



THE  
CEYLON GOVERNMENT  
GAZETTE

EXTRAORDINARY.

---

---

No. 8,372 — THURSDAY, JUNE 9, 1938.

---

---

*Published by Authority.*

PART II.—LEGAL.

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

**DRAFT ORDINANCES.**

**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.
  - Special Cases.*
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 :—

1 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. Short title and date of operation.

*Institution of partition action and incidental procedure.*

2 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. Institution of partition action.

3 (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. Appropriate court.

(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.

(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.

4 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 :— Requisites of plaint.

- (1) the name, if any, and the extent and value of the land ;
- (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 ;
- (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
- (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.

5 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— Necessary parties.

- (1) to any right, share or interest in the land, whether vested or contingent, and whether by way of mortgage, lease, usufruct, servitude, trust, *fidei commissum*, life interest, or otherwise ; and
- (2) to any improvements made or effected on or to the land.

6 (1) The plaintiff in every partition action shall, together with the plaint, file in court— Application for registration of *lis pendens* and copies of summons to be filed with plaint.

- (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 *lis pendens* under that Ordinance ; and
- (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.

(2) Every application for registration of a *lis pendens* shall be filed in court in duplicate and shall be accompanied by the fees prescribed by the Registration of Documents Ordinance,

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.

Rejection of  
plaint for  
failure to  
comply with  
section 6.

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

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.

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

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.

Procedure on  
acceptance of  
the plaint.

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

- (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.

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

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:

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.

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

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.

*Issue, service and publication of summons.*

Issue 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.

(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.

Form of  
summons.

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

- (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.

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.

Service of summons.

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—

Exhibition and publication of summons on the land.

- (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.*

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:

Commission to survey land to be issued simultaneously with summons.

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.

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.

Survey.

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.

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—

Return of surveyor's commission to 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.*

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

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.

Issue of copies of plaint to parties.

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.

Consequence of failure to file material document of title.

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 :

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.

Extension of corpus sought to be partitioned.

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.

Notice of trial.

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.

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.

Interlocutory decree.

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.

Nature of orders which may be incorporated in an 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 ;

- (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.*

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 :

Commission for sale or partition.

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).

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

Form of commission.

- (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.

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

Costs of commission.

- (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.*

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.

Execution of commission for partition.

(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.

Scheme of partition.

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.

Return of commission to court.

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 :—

- (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.

Manner of partition.

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.

(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.

Compensation and owelty.

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.

(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.

Date to be fixed for consideration of scheme of partition.

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.

(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.

Confirmation or modification of scheme of partition.

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.

#### *Commissions for sale.*

Commission for sale. Valuation of land.

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.

Method of valuation and revision by court.

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.



- 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. Conditions 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. Notice of 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. Sale.
- 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. Return to 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. Deposit of purchase money in court.
- 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. Disposal of objections to 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. Confirmation 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. Certificate of sale.
- 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. Distribution and withdrawal of money 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.

*Special provisions relating to decrees.*

- 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. Finality of an interlocutory decree.
- 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. Action for damages by person who is not a party to partition action.

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

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.

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

Registration of final decree and certificate of sale.

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.

Delivery of possession of land to parties and purchasers.

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.

Power of court to enforce its decrees and orders.

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.*

Right of paraveni nilakaraya to institute partition action.

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.

No. 4 of 1870.

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

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.

Right of pre-emption.

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.

Partition of land belonging to partnerships.

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.

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.

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

Personal representatives cannot institute partition action.

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.

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

#### 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 :—

Recoverable costs.

- (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.

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

Proctor's costs. Second Schedule.

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 contest.

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.

Costs of proving title of defaulting party.

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.

One set of costs for parties jointly interested.

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.

Security for costs of parties.

(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.

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

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 in cases not expressly provided for.

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.

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

## Miscellaneous.

- Sale, lease or mortgage pendent lite is void.** \* 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.
- (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.
- Appeals.** 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.
- Proof of deeds.** 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. \*
- Addition of parties before interlocutory decree.** 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—
- (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.
- Compulsory sale of small shares.** 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.
- Result of non-prosecution of partition action.** 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.
- Penalty for dishonest non-disclosure of interested persons.** 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 false return, &c., by surveyor.** 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.

78 Every court having jurisdiction to try a partition action shall from time to time prepare in consultation with the Surveyor-General—

Surveyors.

- (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.

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.

Partition deeds exempt from stamp duty.

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.

Casus omissus to be governed by Civil Procedure Code.

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.

Forms to be prescribed 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.

Schedules may be amended by rules of court.

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 part to that partition action.

Representation of estate of deceased party or co-owner.

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 :

Pending actions.

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.

85 In this Ordinance, unless the context otherwise requires—

Interpretation.

“ 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.

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.

Repeals.

## 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
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 Procédure 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.



## 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>                          |

## Interpretation.

7 (1) In this Ordinance, "the Force" means the Ceylon Naval Volunteer Force.

(2) This Ordinance shall be read and construed as one with the Naval Volunteer Ordinance, No. 1 of 1937.

## 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.

## 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 *ad litem* 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.

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 :—

Amendment of section 38 of the principal Ordinance.

"(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.