (Clause 49). Clause 53 makes provision for the issue by the court of orders for the delivery of possession to parties who have been declared entitled to specified portions of the land in a decree for partition or who have purchased the land or a portion thereof under a decree for sale. In addition, a general power has been conferred on the court in order that it should be in a position to make all such orders as may be necessary to implement or give effect to its own decrees (Clause 54).

9. Clauses 61 to 69 deal with costs in partition actions. Proctors' costs are to be taxed at the rates set out in the Second Schedule but this Schedule may be revised from time to time by Rules of Court made by the Chief Justice and the other Judges of the Supreme Court under section 53 of the Courts Ordinance (Clause 82). Clause 61 sets out the costs which will be borne *pro rata*. The costs of a contest will be awarded according to the order of the Court which has to take into consideration the value of the *share or interest in dispute* in fixing the amount of such costs. Where parties are jointly interested they will ordinarily be allowed only one set of costs (Clause 65). The other provisions of this part of the Bill are designed to minimise the burden of costs and to secure that the amount of such costs shall in all cases be commensurate with the value of the corpus sought to be partitioned or sold.

10. Clauses 70 to 80 deal with miscellaneous matters most of which have been the subject matter of important judicial decisions. Clause 70 reproduces the material provisions of section 17 of Ordinance No. 10 of 1863. It will be observed that the Clause becomes operative after the registration of the *lis pendens*. Clause 71 dispenses with the necessity for the formal proof of deeds. Clause 76 gives effect to one of the recommendations originally made by the Land Commission and makes it an offence for a person knowingly to omit to disclose the claim of a person interested in the land. Clause 77 penalises a surveyor who makes a false return to court. Clause 79 preserves the exemption of partition deeds from stamp duty. A *casus omissus* will be governed by the provisions of the Civil Procedure Code so far as the provisions of that Code are not inconsistent with those of the new Ordinance.

11. The provisions of the new law will apply to pending actions so far as circumstances permit (Clause 84) but the Court, in the exercise of its discretion, may in any particular case direct by order that the old law shall continue to be applicable to the action to any stage which the court may specify in such order.

Legal Secretary's Chambers,  
Hulftsdorp,  
Colombo, June 1, 1938.

J. C. HOWARD,  
Legal Secretary.

## PASSED ORDINANCES.

4/7/6 (F. S. O.)

Ordinance enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof.

No. 19 of 1938.

An Ordinance further to amend the Income Tax Ordinance, 1932.

A. CALDECOTT.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

Short title.

1 This Ordinance may be cited as the Income Tax Amendment Ordinance, No. 19 of 1938.

Amendment of section 45 (4) of Ordinance No. 2 of 1932.

2 Section 45 of the Income Tax Ordinance, 1932, is, with effect from the twenty-fifth day of February, 1938, (being the date of the commencement of the Income Tax Amendment Ordinance, No. 3 of 1938), amended in sub-section (4), by the substitution for paragraph (b) (ii) of the following :—

“(ii) any additional tax charged under sub-section (6) or sub-section (6A) of section 20.”

Passed in Council the Eighteenth day of May, One thousand Nine hundred and Thirty-eight.

E. W. KANNANGARA,  
Clerk of the Council.

Assented to by His Excellency the Governor the Twenty-sixth day of May, One thousand Nine hundred and Thirty-eight.

E. R. SUDBURY,  
Secretary to the Governor.

## SUPREME COURT NOTICES.

## Notification.

IN terms of the provisions of Public Service Regulation 29, His Lordship the Chief Justice has been pleased to appoint Mr. C. Veenasitamby, Tamil Interpreter of the Supreme Court, to officiate, in addition to his own duties, as a Deputy Registrar of the Supreme Court from June 1, 1938, until the termination of the Criminal Sessions of the Supreme Court at Galle, in respect of the First Southern Circuit, 1938.

The Registry, Supreme Court,  
Colombo, May 31, 1938.

By order,  
GUY O. GRENIER,  
Registrar, Supreme Court.

## The Ceylon (Non-Domiciled Parties) Divorce Rules, 1936.

IN pursuance of the provisions of rule 2 (3) of the Ceylon (Non-Domiciled Parties) Divorce Rules, 1936, it is hereby notified by order of the Chief Justice of the Supreme Court of Ceylon that the Honourable Mr. Francis Arnold Moseley, Puisne Justice of the Supreme Court, has been approved by the Lord Chancellor as a Judge appointed to exercise jurisdiction under the Indian and Colonial Divorce Jurisdiction Act, 1926, as applied to Ceylon by the Ceylon Divorce Jurisdiction Order in Council, 1936, in addition to the Judges set out in the notification appearing in the Ceylon Government Gazette No. 8,254 of October 30, 1936.

The Registry, Supreme Court,  
Colombo, May 26, 1938.

GUY O. GRENIER,  
Registrar, Supreme Court.

to court for directions as to what he should do in regard to the said property. A meeting of the creditors will be held on June 21, 1938, to consider what steps should be taken with regard to the right, title, and interest of the insolvent in respect of the said property and to authorize a sale of the said right, title, and interest, if any, of the insolvent in the said property.

By order of court, A. C. BELING,  
May 27, 1938. Secretary.

9 In the District Court of Colombo.  
No. 4,990. In the matter of the insolvency of B. R. J. Insolvency. Office of Nuggetta.

NOTICE is hereby given that a meeting of the creditors of the above-named insolvent will take place at a sitting of this court fixed for June 21, 1938, to declare a dividend in this case.

By order of court, A. C. BELING,  
May 26, 1938. Secretary.

9 In the District Court of Colombo.  
No. 5,171. In the matter of the insolvency of Sahib Thamby Mohamed Samsudeen of 13, Chalmers road, Wellawatta.

NOTICE is hereby given that a meeting of the creditors of the above-named insolvent will take place at the sitting of this court on June 14, 1938, to approve conditions of sale.

By order of court, A. C. BELING,  
June 11, 1938. Secretary.

## 20 NOTICES OF INSOLVENCY.

In the District Court of Colombo.

No. 4,669. In the matter of the insolvency of M. Abdul Insolvency. Office of Fourth Cross street, in Colombo, insolvent.

THE insolvent became entitled to an undivided half share of the land and premises bearing Nos. 94 and 98, Second Cross street, in Colombo, on September 20, 1937, on the death of one Pitchaimmal.

The insolvent has disclaimed title to it and the property is the subject matter of a partition action in case No. 1,093 of the District Court of Colombo. The assignee has applied

In the District Court of Colombo.

No. 5,183. In the matter of the insolvency of (1) Abdul Latiff Abdul Karim, and (2) Mohamed Dada, both carrying on business under the name, style, and firm of "M. A. Latiff & Co." at 738, Hill street, Dehiwala.

WHEREAS A. K. Aboobucker of 32, Galle road, Wellawatta, has filed a petition for the sequestration of the estate of the above-named A. L. M. Karim and M. Dada, under the Ordinance No. 7 of 1853 : Notice is hereby given that the said court has adjudged the said A. L. M. Karim and A. Dada insolvents accordingly ; and that two public

sittings of the court, to wit, on June 28, 1938, and on August 2, 1938, will take place for the said insolvents to surrender and conform to, agreeably to the provisions of the said Ordinance, and for the taking of the other steps set forth in the said Ordinance, of which creditors are hereby required to take notice.

By order of court, A. C. BELING,  
Secretary.

May 26, 1938.

In the District Court of Colombo.

No. 5,184. In the matter of the insolvency of Beruwela Kapuge Jinasena of 501, Dematagoda in Colombo.

NOTICE is hereby given that a meeting of the creditors of the above-named insolvent will take place at the sitting of this court on June 28, 1938, for the grant of a certificate of conformity to the insolvent.

By order of court, A. C. BELING,  
Secretary.

May 25, 1938.

In the District Court of Colombo.

No. 5,222. In the matter of the insolvency of Mudugamuwahewawasam Peiris Karunaratne of 339, 2nd Division, Maradana, Colombo.

WHEREAS the above-named M. P. Karunaratne has filed a declaration of insolvency, and a petition for the sequestration of his estate has been filed by A. C. Perera of 216, Old Kolonnawa road, Colombo, under the Ordinance No. 7 of 1853: Notice is hereby given that the said court has adjudged the said M. P. Karunaratne insolvent accordingly; and that two public sittings of the court, to wit, on June 21, 1938, and on August 2, 1938, will take place for the said insolvent to surrender and conform to, agreeably to the provisions of the said Ordinance, and for the taking of the other steps set forth in the said Ordinance, of which creditors are hereby required to take notice.

By order of court, A. C. BELING,  
Secretary.

May 24, 1938.

In the District Court of Kandy.

No. 2,147. In the matter of the insolvency of L. B. Nawaratne of Kadugannawa.

NOTICE is hereby given that a meeting of the creditors of the above-named insolvent will take place at the sitting of this court on July 8, 1938, to consider the granting of a certificate of conformity to the above-named insolvent.

By order of court, R. MALALGODA,  
Secretary.

May 27, 1938.

In the District Court of Kandy.

No. 2,149. In the matter of the insolvency of Don Francis Emmanuel Ranasinghe of West Hall Group, Kotmalie,

NOTICE is hereby given that a meeting of the creditors of the above-named insolvent will take place at the sitting of this court on July 8, 1938, to consider the granting of a certificate of conformity to the above-named insolvent.

By order of court, R. MALALGODA,  
Secretary.

May 28, 1938.

In the District Court of Nuwara Eliya.

Case No. 26. In the matter of the insolvency of Haltota Liyanage Aloysius Perera of Nuwara Eliya.

NOTICE is hereby given that a sitting of this court will be held on June 24, 1938, for the declaration of dividends.

By order of court, E. DE S. GUNAWARDENE,  
Secretary.

May 24, 1938.

In the District Court of Badulla.

No. 28. In the matter of the insolvency of Nawenna Ana Moona Mohamadu Ossen of Bandarawela.

NOTICE is hereby given that a meeting of the creditors of the above-named insolvent will take place at the sitting of this court on June 28, 1938, to examine the insolvent.

By order of court, A. K. ALVAPILLAI,  
Secretary.

In the District Court of Kegalla.

Insolvency In the matter of the insolvency of Mohamed Jurisdiction. Omer of Kegalla.

No. 74.

WHEREAS the above-named Mohamed Omer has filed a declaration of insolvency together with a petition for the sequestration of his estate, under the Ordinance No. 7 of 1853: Notice is hereby given that the said court has adjudged the said Mohamed Omer insolvent accordingly; and that two public sittings of the court, to wit, on July 27, 1938, and August 31, 1938, will take place for the insolvent to conform to, agreeably to the provisions of the said Ordinance, and for the taking of the other steps set forth in the said Ordinance, of which creditors are hereby required to take notice.

By order of court, R. B. RATNAIKE,  
Secretary.

May 25, 1938.

## NOTICES OF FISCALS' SALES.

### Western Province.

In the District Court of Colombo.

T. D. M. John de Silva of Second Division, Maradana, Colombo ..... 50 ..... Plaintiff.

No. 1,882/S. Vs.

J. D. Dharmasena, carrying on business under the name, style, and firm of J. D. Fernando of Dam street, Pettah, Colombo ..... 24 ..... Defendant.

NOTICE is hereby given that on Saturday, June 25, 1938, at 10 A.M., will be sold by public auction at 99, Dam street, Pettah, Colombo, the following movable property for the recovery of the sum of Rs. 525, with legal interest thereon from June 17, 1937, till payment in full, viz—

In No. 1 *Almirah*.—22 account books (leather bound), 128 books ditto, 25 account books (small), 8 check rolls, 1 lot exercise books.

In No. 2 *Almirah*.—1 lot English books, 1 lot Sinhalese books, and envelopes.

In No. 3 *Almirah*.—40 books (leather bound), 1 lot books (small).

In No. 4 *Almirah*.—12 writing pads, 50 letter clips, 16 letter books (leather bound), 1 lot Sinhalese books, 1 lot sundries.

In No. 5 *Almirah*.—1 lot English and Sinhalese books.

In No. 6 *Almirah*.—1 lot Sinhalese school books.

In No. 7 *Almirah*.—1 lot Sinhalese books (old).

In No. 8 *Almirah*.—1 lot sundries.

In No. 9 *Almirah*.—1 lot stationery.

In No. 10 *Show case*.—4 bottles ink, 6 gum bottles, 4 ink-stands.

One cash register, 2 small show cases with sundries, 2 counters, 2 office tables, 1 small show case, 1 iron safe, 2 tables, 1 pigeon hole, 1 show case, 1 stand.

In Upstairs.

In No. 11 *Almirah*.—1 lot books.

In No. 12 *Almirah*.—1 lot books (old).

In No. 13 *Almirah*.—1 lot books (old).

In No. 14 *Almirah*.—1 lot books (old).

In No. 15 *Almirah*.—1 lot Buddhist religious books (Bana).

In No. 16 *Almirah*.—1 lot books (old).

In No. 17 *Almirah*.—1 lot books (old).

In No. 18 *Almirah*.—1 lot books (old).

In No. 19 *Almirah*.—1 lot books (old).

In No. 20 *Almirah*.—1 lot books (old).

In No. 21 *Almirah*.—250 books.

In No. 22 *Almirah*.—1 lot books (old).

One Underwood typewriter, 2 office tables, 5 chairs, 1 clock, 20 almirahs, 3 show cases, 1 lot sundries.

Fiscal's Office,  
Colombo, June 1, 1938.

J. R. TOUSSAINT,  
Deputy Fiscal.

47 In the District Court of Colombo.  
P. R. V. R. M. Ramanathan Chettiar of Sea street, Colombo ..... 24 ..... Plaintiff.

No. 1,955/S. Vs.

Ahamado Lebbe Marikar Zainabun Natchi executrix of the Last Will of the late Anna Meera Lebbe Marikar Abdul Latiff of Gorakana, Panadure. Defendant.

NOTICE is hereby given that on Thursday, June 30, 1938, commencing at 4 o'clock in the afternoon, will be sold by public auction at the respective premises the right,

title, and interest of the said defendant in the following property, for the recovery of Rs. 1,451·87, with interest on Rs. 1,175 at 15 per cent. per annum from July 19, 1937, till date of decree and thereafter on the aggregate amount of the decree at 9 per cent. per annum till payment in full, viz. :—

1. All that the eastern portion of the land called Godaporagahawatta with the buildings standing thereon, situated at Gorakana in Panadure badda of the Panadure totamune, in the District of Kalutara, Western Province ; and bounded on the north by Palenwatta and Gonnagahawatta, east by cart road, on the south by Gorakagahawatta, and on the west by defined portion of this land ; and containing in extent 1 acre 2 roods and 26 $\frac{3}{4}$  perches and registered under B 127/314.

2. All that southern half part or share of the land called Delgahakanattewattewatuketiya, together with the tiled house standing thereon, situated at Horetuduwa in Panadure badda of the Panadure totamune aforesaid ; and bounded on the north by  $\frac{1}{2}$  part of this land, on the east by portion of this land belonging to the heirs of Neinna Lebbe Marikkar, on the south by portion of this land of Ahamadu Lebbe Marikkar, and on the west by the limits of the portion of the heirs of Siddi Lebbe Marikkar and Rasa Marikkar ; and containing in extent 1 rood and registered in B 228/227.

3. All those three contiguous portions of land called Delgahawatta, with the house standing thereon, situated at Horetuduwa aforesaid ; and bounded on the north-east by field of M. Abraham Fernando, on the south-east by portion of this land of the heirs of deceased U. Lebbe Marikkar, and another portion of this land of M. Abraham Fernando, on the south-west by Government high road, and on the north-west by portion of this land of the heirs of U. Lebbe Marikkar ; containing in extent 2 roods and registered in B 231/247.

Deputy Fiscal's Office,  
Kalutara, May 30, 1938.

H. SAMARASINGHE,  
Deputy Fiscal.

In the District Court of Kalutara.

Mrs. Adeline Wijegoonewardena of Welana in Panadure ..... Plaintiff.  
No. 18,538. 34/ Vs.

(1) Kalutantrige Daniel Peiris Appuhamy, (2) Nestiyage Dona Madalena, both of Bekkegama in Panadure ..... Defendant.

NOTICE is hereby given that on Thursday, July 7, 1938, at 4 o'clock in the afternoon, will be sold by public auction at the premises the following property mortgaged by the defendant with the plaintiff and declared bound and ordered to be sold by the decree entered in the said case for the recovery of Rs. 4,000 and costs 111·40 less Rs. 925.

1. An undivided 493/504 shares of the soil, an undivided 8/252 shares of the trees and plantations of the first plantation, an undivided 4/11 shares of the planter's half share of the trees and plantations of the second plantation, an undivided 1/126 shares of the planter's praveni shares of the trees and plantations planted by the first defendant and all the buildings standing thereon built by the first defendant of the land called Kongahawatta *alias* Kosgahawatta, situated at Bekkegama in Panadure badda of the Panadure totamune, in the District of Kalutara, Western Province ; and bounded on the north by the land belonging to Kodduruatchige Don Allis and by the land belonging to Kalutantrige Silvestry Peiris and others, east by Hepparayahena *alias* Welipennagahawatta, south by a portion of Hepparayahena *alias* Welipennagahawatta, and on the west by Godaporagahawatta and Kahatagahawatta ; and containing in extent 2 acres and 6 perches as per Figure of Survey No. 5,825 dated August 3, 1908, made by Mr. B. M. F. Caldera, Licensed Surveyor.

Deputy Fiscal's Office,  
Kalutara, May 30, 1938.

H. SAMARASINGHA,  
Deputy Fiscal.

51/ Central Province.

In the District Court of Kandy.

Seena Thana Kuna Manu Sidambaram Chettiar of Trincomalee street, Matale ..... Plaintiff.  
No. 47,571. 39/ Vs.

(1) Suppiah Pulle's son Narayana Pulle, (2) Suppiah Pulle's son Sanmugam Pulle, both of Dambulla in Matale ..... Defendants.

NOTICE is hereby given that on Tuesday, June 28, 1938, at 12 o'clock in the noon, will be sold by public auction at

the premises the right, title, and interest of the said defendants in the following property for the recovery of the sum of Rs. 2,000, being the aggregate amount of the principal and interest due in respect of Mortgage Bond No. 2,204 dated September 10, 1930, and attested by F. J. Van Rooyan of Matale, Notary Public, with interest thereon at the rate of 9 per cent. per annum from July 3, 1936, till payment in full, costs of suit and poundage, viz. :—

1. All that land called Urapolawatta *alias* Murupolawatta ; containing in extent 1 acre ; bounded on the east by Crown land, south by M. M. S. Lebbe's land, and on the west and north by high road, situated at Mandandawela in Kohonsiya pattu of Matale South within the limits of the Matale Urban District Council, Central Province, and registered in A 6/259.

2. One undivided half part or share of and in all that land called Meegonkotuwa ; containing in extent on the whole 3 acres 2 roods and 23 perches ; bounded on the east by Crown land, south by Don Davith Wijekoon Mudaliyar's land, west by road leading to Rattota, and on the north by Don Andiris Tilikaratna Muhandiram's land, situated at Mandandawela aforesaid, together with the plantations and everything standing thereon, registered in A 6/260.

4. All that land called Damunugamahulahena ; containing in extent 1 seer kurakkan sowing ; bounded on the east by Katta Lebbe's garden, south by Sekana Lebbe's garden, west by old road, and on the north by Ibrahim Saibo's garden together with the plantations and everything standing thereon, situated at Mandandawela aforesaid, and registered in A 6/262 and now in A 6/259 to 262.

Note.—The aforesaid lands Nos. 1, 2, and 4 are adjoining each other and form one property in extent about 4 $\frac{1}{2}$  acres ; and bounded on the east by Aluwihare Group, south by K. N. Nadaraja's estate, west by high road leading to Rattota, and on the north by Aluwihare Group, situated at Mandandawela aforesaid.

3. One undivided half part or share of and in all that allotment of land in extent 12 perches ; bounded on the east by road leading to Rattota, south by wall of the house of Mohideen Abdul Cader, west by road leading to Trincomalee, and on the north by wall of the house of Tangasaibo Cader Saibo, together with the house bearing assessment No. 377, plantations, and everything standing thereon, situated at Dombagolla in Kohonsiya pattu, Matale South, within the limits of the Matale Urban District Council aforesaid, and registered in A 6/261.

Deputy Fiscal's Office,  
Matale, May 30, 1938.

IAN M. DE SILVA,  
Additional Deputy Fiscal.

31/ Southern Province.

In the District Court of Colombo.

Walker, Sons and Company, Limited of Colombo .. Plaintiff.

No. 7,021. 39/

P. D. S. Wickremasinghe of Ennapitiya Walawwa, Tangalla ..... Defendant

NOTICE is hereby given that on Saturday, June 25, 1938, at 2 o'clock in the afternoon, will be sold by public auction at the premises the right, title, and interest of the said defendant in the following property for the recovery of Rs. 147·80, with legal interest thereon from October 6, 1937, till payment in full and a further sum of Rs. 95·50 per month from date of termination of the hiring until the return of the Chevrolet car but not exceeding Rs. 669 in all, if possession of the said Chevrolet car cannot be delivered then to recover the sum of Rs. 250 being its value together with legal interest on all sums awarded from the date of decree till payment in full and poundage, viz. :—

At Palatuduwa and Godigamuwa.

An undivided 5/12 share of the land called Kammala-bendithuduwa *alias* Pransawatta, in extent 196 acres and 1 rood, partly planted with citronella, exclusive of the citronella boiler thereon, situated in the villages Palatuduwa and Godigamuwa in West Giruwa pattu of the Hambantota District, Southern Province ; and bounded on the north by Badanagehena, Aliyawetunawale, Pinhena and Godigamuwe Lebima, east by Marakolliye Thalabedda and Julgahahena, south by the Gansabhawa road from Marakolliya to Walganeliya, and west by Egodapitiyewela, Alagediyewewa and Kongahahena.

Deputy Fiscal's Office,  
Tangalla, May 24, 1938.

P. D. WEERAMAN,  
Additional Deputy Fiscal.

**Northern Province.**

In the District Court of Jaffna.

Shabhai Miagee of 2nd Gaboo's Lane, Colombo... Plaintiff.

No. 4,292. *Rs. 16* Vs.

- (1) K. Sothinagaretnam of Audit Office, Colombo, and his wife (2) Ahilandanayagi of Victoria road, Jaffna, (3) S. M. Abdulally of Grand Bazaar, Jaffna... Defendants.

NOTICE is hereby given that on Saturday, June 25<sup>th</sup> 1938, at 10 o'clock in the forenoon, will be sold by public auction at the premises the right, title, and interest of the said second defendant for the recovery of Rs. 394.65, with legal interest thereon at the rate of 9 per cent. per annum from April 28, 1933, until payment in full and poundage and charges in the following property, viz. :—

All that piece of land situated at Tellippalai West, in Tellippalai Parish, Valikamam north division of the Jaffna District, Northern Province, called Aralanai, in extent 28 lachams varagu culture with well and other appurtenances; bounded on the east by water channel, north by Thialnayagi, wife of Kathiripillai, west by Kanagasabai Thambiah, and on the south by road.

Fiscal's Office,  
Jaffna, May 30, 1938.S. TURAIYAPPAH,  
for Fiscal.**North-Western Province.**

In the District Court of Kegalla.

Alahakoon Mudiyanseelage Dingiri Banda of Kumbal diwela ..... Plaintiff.

No. 135. *Rs. 28* Vs. *39*

- Kiridana Yasatileke Mayrapaksa Wasala Mudiyanseeralahamillage Dingirianna Kumarihamy of Kegalla, administratrix of the estate of H. S. Manchanayaka of Kegalla, deceased ..... Defendant.

NOTICE is hereby given that on Saturday, July 2, 1938, commencing from the first land at 2.45 in the afternoon, will be sold by public auction at the premises the right, title, and interest of the said defendant in the following property for the recovery of Rs. 838.90, with legal interest thereon from December 19, 1935, till payment in full, costs of suit, and poundage, viz. :—

1. An undivided  $\frac{2}{3}$  share of the land called Kahata-gahayamedawatta, situate at Nattandiya in Meda palata of Pitigal korale south in the District of Chilaw, North-Western Province; and bounded on the north by Gansabha road, east by lands of Thelesinghe Mudiyanseelage Singhappu Gamarala, south by ditch of land of Samel Appuhamy, west by lands of Wijesinghe Abeyekoon Sundara Appuhamy; containing in extent 4 acres.

2. An undivided  $\frac{5}{16}$  share of the land called Ambagahawatta, situate at Nattandiya aforesaid; and bounded on the north by land in plan No. 119,374 and 119,373, east by land in plan No. 117,756, south by land in plan No. 117,756 and 117,827, and west by land in plan No. 117,976; containing in extent 1 acre 3 roods and 7 perches.

3. An undivided  $\frac{2}{5}$  share of Ambagahawatta, situate at Nattandiya aforesaid; and bounded on the north and south by wela, east by Galawita, and west by garden of Babappuhamy and others; containing in extent 3 acres.

4. An undivided  $\frac{2}{3}$  share of Siyambalagahawatta or Madangahawatta, situate at Nattandiya aforesaid; and bounded on the north by field called Divulgahakumbura of Menikrala Velvidanerala and others, south and east by garden of Kapuruhamy Appuhamy Vidanarala, and west by garden of Menikrala Velvidanerala and others; containing in extent about 2 acres.

5. An undivided  $\frac{1}{3}$  share of Ehetugahakumbura, situate at Nattandiya aforesaid; and bounded on the north by garden of Baba Appuhamy and others, east by inniyara of the field of Puchappuhamy and others, south by garden of Telesingha, V. A., and others, and west by inniyara of the field of deceased Singhappuhamy and others; containing in extent about 30 parras of paddy sowing soil.

6. An undivided  $\frac{1}{3}$  share of Bulugahawatta, situate at Nattandiya aforesaid; and bounded on the north-east by lands in plans Nos. 117,857 and 119,375, south-east by lands in plan No. 117,756, south by lands in plan No. 119,372,

south-west by lands in plan No. 119,373, and north-west by lands in plan No. 117,143; containing in extent 1 acre 1 rood and 19 perches.

The above-mentioned 2nd to 6th lands are subject to a mortgage bond for Rs. 3,000 in favour of the father of the present Vidane Arachechi of Nattandiya.

Deputy Fiscal's Office,  
Chilaw, May 31, 1938.I. L. M. SHERIFF,  
Deputy Fiscal.

In the District Court of Colombo.

- (1) Oona Ravanna Mana Raman Chettiar, (2) Ravanna Mana Mena Ravanna Mana Ramanathan Chettiyar, both of Sea street, Colombo ..... Plaintiffs.

No. 3,869. *54* Vs. *Rs. 24*

- (1) Jayasinghe Aratchige Belenis Singho, and Wanasinghe Achchige Maiya Nona, both of Manakulama ..... Defendants.

NOTICE is hereby given that on Thursday, July 7, 1938, commencing at 10 o'clock in the forenoon, will be sold by public auction at the respective premises the following property mortgaged with the plaintiff by bond No. 371 dated November 25, 1929, attested by A. W. Corea of Chilaw, Notary Public, and declared specially bound and executable under the decree entered in the above action and ordered to be sold by the order of court dated November 18, 1937, for the recovery of Rs. 2,500, with interest on Rs. 2,500 at the rate of 9 per cent. per annum from date of decree till payment in full and poundage, viz. :—

**Schedule A (Primary Mortgage).**

All that the land called Kongahawatta, situate at Manakulama in Munnessaram pattu of Pitigal korale north, in the District of Chilaw, North-Western Province, and depicted in plan No. 1,051 dated November 18, 1929, and made by L. R. Jayamanna, Licensed Surveyor; and which said land is bounded on the north by road to Kokkawila and land of Saradi Naide, east by lands of Andi Naide and Punchi Naide, south by lands of Sinno Naide and Samel Naide, and west by Kongahawatta belonging to Belenis Singho; containing in extent 1 acre 1 rood and 10 perches.

**Schedule B (Secondary Mortgage).**

1. An undivided  $\frac{1}{2}$  share from and out of the land called Kongahawatta bearing F 139, situate at Manakulama aforesaid; and bounded on the north by road leading to Kokkawila, east by garden of Ungu Naide and others, south by garden of Naide, and west by road; containing in extent about 2 acres 2 roods and 21 perches, together with the buildings and plantations standing thereon.

2. An undivided  $\frac{2}{3}$  share from and out of the land called Kongahawatta, situate at Manakulama aforesaid; and bounded on the north by road, east by the land of Ungu Naide, south by the garden of Gabriel Appu, and west by Kongahawatta; containing in extent about 1 acre and 1 rood, together with the buildings and plantations standing thereon.

3. An undivided extent of  $1\frac{1}{2}$  acres from and out of the land called Kongahawatta, situate at Manakulama aforesaid; and bounded on the north and west by road leading to Mr. Mel's estate, east by land of Ungu Naide, and south by land of Gabriel Appu and others; containing in extent about 3 acres 1 rood and 30 perches, together with the buildings and plantations standing thereon.

Deputy Fiscal's Office,  
Chilaw, May 30, 1938.I. L. M. SHERIFF,  
Deputy Fiscal.

I, Thomas Arthur Hodson, Fiscal for the Central Province, do hereby appoint Mr. D. W. Wickremasinghe to act as Fiscal's Marshal for the District of Matale with effect from May 25, 1938, until the return of Mr. P. B. Ellepola from leave, under Ordinance No. 4 of 1867, and authorize him to perform the duties and exercise the authority of Marshal, for which this shall be his warrant.

Fiscal's Office,  
Kandy, May 28, 1938.T. A. HODSON,  
Fiscal, Central Province.



**NOTICES IN TESTAMENTARY ACTIONS.**

In the District Court of Colombo.

*Order Nisi.*

Testamentary In the Matter of the Intestate Estate and Jurisdiction. Effects of Henry Walter Goonasekera, No. 8,424. late District Telegraph Inspector, Colombo, deceased.

Clara Goonasekera of Enderley Frazer avenue, Dehiwala ..... Petitioner.

And,

- (1) Bernardine Francis Josephine Jayasuriya nee Goonasekera, (2) Don Anthony Wijesuriya, both of Bandarawatta, Gampaha, (3) Henry Joseph Clarence Goonasekera, (4) Daisybelle Constance Goonasekera, (5) Irene Therese Goonasekera, (6) Christy Walter Goonasekera, (7) Praxedes Ethel Goonasekera, all of Enderley, Frazer avenue, Dehiwala, minors appearing by their guardian *ad litem* (8) Don Charles Benedict Jayakody of Moor road, Wellawatta in Colombo ..... Respondents.

THIS matter coming on for disposal before Waldo Sansoni, Esq., District Judge of Colombo, on May 16, 1938, in the presence of Mr. E. S. A. Ratnayake, Proctor, on the part of the petitioner above named; and the affidavit of the said petitioner dated May 11, 1938, having been read:

It is ordered (a) that the 8th respondent be and he is hereby appointed guardian *ad litem* of the minors, the 3rd, 4th, 5th, 6th, and 7th respondents above named, to represent them for all the purposes of this action, and (b) that the petitioner be and she is hereby declared entitled, as widow of the above-named deceased, to have letters of administration to his estate issued to her, unless the respondents above named or any other person or persons interested shall, on or before June 30, 1938, show sufficient cause to the satisfaction of the court to the contrary.

May 16, 1938.

W. SANSONI,  
District Judge.

In the District Court of Kalutara.

*Order Nisi declaring Will proved, &c.*

Testamentary In the Matter of the Estate of the late Jurisdiction. Maddumage David Perera, deceased, of No. 2,806. Weedagama.

Wijesuriya-aratchige Dona Christina Wijesuriya of Malamulla ..... Petitioner.

Vs.

- (1) Maddumage Amarasena Perera, (2)itto Indrapala Perera, both of Weedagama, (3) Kalutantrige Selestina Peiris of Weedagama ..... Respondents.

THIS action coming on for disposal before Waldo Sansoni, Esq., District Judge of Kalutara, on March 1, 1938, in the presence of Messrs. Tirimanne and Meegama, Proctors, on the part of the petitioner Wijesuriya-aratchige Dona Christina Wijesuriya of Malamulla; and the affidavit of the said petitioner dated February 25, 1938, having been read:

It is ordered that the petitioner above named be and she is hereby declared entitled, as widow of the deceased above named, to have letters of administration to the estate of the deceased issued to her, unless the respondents or any other person or persons interested shall, on or before June 16, 1938, show sufficient cause to the satisfaction of this court to the contrary.

It is further declared that the said 3rd respondent be and she is hereby appointed guardian *ad litem* over the said 1st and 2nd respondents, who are minors, for all the purposes of this action, unless respondents shall, on or before June 16, 1938, show sufficient cause to the satisfaction of this court to the contrary.

March 1, 1938.

T. F. C. ROBERTS,  
Additional District Judge.

In the District Court of Kandy.

*Order Nisi.*

Testamentary In the Matter of the Estate of the late Jurisdiction. Wattamulla Kankarange Appusingho No. T. 43. of Dambulla, deceased.

THIS matter coming on for disposal before Reginald Felix Dias, Esq., District Judge, Kandy, on May 20, 1938, in the presence of Mr. S. J. B. Dharmakirti, Proctor,

on the part of the petitioner, Jayasuriya Aratchige Elisa Hamy of Dambulla; and the affidavit of the petitioner dated May 8, 1938, having been read:

It is ordered that the petitioner be and she is hereby declared entitled, as the widow of the above-named deceased, to have letters of administration to the estate of the deceased issued to her, unless any person or persons interested shall, on or before June 16, 1938, show sufficient cause to the satisfaction of this court to the contrary.

May 20, 1938.

R. F. DIAS,  
District Judge.

In the District Court of Galle.

*Order Nisi.*

Testamentary In the Matter of the Estate of the late Jurisdiction. Lionel Benjamin Gunasekera of Galle, No. 7,817. deceased.

Between

Florence Margaret Gunasekera of 124, Minuwangoda, Galle ..... Petitioner.

And

- (1) Donald Patrick Gunasekera, (2) Doreen Patricia Gunasekera, (3) Reene Florence Gunasekera, (4) Lionel Benjamin Gunasekera, all of Minuwangoda, Galle, (5) Adelaide Brown ..... Respondents.

THIS matter coming on for disposal before C. L. Wickramasinghe, Esq., District Judge, Galle, on May 5, 1938, in the presence of Messrs. D. and R. Amarasuriya, Proctors, on the part of the said petitioner; and the affidavit of the said petitioner dated May 5, 1938, having been read:

It is ordered that the said 5th respondent be appointed guardian *ad litem* over the said 1st to 4th respondents, unless the said respondents or any person or persons interested shall, on or before June 10, 1938, show sufficient cause to the satisfaction of this court to the contrary.

It is further declared that the petitioner above named is entitled to have letters of administration to the estate of the said deceased issued to her accordingly, unless the said respondents or any person or persons interested shall, on or before June 10, 1938, show sufficient cause to the satisfaction of this court to the contrary.

N. M. BHARUCHA,  
District Judge.

In the District Court of Matara.

*Order Absolute declaring Will proved, &c.*

Testamentary In the Matter of the Last Will and Testament. ment of the late Simon Abeywardena No. 3,978. Wickremasinghe, deceased, of Kirinda.

Jothiye Wijetunga Wickremasinghe of Kirinda. . . . . Petitioner.

Vs.

- (1) Ancy Jayawickrema Wijetunga; (2) Arthur Wijetunga Wickremasinghe; (3) Budladasa Wijetunga Wickremasinghe; (4) Leelayathie Wijetunga Wickremasinghe and husband (5) Dan Baron Mudunkotuwa, both of Kolu-oya; (6) Krishanajina Wijetunga Wickremasinghe; (7) Danawathie Wijetunga Wickremasinghe, (8) Chandrawathie Wijetunga Wickremasinghe, (9) Thilina Wijetunga Wickremasinghe, (10) Siyatha Wijetunga Wickremasinghe, all of Kirinda, minors by guardian *ad litem* the 1st respondent ..... Respondents.

THIS matter coming on for final determination before James Joseph, Esq., District Judge of Matara, on January 27, 1938, in the presence of Mr. W. P. A. Wickremasinghe, Proctor, on the part of the petitioner, Jothiye Wijetunga Wickremasinghe of Kirinda; and the affidavit of the said petitioner and W. P. A. Wickremasinghe the attesting Notary dated November 16, 1937, and January 26, 1938, having been read:

It is ordered that the will of Simon Abeywardena Wickremasinghe the above-named deceased dated June 8, 1936, and now deposited in this court be and the same is hereby declared proved.

It is further declared that the said Jothiye Wijetunga Wickremasinghe is the executor named in the said will, and that he is entitled to have probate of the same issued to him accordingly.

And it is further declared that the said 1st respondent be and she is hereby appointed guardian *ad litem* over the 7th to 10th minor respondents for all the purposes of this action.

May 25, 1938.

JAMES JOSEPH,  
District Judge.



29 In the District Court of Matara.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of the  
Proceedings. late Aturenyega Caronchi, deceased, of  
No. 3,997. Kudalumulla.

Dewapurage Charlis of Kudalumulla . . . . . Petitioner.

Po. 16  
29 Vs.

(1) Dewapurage Lennie and husband (2) Richard  
Gurusinha, (3) Dewapurage Gilman, all of Kudalu-  
mulla . . . . . Respondents.

THIS matter coming on for disposal before James Joseph, Esq., District Judge, Matara, on March 31, 1938, in the presence of Mr. W. P. Wijetunge, Proctor, on the part of the petitioner, Dewapurage Charlis of Kudalumulla; and the affidavit of the said petitioner dated March 28, 1938, having been read:

It is ordered that the said petitioner be and he is hereby declared entitled as husband to have letters of administration issued to him, unless the respondents or any other person or persons interested shall, on or before June 6, 1938, show sufficient cause to the satisfaction of this court to the contrary.

JAMES JOSEPH,  
District Judge.

35 In the District Court of Jaffna.

Order Nisi.

Testamentary In the Matter of the Estate of the late  
Jurisdiction. Hendry Sandrasegara Ariaretnam of  
No. 580. Chavakachcheri, deceased.

Sothismathy, widow of H. S. Ariaretnam of Chava-  
kachcheri . . . . . Petitioner.

Po. 10  
Vs

(1) Inthirany, daughter of H. S. Ariaretnam, (2) Aria-  
retnam Kulechran, (3) Thangaretnam, daughter of  
Ariaretnam, (4) Arunpugam Moothathamby, all of  
ditto . . . . . Respondents.

THIS matter of the petition of the above-named petitioner praying that the above-named 4th respondent be appointed guardian *ad litem* over the above-named minors 1st to 3rd respondents for the purpose of watching their interest in this testamentary case, and that letters of administration to the estate of the above-named deceased be issued to her, as lawful wife of the deceased, coming on for disposal before C. Coomaraswamy, Esq., District Judge, Jaffna, on March 30, 1938, in the presence of Messrs. Aboobucker & Sultan, Proctors, on the part of

the petitioner; and the petition and affidavit of the petitioner having been read: It is ordered that the above-named 4th respondent be appointed guardian *ad litem* over the 1st to 3rd minor respondents for the purpose of this case, and that letters of administration to the estate of the above-named deceased, as his lawful widow, unless the respondents shall appear before this court on May 18, 1938, and show sufficient cause to the satisfaction of this court to the contrary.

May 11, 1938.

C. COOMARASWAMY,  
District Judge.

Extended for June 24, 1938.

May 18, 1938.

C. E. A. S.,  
A. D. J.

30 In the District Court of Chilaw.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of  
Jurisdiction. the late Kadermeera Lebbe Abusalibu  
No. 2,213 T. of Udappu, deceased.

Mana Muna Nallameera Nachiya of Udappu . . Petitioner.

Po. 100  
29 Vs.

(1) Amina Umma of Udappu (minor) by her guardian  
*ad litem* the 2nd respondent (2) Mana Muna Muham-  
madu Meera Sabu of Udappu, guardian *ad litem*  
of the 1st minor respondent . . . . . Respondents.

THIS matter coming on for disposal before M. A. Samarakoon, Esq., District Judge of Chilaw, on May 6, 1938, in the presence of Mr. F. T. Proctor, Proctor, on the part of the petitioner; and the affidavit of the said petitioner dated April 25, 1938, having been read: It is hereby ordered that the 2nd respondent above named be and he is hereby appointed guardian *ad litem* over the 1st minor respondent, and it is further ordered that the petitioner above named be and she is hereby declared entitled to have letters of administration, as widow of the deceased above named, unless the respondents above named or any other person or persons interested shall, on or before May 26, 1938, show sufficient cause to the satisfaction of this court to the contrary.

May 6, 1938.

M. A. SAMARAKOON,  
District Judge.

The date for showing cause is extended for June 21, 1938

May 26, 1938.

M. A. SAMARAKOON,  
District Judge.