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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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PASSED ORDINANCES.

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

No. 46 of 1946.

An Ordinance to Incorporate the Moors' Islamic Cultural Home.

J. C. HOWARD.

WHEREAS an institution, styled and known as the Moors' Islamic Cultural Home, has heretofore been established at Colombo, for the cultural and social amelioration of the Muslims :

Preamble.

And whereas the said institution has applied to be incorporated and it will be for the public advantage to grant the application :

Be it therefore 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 Moors' Islamic Cultural Home (Incorporation) Ordinance, No. 46 of 1946.

Short Title.

2. (1) On and after the date of the commencement of this Ordinance, the persons for the time being constituting the Board of Trustees of the Moors' Islamic Cultural Home, and the other members for the time being of the aforesaid Home shall be and are hereby constituted a body politic and corporate with the name of " the Moors Islamic Cultural Home ".

Incorporation of the Moors' Islamic Cultural Home.

(2) The Moors' Islamic Cultural Home shall, in the said name and for the purposes herein mentioned, have perpetual succession, and may by the said name sue and be sued, plead and be impleaded, answer and be answered in all Courts, and shall have a common seal with power to break, alter and renew the same at its discretion.

3. The objects for which the corporation is constituted are hereby declared to be—

Objects of the corporation.

- (a) the study and promotion of Islamic culture and religion ;
- (b) the research into, and study of, the history, customs, traditions and habits of the Ceylon Moors ;
- (c) the promotion of a spirit of fellowship among members of the Moors' Islamic Cultural Home, and the inculcation in them of the principles of service to the community and the country ;
- (d) the promotion of the cultural, moral, social and economic welfare of the Island ;
- (e) the provision of facilities for recreation ;

- (f) the establishment and maintenance of a hostel for students, a guest house for visitors, and a restaurant for the convenience of its members and other persons approved by the Board of Trustees; and
- (g) the construction and maintenance of a suite of rooms which are to be let for weddings and other social functions.

Board of Trustees.

4. (1) The affairs of the corporation shall, subject to any rules made or deemed to be made under this Ordinance, be administered by a Board of Trustees, consisting of the President, not less than five Vice-Presidents, three Honorary Joint Secretaries, two Honorary Joint Treasurers, and not less than thirty-eight other members. The persons constituting such Board shall be elected in accordance with rule 3 specified in the Schedule to this Ordinance or any rule amending the said rule 3.

(2) The first members of the Board of Trustees shall be—

President	.. A. R. A. Razik, M.S.C., M.M.C., J.P., U.M.	.. Colombo
Vice-Presidents	.. W. M. Hassim, J. P.	.. Colombo
	Al Haj. A. V. Macan Markar	.. "
	A. R. M. Mukthar	.. "
	M. H. M. Munas	.. "
	Al Alim M. H. M. Shamsu- deen	.. "
	O. H. M. Sulaman	.. "
	Al Haj. M. H. M. Sulaiman	.. "
	L. M. M. Uvais	.. "
	M. I. Abdul Rasool	.. Trincomalee
Hon. Jt. Secretaries	{ A. I. L. Marikar .. Colombo A. H. Macan Markar, B.A. (Cantab.) .. " A. L. M. Lafir .. "	
Hon. Jt. Treasurers	{ M. L. M. Ghouse .. Colombo A. H. Macan Markar, B.A. (Cantab.) .. "	
Other members of the Board of Trustees	A. C. Abdeen .. Colombo	
	B. L. Abdul Bhari .. Bentota	
	A. C. M. Abdul Cader, Proctor, S.C.	.. Colombo
	M. C. M. Abdul Cader	.. Galle
	S. M. H. Abdul Hafeel	.. "
	M. A. M. Abdul Hassen	.. Warakapola
	A. R. A. M. Aboobucker, Kathi, J.P.	.. Trincomalee
	M. L. M. Ahmed	.. Colombo
	M. S. M. Anver	.. "
	I. M. Asanoon	.. Negombo
	Al Haj. H. A. Cabeer	.. Colombo
	M. A. Careem, M.A. (Cantab.)	.. "
	M. Hussain Careem, Proctor	.. Galle
	S. A. I. Dheen, Proctor, S.C., Kathi, J.P.	.. Negombo
	M. M. M. Ghouse	.. Colombo
	Dr. M. S. Ghouzul Ameer	.. "
	S. Halimdeen	.. Kandy
	M. I. M. Hamdoon	.. Negombo
	A. M. Hamid, M.R.A.S. (C.B.)	.. Colombo
	A. L. M. Haniffa, Kathi, J.P.	.. Anuradhapura
	M. Sulaiman Hassim	.. Colombo
	Al Haj. M. M. Ibrahim	.. Batticaloa
	M. Thowfeek Idroos	.. Colombo
	S. M. Ismail	.. "
	H. S. Ismail, Proctor	.. Puttalam
	K. S. Jallabdeen	.. "
	Al Haj. Y. A. Jamaldeen	.. "
	M. F. M. Jaward	.. "
	M. H. M. Kamil	.. "
	Y. M. Khalid	.. "
	C. M. M. Maharroof, Proctor, S.C.	.. "
	S. D. M. Mansoor	.. "
	A. C. H. Mohamed	.. "
	I. S. Mohamed, Headman	.. Akurana
	K. M. N. S. Mohamed, Head- man	.. "
	S. L. Mohamed	.. Colombo
	A. F. Mohamed	.. Galle
	M. B. Mohamed	.. Colombo
	M. N. S. Mohamed	.. Trincomalee
	A. C. Mohammedo, J.P., U.M., Proctor, S.C.	.. Colombo
	H. M. Mohideen	.. Katugastota
	S. E. C. Mohideen	.. Minuwangoda
	Dr. M. Mohideen Hassan	.. Colombo
	M. Y. M. Mushood	.. "
	M. S. Naina Marikar	.. "

S. M. A. Raheeman, J.P.,	
U.M., Proctor, S.C.	.. Negombo
Rajakaruna Vaidiyatilleke	
Muhandiram Sheik Mohamed Udayar	.. Aranayake
Rasheed Bin Hassen, M.M.C.	Colombo
Razeen Abdul Cader	.. "
C. M. M. Sahid	.. "
A. R. M. Saleem	.. "
C. M. M. Salih	.. "
O. L. M. M. Salih	.. "
M. Sameer	.. "
M. M. Shafi	.. "
M. M. Sulaiman	.. "
A. Mubarsk Thaha	.. "
A. R. M. Thassim, Kathi,	
J.P.	.. Balapitiya
P. M. Yoosooof	.. Negombo
M. H. M. Yusuf	.. Colombo
A. R. M. Zarook	.. "

5. (1) It shall be lawful for the Board of Trustees at any of its meetings, by a majority which is not less than two-thirds of the number of members present and voting at such meeting, to make rules in respect of all or any of the following matters :—

Rules.

- (a) the admission, withdrawal, suspension or expulsion of members of the Moors' Islamic Cultural Home ;
- (b) the election, appointment, and removal of the office-bearers of the corporation or of the members of the Board of Trustees, and their tenure of office ;
- (c) the duties of the Board of Trustees, and of the various sub-committees, office-bearers, agents and servants of the corporation ;
- (d) the procedure to be followed in the transaction of business ; and
- (e) generally for carrying out and giving effect to the principles of this Ordinance.

(2) The rules in the Schedule to this Ordinance shall for all purposes be deemed to be the rules of the corporation in force at the commencement of this Ordinance, and to have been made under this Ordinance, and may be altered, added to, amended, or rescinded by rules, to be made under this Ordinance.

(3) All members of the corporation shall be subject to any rules made or deemed to be made under this Ordinance.

6. The corporation shall at all times hereafter be able and capable in law to take and hold any property movable or immovable, whether by purchase, grant, gift, testamentary disposition, or otherwise, and all such property shall be held by the corporation for the purposes of this Ordinance.

Power to hold property.

7. All debts and liabilities of the said Moors' Islamic Cultural Home which were in existence before the coming into operation of this Ordinance, shall be paid by the corporation, and all debts due to and subscriptions and contributions payable to the said Moors' Islamic Cultural Home shall be paid to the corporation for the purpose of this Ordinance.

Debts, &c., due by and payable to the Corporation.

8. The seal of the corporation shall not be affixed to any instrument whatsoever, except in the presence of three members of the Board of Trustees, of whom one shall be the President or a Vice-President, expressly nominated by the Board of Trustees and such persons shall sign their names to the instrument in token of their presence, and such signing shall be independent of the signing of any person as a witness.

Seal.

9. Subject to the provisions of rule 3 (j) specified in the Schedule to this Ordinance, the corporation shall have the power to sell, mortgage, lease, exchange or otherwise dispose of its property.

Power to dispose of property.

10. Except so far as provided in this Ordinance or in any rules made or deemed to be made thereunder, any dispute or doubt as to any matter or question affecting or relating to the principles or policy of the corporation shall be referred to the Board of Trustees whose decision thereon shall be final.

Decision of disputes, &c., as to principles or policy.

11. Nothing in this Ordinance contained shall prejudice or affect the rights of His Majesty the King, His Heirs, and Successors, or any body politic or corporate or any other persons except such as are mentioned in this Ordinance and those claiming by, from or under them.

Saving of the rights of the Crown and others.

SCHEDULE.

Rules of the Moors' Islamic Cultural Home, Colombo.

1. In these rules, unless the context otherwise requires—

- (1) "The Corporation" means the Moors' Islamic Cultural Home, as incorporated by the Ordinance ;

- (2) "The Ordinance" means the Moors' Islamic Cultural Home Incorporation Ordinance ;
 (3) "Board" means Board of Trustees.

2. *Membership.*—(1) Persons not less than sixteen years of age, having any or all of the objects of the corporation in view, are eligible for membership.

(2) Every application for membership, countersigned by two members of the Board shall be forwarded together with the entrance fee and annual subscription to the Honorary Joint Secretaries who shall submit it to the Board for approval.

(3) The rates of subscription payable in advance by the members shall be as follows :—

- (a) for members of the Board an annual subscription of Rs. 25.
 (b) for ordinary members an entrance fee of Rs. 10 and an annual subscription of Rs. 10 or a contribution of Rs. 500 for life membership.
 (c) an honorary life membership may be conferred by the Board on any Muslim who in the opinion of the Board has rendered meritorious service to the cause of the community or the country or in the advancement of science, the arts or literature.

(4) The Board may reject any application for membership without stating reasons.

(5) If any member is in arrears of subscription for a period of three months, the Board may remove his name from the roll of members after a fortnight's notice.

(6) Any member whose conduct is found detrimental to the interest of the corporation may, after investigation, be suspended or removed from the roll, by the Board at a meeting of the same specially convened for the purpose, if two-thirds of the members of the Board present and voting at such meeting approve of such suspension or removal, voting being by ballot. The quorum at such a meeting shall be not less than fifteen.

3. *Management.*—(a) The members of the Board shall be elected at the annual general meeting of the corporation, and shall hold office for three years, one third thereof retiring at the end of each year but being eligible for re-election. A member absenting himself from three consecutive meetings of the Board shall cease to be a member thereof, unless re-elected by the Board.

(b) The various activities of the corporation shall be in charge of Departmental Committees consisting of seven members each, of whom six shall be elected at the Annual General Meeting and the other nominated by the Board from among its members. Such nominee of the Board shall be the Chairman or Secretary and convenor of the Committee to which he is appointed.

(c) All office-bearers and members of the Board shall be Ceylon Muslims and no member shall hold more than two offices simultaneously.

(d) The President, or in his absence one of the Vice-Presidents shall be the Chairman at the meetings of the corporation. If neither the President nor one of the Vice-Presidents be present, a member shall be voted to the chair. The Chairman shall have the casting vote.

(e) The Secretaries shall keep a record of all meetings of the corporation and of the Board, a register of members, and any other record that may be necessary.

(f) The Honorary Treasurers shall collect, receive and keep accounts of all moneys and funds belonging to the corporation, and shall make such payments as are authorised by the Board. They shall prepare and table a statement of accounts at the quarterly meetings of the Board and submit a duly audited statement of accounts and Balance Sheet at the Annual General Meeting and their books shall be open for inspection on an application made by a member of the Moors' Islamic Cultural Home which is supported by a member of the Board.

(g) Meetings of the Board shall be held at least once a quarter. Upon the written requisition of five members of the Board the President shall have a meeting of the Board convened to transact such business as is intimated in the notice calling the meeting. Five days' notice shall be given to the members of any such special meeting. Nine members shall form the quorum at meetings of the Board.

(h) In the case of any vacancies occurring during the year among the office-bearers or in the Board or in the Departmental Committees, the Board shall have power to fill such vacancies for the unexpired term.

(i) The Board shall have power to make rules for its own government and for the management of the corporation and its departments provided that such rules are not inconsistent with this Ordinance.

(j) The Board shall hold and administer for the purposes of the corporation all property belonging to the corporation. It shall also have power, with the consent of a two-thirds majority of members present at a General Meeting of the Corporation, to sell, mortgage, lease, exchange or otherwise dispose of the immovable property belonging to the corporation: Provided that such decision is confirmed at a subsequent General Meeting held within one month.

4. *General Meeting of the Corporation.*—(a) The Annual General Meeting of the corporation shall be held in the month of August, at which the report of the Board and of the Honorary Treasurers shall be presented. (b) The Honorary General Secretaries shall convene a General Meeting of the corporation

upon the request of the Board or upon the written requisition of not less than twenty-five members. (c) A fortnight's notice shall be given of any general meeting, and twenty-five members shall constitute a quorum at such meeting.

5. *Bank Account, &c.*—All Bank accounts, securities, notes and debentures, the property of the corporation, shall be kept in the name of the corporation, and shall be under the control of the President, Vice-Presidents, Secretaries or Treasurers in accordance with the resolution of the Board.

6. *Auditor.*—The members shall elect at the Annual General Meeting of the corporation a qualified auditor, who shall audit the accounts of the corporation for the ensuing year.

7. *Branches.*—Branch societies may be established wheresoever possible in the Island under such conditions as shall be determined by the Board. All such societies shall be worked on the same principles as defined in these rules. A certificate of affiliation shall be issued to branches so formed.

8. *Affiliation.*—The corporation may be affiliated to organisations in other parts of the Islamic world having similar aims and objects.

9. *Interpretation.*—In the event of any uncertainty or ambiguity, the Board shall have the power to interpret the constitution, rules and by-laws.

Passed in Council the Twenty-fifth day of September, One thousand Nine hundred and Forty-six.

D. C. R. GUNAWARDANA,
Clerk of the Council.

Assented to by the Officer Administering the Government the Nineteenth day of October, One thousand Nine hundred and Forty-six.

C. H. HARTWELL,
Secretary to the Governor.

DRAFT ORDINANCES.

MINUTE.

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

An Ordinance to amend and consolidate the Law relating to Mortgage.

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81 .. Right of approved agency to surrender mortgaged life policy in specified circumstances.
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- 114 .. Approval of credit agencies, &c.

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- 115 .. Saving for appointment of Receivers under Civil Procedure Code.

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- 116 .. Repeal of Chapter 74.

**An Ordinance to amend and consolidate the Law
relating to Mortgage.**

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

Part I.

SHORT TITLE AND INTERPRETATION.

- | | |
|--|--|
| Short title
and date of
operation. | 1. This Ordinance may be cited as the Mortgage Ordinance, No. of 194 , and shall come into operation on such date (hereinafter referred to as "the appointed date") as may be appointed by the Governor by Proclamation published in the <i>Gazette</i> . |
| Interpretation. | 2. In this Ordinance, unless the context otherwise requires—
"hypothecary action" means an action to obtain an order declaring the mortgaged property to be bound and executable for the payment of the moneys due upon the mortgage and to enforce such payment by a judicial sale of the mortgaged property ;
"land" includes things attached to the earth or permanently fastened to anything attached to the earth, and any estate, right, or interest in or over land ;
"mortgage" includes any charge on property for securing money or money's worth ;
"mortgagee" includes any person from time to time deriving title under or through the original mortgagee. |
| Approved
credit
agencies. | 3. In this Ordinance "approved credit agency" means—
(a) any banking company as defined in section 330 of the Companies Ordinance, No. 51 of 1938, which is declared by the Director of Commerce and Industries, by notification published in the <i>Gazette</i> , to be an approved credit agency for the purposes of this Ordinance ;
(b) the Ceylon State Mortgage Bank, the Agricultural and Industrial Credit Corporation, the Loan Board, the Ceylon Savings Bank, and the Local Loans and Development Commissioners ;
(c) any other company, firm, institution or individual for the time being declared by the Director of Commerce and Industries, by notification published in the <i>Gazette</i> , to be an approved credit agency for the purposes of this Ordinance. |

Part II.

HYPOTHECARY ACTIONS ON MORTGAGES OF LAND.

General.

- | | |
|---|--|
| Application
of this Part. | 4. The provisions of this Part shall apply only to a mortgage of land, to any action to enforce payment of the moneys due upon a mortgage of land, and to any hypothecary action in respect of any land. |
| Interpretation
of terms in
this Part. | 5. (1) For the purposes of this Part—
"person entitled to notice", in relation to a hypothecary action in respect of any land, means any person who—
(a) has any interest in the land (whether by way of mortgage or otherwise), being an interest (i) to which the mortgage in suit in the hypothecary action has priority ; and (ii) which was created or arises by virtue of an instrument duly registered under the Registration of Documents Ordinance, as an instrument affecting the land, prior to the time of the registration of the <i>lis pendens</i> of the hypothecary action, and
(b) has, prior to such time, registered an address for the service on him of legal documents in accordance with the provisions of section 6 of this Ordinance,

and includes a person declared by sub-section (2) of this section to be entitled to notice of the action ,
"registered address" means an address registered in accordance with the provisions of section 6 of this Ordinance. |
| Cap. 101. | (2) Where a notice of seizure of any land is, after the registration of a mortgage of that land but before the registration of the <i>lis pendens</i> of a hypothecary action upon such mortgage, duly registered for the time being under the Registration of Documents Ordinance, the judgment creditor |

in the action in which such seizure was effected may register an address under section 6, and if such address is registered, shall be a person entitled to notice of the hypothecary action.

6. (1) Application for the registration of an address for the service of legal documents shall be made substantially in the form set out in the First Schedule to this Ordinance.

Registration
of address
for service
of documents.

(2) The address for service shall be registered in or in continuation of the folio in which is registered the mortgage of the land in respect of which the applicant has an interest:

Provided, however, that where such mortgage includes more than one land, it shall be sufficient if the address of the applicant is registered in the folio relating to the land in which he has an interest.

(3) Where the applicant declares in his application that a previously registered address is cancelled, the Registrar shall make a new entry in the register and cancel the registration of the previous address.

(4) The fee for registration of an address for service or for a change of such address shall be fifty cents for each address, with an addition of ten cents for each folio after the first in which the address is to be registered.

7. (1) Notwithstanding anything in section 34 of the Civil Procedure Code, a claim to enforce payment of the moneys due upon a mortgage may be joined to a claim in a hypothecary action, or a separate action may be brought in respect of each such remedy.

Actions
on mortgage.
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(2) In every such action the mortgagor shall be sued as defendant whether or not he is in possession of the mortgaged land at the time when the action is instituted.

8. An order for the issue of summons in a hypothecary action shall not be made by any Court unless a declaration under the hand of a Proctor is filed of record—

Lis pendens
to be regis-
tered, &c.

- (a) certifying that the *lis pendens* of such action has been duly registered under the Registration of Documents Ordinance as an instrument affecting the land to which the action relates,
- (b) certifying that the register maintained under the Registration of Documents Ordinance or a certified extract therefrom, and all relevant entries in such register, have been personally inspected by such Proctor or by any other specified Proctor, at or after the time of the entry in the register of the *lis pendens* of the action; and
- (c) containing a statement of the name and registered address of every person, if any, found upon such inspection to be a person entitled to notice of the action.

Issue of Notice of Hypothecary Action, Addition of Parties, Intervention, &c.

9. (1) Notice of a hypothecary action shall, upon an order being made for the issue of summons on the defendants in the action, be issued to every person who is stated in the declaration filed under section 8 to be a person entitled to notice of such action, but who has not been joined as a defendant to the action.

Notice of
hypothecary
action

(2) Where notice is not issued under sub-section (1) to any person entitled to such notice, any party to the action may thereafter, but before the sale of the mortgaged land in execution of a hypothecary decree, apply to the Court for the issue of notice of the action to such person, (whether or not his name was mentioned in the declaration filed under section 8), and notice shall be issued accordingly.

10. (1) Notice of a hypothecary action may be issued to a person entitled to notice of such action in the manner provided in paragraph (a) hereunder or in the manner provided in paragraph (b) hereunder, at the option of the plaintiff:—

Manner
issue of notice

- (a) (i.) The Secretary of the Court shall send to that person by registered post to his registered address a notice in the prescribed form; it shall be the duty of the Secretary to make an entry that the notice was sent in the journal of the proceedings in the action, and to file in such journal the receipt issued by the Post Office in respect of such notice; and such entry and receipt shall be taken as conclusive proof, in the absence of fraud, that the notice was duly sent;
- (ii.) A copy of such notice shall, within the period of two weeks from the date of the posting of the notice under sub-paragraph (i), be affixed in a conspicuous position upon the mortgaged land by the Fiscal under a precept from the Court;

(iii.) A copy of such notice shall be published in a daily newspaper specified by the Court,

(b) The notice of action may be served in any manner provided by the Civil Procedure Code for the service of summons.

(2) The notice referred to in sub-paragraphs (i.) and (ii.) of paragraph (a) of sub-section (1) shall be in English, and shall be accompanied by a translation thereof in Sinhalese or Tamil as the Court may direct.

Manner of issue of process, &c., where person entitled to notice is a party to the action.

11. (1) Where the plaintiff in a hypothecary action joins as a defendant any person entitled to notice of the action, the provisions of section 10 shall apply in relation to the service on such person of the summons in the action in like manner as they apply in relation to the issue of notice of the action.

(2) Where any person entitled to notice of a hypothecary action is added as a party to the action, the provisions of section 10 shall apply in relation to the service on such person of any notice, process, order, decree or other document or written communication, in like manner as they apply in relation to the issue of notice of the action.

Rights of person to whom notice is issued.

12. Where notice of a hypothecary action is issued to any person under section 9 and in the manner provided by section 10—

(a) such person shall be entitled at his option to be added as a party to the action upon application made to the Court in that behalf within one month of the date of the posting of the notice to him under section 10 (1) (a) or of the publication of a copy thereof under section 10 (1) (c), whichever is the later, or where the notice is served in like manner as a summons, within one month of the date of such service;

(b) such person may, in the discretion of the Court upon such terms as the Court thinks just, be added as a party to the action upon application made after the expiry of the period of one month referred to in paragraph (a) but before the sale of the land under the hypothecary decree:

Provided, however, that every finding, order, decree or thing done in the action prior to the date of the application under paragraph (b) shall, unless the Court in its discretion otherwise orders, bind the person so added in like manner as though he had previously been a party to the action.

Right of person entitled to notice to be added as a party before sale.

13. Any person entitled to notice of a hypothecary action to whom such notice has not been issued under section 9 and in manner provided by section 10 shall be entitled, on application made by him to the Court at any time before the sale of the mortgaged land in execution of a hypothecary decree, to be added as a party to the action.

Rights of person added during pendency of action.

14. Where any person, to whom notice of a hypothecary action has been issued under sub-section (2) of section 9 and in the manner provided by section 10, is added as a party to the action under paragraph (a) of section 12, or any person entitled to notice of a hypothecary action is added as a party under section 13—

(a) no finding, order, decree or proceedings previously made or taken in the action shall bind him except in so far as he may consent to be bound thereby;

(b) such person shall be entitled to raise any question or issue which he could have raised if he had originally been a party to the action, and any other party may raise any question or issue arising in consequence;

(c) a fresh trial shall be had on every issue previously raised in the action, unless such person consents to be bound by the previous finding thereon;

(d) upon the trial of any issue whether previously raised or not no part of the evidence previously taken shall be evidence upon that issue, except in so far as all the parties to the action agree to be bound by such evidence;

(e) if a decree had been entered in the action prior to the addition of such person as a party thereto, the Court shall, if such person so requires, make order suspending the operation of such decree, and shall, after the trial of all the issues as hereinbefore provided, confirm the judgment previously given and the decree entered thereon or annul such judgment and decree and give a new judgment and enter a new decree, as the circumstances of the case may require.

15. Every party to a hypothecary action, and every person entitled to notice of the action and to whom notice of the action is issued under section 9 and in manner provided by section 10, and every person who is added as a party under section 12 or section 13, shall be bound by the decree and sale in the hypothecary action.

Persons noticed or added to be bound by decree and sale.

16. Every person having any interest in the mortgaged land by virtue of an instrument to which the mortgage in suit has priority, but who is not a person entitled to notice of the action as hereinbefore defined, shall be bound by every order, decree or sale or thing done in the hypothecary action :
Provided, however, that any such person may at any time before the entry of the decree in the action be added as a party on application made by him in that behalf upon such terms as the Court may impose, but any person so added shall be bound by every finding or order previously made in the action and by the proceedings previously taken therein except in so far as the Court may in its discretion otherwise order.

Intervention by person interested who are not entitled to notice.

17. In sections 18 to 23, " party omitted from a hypothecary action " means a person entitled to notice of the hypothecary action but who is not declared by section 15 to be bound by the decree and sale in that action.

Meaning of " party omitted ".

18. (1) A party omitted from a hypothecary action may at his option intervene in the action after the sale of the mortgaged land in execution of a hypothecary decree, but before the distribution of the proceeds of the sale, for the purpose of raising an issue as to the sum due under the mortgage in suit in the hypothecary action, and the Court shall if it finds after inquiry and hearing such evidence as may be adduced upon such issue, that the sum actually due is less than the sum stated in the decree to be due under the mortgage, amend the decree in so far as it relates to the sum found to be due under the mortgage.

Party omitted may intervene after sale and dispute the amount of decree or claim balance proceeds.

(2) The raising of any issue or the amendment of any decree under sub-section (1) shall not in any way affect the validity of the sale in execution of the hypothecary decree.

(3) A party omitted from a hypothecary action who intervenes in that action under sub-section (1) shall, whether or not he makes a claim under section 57 to participate in the balance proceeds of sale of the mortgaged land, be bound by the sale in that action and by the decree (whether or not it is amended under that sub-section) in like manner as though he had been a party to the action.

(4) Where a party omitted from a hypothecary action makes a claim under section 57 to participate in the balance of the proceeds of sale of the mortgaged land, then, notwithstanding that he may not have intervened in the action under sub-section (1) of this section, he shall be bound by the decree and sale in the action in like manner as though he had been a party thereto.

19. (1) Where a party omitted from a hypothecary action is not a person who is by sub-section (3) or sub-section (4) of that section 18 declared to be bound by the decree and sale in that action, and a conveyance of the mortgaged land has been executed in favour of the person who had purchased that land at the sale (hereinafter referred to as " the prior sale ") in execution of the hypothecary decree in that action—

Action by or against party omitted for settlement of rights, &c.

(a) the party omitted may institute an action, to which the mortgagor and the purchaser at the prior sale shall be added as parties, for the purpose of obtaining a decree declaring him to be entitled to the land or to any interest therein, or where such party omitted is a mortgagee, for the purpose of obtaining a hypothecary decree in respect of the land,

(b) the purchaser of the land at the prior sale may institute an action to which the mortgagor and the party omitted shall be added as parties, for the settlement of the rights and liabilities of the purchaser, the mortgagor and the party omitted.

(2) In this section and in sections 20 to 23, " purchaser at the prior sale " includes any person deriving title under or from the person who purchased the land at the prior sale.

20. In any action instituted under section 19, the party omitted from the hypothecary action may raise any issue as to the moneys due under any mortgage, which had priority over the interest of the party omitted and which was wholly or partly paid off out of the proceeds of the prior sale. Where such issue is raised, the mortgagee under that mortgage shall be added as a party to the action instituted under section 19 and the Court shall determine afresh the sum actually due thereunder.

Issue may be raised as to amount properly due under mortgages paid off out of proceeds of prior sale.

Procedure where Court finds that moneys are due to party omitted from mortgagor.

21. (1) Where the Court, in any action instituted under section 19, finds that any moneys are due from the mortgagor to the party omitted by virtue of the instrument under which he claims, the Court shall enter a decree ordering that the land sold at the prior sale shall be re-sold, unless the purchaser at the prior sale pays to the party omitted, before a date specified in the decree, the moneys so found to be due to the party omitted from the mortgagor.

(2) Upon the re-sale of the mortgaged land under the decree entered under sub-section (1), the proceeds of re-sale shall be distributed as follows:—

(i.) *firstly*, the purchaser at the prior sale shall be entitled to payment of the amount at which he purchased the land at the prior sale, or of the total amount of the moneys paid off out of such purchase money to every mortgagee under a mortgage which had priority over the interest of the party omitted, whichever amount is the less:

Provided, however, that where the Court has under section 20 determined the amount of the moneys due under any such mortgage, and the amount so determined is less than the moneys actually paid off thereon in the prior action, the amount so determined shall be taken, for the purposes of the preceding provisions of this paragraph, to be the moneys due under that mortgage;

(ii.) *secondly*, after payment of any amount to which the purchaser is entitled under paragraph (i), the party omitted shall be entitled to payment of the amount found under sub-section (1) to be due to him from the mortgagor;

(iii.) *thirdly*, the purchaser at the prior sale shall be entitled to any balance remaining after the payments referred to in sub-paragraphs (i.) and (ii.), have been made.

(3) Where any moneys are paid to the party omitted by the purchaser at the prior sale in compliance with the decree under sub-section (1) or any moneys are paid to the party omitted under paragraph (ii.) of sub-section (2), the following provisions shall apply—

(a) if the mortgage was created before the appointed date, or if the mortgage bond by virtue of which the party omitted claims an interest in the land contains a declaration under section 47 that the mortgagor renounces the benefit of the provisions of section 46, the purchaser of the land at the prior sale shall be entitled, in the action instituted under section 19, to an order directing the mortgagor to pay to such purchaser an amount equal to the amount so paid to the party omitted;

(b) if such mortgage bond contains no such declaration, then, if, but only if, any amount had in the prior hypothecary action been paid to the mortgagor out of the proceeds of sale of the mortgaged land at the prior sale, the purchaser at such prior sale shall be entitled, in the action instituted under section 19, to an order directing the mortgagor to pay to such purchaser an amount equal to the moneys actually so paid to the party omitted under this section or to the moneys paid to the mortgagor out of the proceeds of the prior sale, whichever amount is the less.

(4) Any order made under sub-section (3) may be enforced in the same manner as an order or decree for the payment of money in an ordinary action.

Provisions applicable where party omitted is a transferee.

22. (1) Where the Court is satisfied that the instrument, under which the party omitted from the hypothecary action claims an interest in the land, transferred to him the title of the mortgagor to the land, but that such title was subject to the mortgage in suit in the prior hypothecary action, the Court shall enter decree declaring the party omitted to be entitled to the land subject to the right of the purchaser at the prior sale to a hypothecary charge to the extent of the amount at which he purchased the land at the prior sale or of the total amount of the moneys paid off out of such purchase money to every mortgagee under a mortgage which had priority over the interest of the party omitted, whichever amount is less, and ordering that in default of the payment of such amount to the purchaser by the party omitted the land shall be sold against the party omitted for the recovery of such amount:

Provided, however, that where the Court has under section 20 determined the amount of the moneys due under any such mortgage, and the amount so determined is less than the sum actually paid off thereon out of the proceeds of the prior sale, the amount so determined shall be taken, for the purposes of the preceding provisions of this sub-section, to be the moneys due under that mortgage.

(2) In any case to which sub-section (1) of this section applies the Court shall, if satisfied that any moneys were paid to the mortgagor out of the proceeds of the prior sale, make order directing the mortgagor to pay to the purchaser at the prior sale an amount equal to the moneys so paid to the mortgagor out of those proceeds, and such order may be enforced in the same manner as an order or decree for the payment of money in an ordinary action.

23. (1) In any case where, by reason that the amount of the moneys determined by the Court under section 20 to be due on any mortgage is less than the amount of the moneys actually paid off on that mortgage out of the proceeds of the prior sale, there has been an over-payment to the mortgagee under that mortgage (hereinafter referred to in this section as "the prior mortgagee"), the following provisions shall apply:—

Order against prior mortgagee if over-payment was made from proceeds of prior sale.

(a) If no moneys are paid to the party omitted under section 21 (1) in compliance with the decree entered thereunder or under paragraph (ii.) of section 21 (2) out of the proceeds of the re-sale, the party omitted shall be entitled, in the action instituted under section 19, to an order directing the prior mortgagee to pay to him the amount found under section 21 (1) to be due to him from the mortgagor or the amount of such over-payment, whichever amount is less;

(b) If any moneys are paid to the party omitted under section 21 (1) in compliance with the decree entered thereunder or under paragraph (ii.) of section 21 (2) out of the proceeds of the resale—

(i.) the purchaser at the prior sale shall be entitled, in the action instituted under section 19, to an order directing the prior mortgagee to pay to such purchaser the amount of the moneys so paid to the party omitted or the amount of such over-payment, whichever amount is less;

(ii.) if the moneys so paid to the party omitted are less than the amount found under section 21 (1) to be due to him from the mortgagor, the party omitted shall be entitled, in the action instituted under section 19, to an order directing the prior mortgagee to pay to him the amount of the deficiency:

Provided, however, that no order shall be made under this sub-paragraph against the prior mortgagee unless, and except to the extent to which, the amount of the over-payment exceeds the amount specified in the order made against the prior mortgagee under sub-paragraph (i.) of this paragraph;

(c) If the party omitted is a transferee, and the provisions of section 22 are accordingly applicable, the purchaser at the prior sale shall, in the action instituted under section 19, be entitled to an order directing the prior mortgagee to pay to him the amount of such over-payment.

(2) Any order made under sub-section (1) may be enforced in the same manner as an order or decree for the payment of money in an ordinary action.

Effect of Sale in Execution of decree upon Puisne Mortgage.

24. In section 25—

"prior mortgage", in relation to any other mortgage of the same land, means a mortgage which has priority over such other mortgage; and "prior mortgagee" has a corresponding meaning;

"puisne mortgage", in relation to any other mortgage of the same land, means a mortgage over which such other mortgage has priority; and "puisne mortgagee" has a corresponding meaning.

Meaning of "prior mortgage", "puisne mortgage", &c.

25. Where any mortgaged land is sold in execution of a decree in a hypothecary action upon a puisne mortgage, and the conveyance of the mortgaged land is executed in favour of the purchaser at such sale (hereinafter in this section referred to as "the purchaser under the puisne mortgage"), the following provisions shall apply:—

Effect of conveyance upon sale under puisne mortgage.

(a) The puisne mortgagee, and every person who being entitled to notice of the action upon the puisne mortgage is by virtue of any of the preceding provisions of this Part bound by the decree and sale in that action, shall not be entitled to notice of any hypothecary action instituted subsequent to the date of such conveyance on any prior mortgage of that land, but shall be bound by the decree and sale in the latter action;

- (b) The purchaser under the puisne mortgage shall, if the mortgaged land is subsequently sold in execution of the decree in any hypothecary action upon a prior mortgage, be entitled upon making a claim in that behalf under section 57, to the entirety of the balance of the proceeds of the sale of the land remaining after satisfaction of the moneys found to be due in that action to the prior mortgagee and of the claim, if any, of any other person preferred by virtue of any other instrument having priority to the puisne mortgage ;
- (c) If the purchaser under the puisne mortgage is a person entitled to notice of a subsequent hypothecary action upon a prior mortgage of the land but is a party omitted from the latter action, and if an action is instituted under section 19, then, for the purposes of the application of the provisions of sub-section (1) of section 22, no mortgage shall be deemed to have priority over the interest of such party omitted unless it had priority over the puisne mortgage in suit in the action in which the land was sold to such purchaser ;
- (d) If the conveyance to the purchaser under the puisne mortgage was executed after the date of the registration of the *lis pendens* of a hypothecary action upon a prior mortgage of the land, and if the puisne mortgagee under the mortgage in suit in the action in which such purchaser purchased the mortgaged land is a party omitted from the subsequent hypothecary action, then such purchaser, unless he is added as a party to the latter action under section 16 or makes a claim under section 57 in the latter action, shall be deemed to be a party omitted from the latter action and the provisions of paragraph (c) of this section shall be applicable ;
- (e) Except in the cases referred to in paragraphs (c) and (d) of this section, the purchaser under the puisne mortgage shall, whether or not he is a party to any hypothecary action upon any prior mortgage of the mortgaged land, be bound by the decree and sale in the latter action.

Death, Insolvency or Disability of Mortgagor or Person entitled to Notice.

Appointment of representative of deceased mortgagor or of deceased party to hypothecary action.

26. (1) Where any mortgagor dies before the institution of a hypothecary action in respect of the mortgaged land, or any mortgagor or any person who is or becomes a party to a hypothecary action dies after the institution of the action, and grant of probate of the will or issue of letters of administration to the estate of the deceased has not been made, the Court in which the action is to be or has been instituted may in its discretion, after the service of notice on such persons if any and after such inquiry as the Court may consider necessary, make order appointing a person to represent the estate of the deceased for the purpose of the hypothecary action, and such person may be made or added as a party to the action.

Provided, however, that such order may be made only if—

- (a) the value of the mortgaged property does not exceed two thousand five hundred rupees ; or
- (b) a period of six months has elapsed after the date of the death of the deceased ; or
- (c) the Court is satisfied that delay in the institution of the action would render the action not maintainable by reason of the provisions of the Prescription Ordinance.

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(2) In making any appointment under sub-section (1) the Court shall appoint as representative a person who after summary inquiry appears to the Court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued :

Provided, however, that in the event of a dispute between persons claiming to be entitled to be so appointed, the Court shall make such an appointment (whether of one of those persons or of any other person) as would in the opinion of the Court be in the interests of the estate of the deceased.

Effect of representative being made a party.

27. Where any appointment is made under section 26 and the person so appointed is a party to the action, every order, decree and sale or thing done in the hypothecary action (including the seizure and sale in execution of the property of the deceased mortgagor not included in the mortgage in suit) shall have the like effect as though the executor or administrator of the deceased were a party to the action.

28. (1) The duly appointed executor of the will or the administrator of the estate of a deceased person, or the duly appointed assignee of the estate of an insolvent, or the duly appointed curator or manager of the estate of a minor or lunatic, may whether or not such deceased person, insolvent, minor or lunatic has himself registered his address under section 6, register an address under that section on behalf of such estate.

(2) Where the registration of the address of the executor or administrator or of the assignee, curator or manager, as the case may be, is not effected as provided in sub-section (1), any other person interested may register an address under section 6 on behalf of the estate of the deceased person or of the insolvent, minor or lunatic. The address so registered shall be cancelled forthwith upon the registration of an address under sub-section (1) on behalf of such estate.

(3) Where notice of a hypothecary action is issued under section 9 and in manner provided by section 10—

- (a) to any executor or administrator or to any assignee, curator or manager who has registered an address as provided in sub-section (1); or
- (b) to any other person who has registered an address as provided in sub-section (2) and whose address is for the time being registered, and if the deceased person, insolvent, minor or lunatic had himself registered an address under section 6, to the address registered by him,

notice of the hypothecary action shall be deemed to have been duly issued for the purpose of binding the estate of such deceased person, insolvent, minor or lunatic.

(4) In any case referred to in paragraph (b) of sub-section (3), any person to whom notice of the hypothecary action is issued or any other person may, within one month of the date of the posting of the notice or of the publication thereof, whichever is the later, or where the notice is served in like manner as a summons, within one month of the date of such service, make application to the Court for the appointment of some person to represent the estate of the deceased or of the insolvent, minor or lunatic as the case may be, and the Court shall appoint a person accordingly.

In making such appointment the Court shall appoint as representative a person who after summary inquiry appears to Court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued, or who would ordinarily be appointed to be the curator, assignee or manager of the estate, as the case may be :

Provided, however, that in the event of a dispute between persons claiming to be entitled to be so appointed, the Court shall appoint as representative such of those persons or such other person, whose appointment in the opinion of the Court will be in the interests of the estate.

Where the Court is satisfied that proceedings are pending for the appointment of an executor, administrator, assignee, curator or manager, the Court may on that ground postpone the appointment of a representative for any period not exceeding three months.

29. (1) Where notice of a hypothecary action is issued under section 9 and in manner provided by section 10 to the registered address of a person entitled to notice of the action, then, notwithstanding that such person may be or may have been dead or an insolvent or a minor or lunatic at the time of the issue of the notice, the estate of such person shall be bound by every order, decree or sale or thing done in the hypothecary action whether or not application is made under sub-section (4) of section 28 for the appointment of a representative, unless the executor or administrator or assignee, curator or manager or any other person had registered an address on behalf of the estate under sub-section (1) or sub-section (2) of that section.

(2) In any case where notice of a hypothecary action is in manner provided in section 10 issued to an executor, administrator, curator, assignee or manager who has registered his address as provided in sub-section (1) of section 28, then, notwithstanding such death, insolvency, minority or lunacy, the estate shall be bound by every order, decree or sale or thing done in the hypothecary action, whether or not such executor, administrator, assignee, curator or manager becomes a party to the action.

(3) Where—

- (a) notice of a hypothecary action is issued under section 9 and in manner provided by section 10 to any person who has registered an address under sub-section (2) of section 28 on behalf of the estate of a deceased person or insolvent or lunatic or minor; and

Provision for death, insolvency, lunacy or minority of party entitled to notice and for registration of addresses and issue of notice in such cases.

Estate to be bound if notices issued as provided in section 28.

- (b) if the deceased person, insolvent, lunatic or minor had himself registered an address, such notice is issued to that address,

then, notwithstanding the death, insolvency, minority, or lunacy, the estate shall be bound by every order, decree or sale or thing done in the hypothecary action, whether or not a representative is appointed under sub-section (4) of section 28 and becomes a party to the action.

Estate to be bound notwithstanding death, &c., if address not registered.

30. Where any person having any interest in a mortgaged land, to which the mortgage in suit has priority, has not registered an address under section 6, and no other person registers an address on his behalf or on behalf of his estate as provided in sub-section (1) or sub-section (2) of section 28, then, notwithstanding that the person having such interest may be dead or an insolvent, minor, or lunatic at the time of the institution of the hypothecary action, the estate of such person shall be bound by every order, decree or sale or thing done in the hypothecary action.

Special provision for actions on mortgages created before the appointed date.

31. (1) The provisions of sections 28 to 30 shall not apply in the case of any action instituted for the enforcement of a mortgage created before the appointed date.

(2) Where a hypothecary action is instituted for the enforcement of a mortgage created before the appointed date, and the Court is satisfied that any person entitled to notice of the action is or was dead or an insolvent, minor or lunatic before or at the time of the issue to him of notice of the action, the person to whom probate of the will or letters of administration to the estate of the deceased is granted, or as the case may be, the duly appointed assignee or curator or manager shall be added as a party to the action upon application made to the Court in that behalf whether by such person or by any party to the action :

Provided, however, that it shall be lawful for the Court in the circumstances and subject to the conditions set out in section 26 to appoint a representative of the deceased for the purpose of the hypothecary action, and in any such case the representative so appointed may be added as a party to the action in lieu of the executor or administrator.

(3) Where the executor or administrator or the duly appointed representative of a deceased person, or, as the case may be, the assignee, curator, or manager of the estate of the insolvent, minor, or lunatic is not added as a party under sub-section (2), the executor or administrator or as the case may be the assignee, curator or manager shall—

- (a) be entitled upon making a claim in that behalf under section 57 to participate in the proceeds of sale remaining after satisfaction of the amount decreed to be due upon the mortgage in suit in the action ; or
- (b) if he does not so participate, be deemed to be a party omitted for the purpose of enabling an action to be brought by or against him under section 19 and if such an action is brought the provisions of sections 20 to 23 shall apply accordingly.

Death, insolvency or lunacy of mortgagor after entry of decree.

32. Where any mortgagor dies or is adjudged an insolvent or lunatic at any time after the entry of decree in a hypothecary action and before the sale of the mortgaged land under the decree, no proceedings for the execution or enforcement of the decree shall be taken, or if taken shall be of any effect, unless the duly appointed executor of the will or administrator of the estate of the deceased or a representative appointed under section 26, or as the case may be the assignee or manager of the estate of the insolvent or lunatic, is made a party to the action.

Power of Plaintiff to join claimants adverse to mortgagor or to, apply for declaration as to possession of land in the event of sale.

Power of plaintiff to join claimant adverse to mortgagor.

33. (1) The plaintiff in a hypothecary action may at his option join as a party to the action any person alleged by the plaintiff to claim any right to ownership or possession of the mortgaged land by title adverse to that of the mortgagor.

(2) Where any person is so joined as a party to the action, such person or any other party may raise any issue upon any question relating to the right of ownership or possession of the land ; and in any such case the Court shall, after hearing such evidence as may be adduced by any party to the action, make an adjudication upon the issue so raised.

(3) Where the adjudication of the Court upon any issue raised as hereinbefore provided is to the effect that the mortgagor is not entitled to the land or any part or share thereof, no decree shall be entered in the action for the sale of the land or such part or share thereof, as the case may be.

(4) Where any person is joined as a party to the action under sub-section (1), every adjudication by the Court on any question relating to the title of the land or to the right of possession thereof shall be *res adjudicata* as between all parties to the action including the party so added.

34. (1) Upon the institution of a hypothecary action in respect of any land, the plaintiff may at his option, at any time after the registration of the *lis pendens* of the action and before the issue of a precept or order for the service of summons, make application to the Court for a declaration that, in the event of decree being entered for the sale of the land, the Court will order the removal from the land of all persons whomsoever who may resist the delivery of possession to the purchaser at the sale.

Provision for declaration by Court as to removal from land of persons claiming adversely to mortgagor.

No such application shall be entertained by the Court unless it is accompanied by a plan of the land.

(2) Upon such application being made, the Court shall direct—

- (a) that notices of the application shall be published in two separate issues of each of two newspapers specified by the Court ;
- (b) that such notices shall be posted by the Fiscal under a precept from Court in at least three conspicuous places on the land, and that similar notices shall be posted at the District Court, Magistrate's Court and Village Tribunal, if any, having jurisdiction in the area in which the land is situated, at the Kachcheri of the District in which the land is situated, and at such other places as the Court may think fit ;
- (c) that notice of the action shall be published by beat of tom-tom in the vicinity of the land on two specified dates in the presence of a Fiscal's Officer or headman or other officer specified by the Court.

(3) Every notice under sub-section (2) shall contain a statement to the effect that a plan of the land has been filed in the Court and will be available for inspection by any person interested.

(4) For the purposes of paragraph (a) of sub-section (2), the Court shall direct publication in two newspapers which appear to the Court to be the most appropriate for the purpose of conveying information of the action to the residents of the area in which the land is situated.

(5) The notices required to be posted by paragraphs (b) and (c) of sub-section (2) shall be posted either before the date of the last publication of the notice under paragraph (a) of sub-section (2) or not later than two weeks after that date.

35. (1) Where notices have been published and posted as provided in section 34, any person claiming to be entitled to possession of the land or of any part or share thereof under any right or title adverse to that of the mortgagor shall be entitled, on application made to the Court in that behalf at any time within two months of the date of the last publication of the notice under paragraph (a) of section 34 (2), to be added as party to the action for the purpose of securing an adjudication by the Court upon his claim.

Right of claimant to be added as party and to raise issues as to right of possession, &c.

(2) Where any person is added as a party under sub-section (1), such person or any other party may raise any issue (including an issue on a question of title) relevant to the claim to possession of the land and in any such case the Court shall, after hearing such evidence as may be adduced by any party to the action, make an adjudication upon the issue so raised.

36. (1) Where no person makes application to be added as a party under section 35, or where the Court is satisfied that none of the persons so added is entitled to possession of the land, the Court shall make the declaration for which application was made by the plaintiff under sub-section (1) :

Order of Court upon application under section 35.

Provided, however, that where any person appears before the Court at any time within the period of two months specified in sub-section (1) of section 35, and satisfies the Court—

- (a) that he was placed in charge of the land by a person who is absent from the Island ; and
- (b) that there is no duly appointed attorney in Ceylon of such last-mentioned person,

the Court shall not make such declaration.

(2) Where the adjudication of the Court upon any issue raised as hereinbefore provided is to the effect that the mortgagor is not entitled to the land or to any part or share thereof, the Court shall make order dismissing the hypothecary action in so far as it relates to the land or such part or share.

(3) Where the adjudication of the Court upon any such issue is that any party added under section 34 is entitled to possession of the land or any part thereof and that the mortgage in suit in the action is subject to the rights of such person, no declaration shall be made under sub-section (1) of this section in respect of the land or that part thereof, as the case may be.

(4) Where any person is added as a party to the action under section 35, every adjudication by the Court upon any question relating to the title to the land or to the right to possession thereof shall be *res adjudicata* as between all the parties to the action including the parties so added.

(5) The making of a declaration under this section, or the removal from the land of any person in pursuance of the order made under section 55 in terms of such declaration—

- (a) shall not affect or prejudice the right of any person (other than (i) a person declared by the preceding sections of this Ordinance to be bound by the decree, or (ii) a person added as a party under this section) to institute proceedings for the recovery of possession of the land from the purchaser or for declaration of title thereto; and
- (b) shall not operate as *res adjudicata* in such proceedings upon any question as to the right to possession or ownership of the land.

Appointment of receiver of Mortgaged Land.

Application
for appointment
of
Receiver of
mortgaged
land.

37. (1) The plaintiff in a hypothecary action may, at any time after the registration of the *lis pendens* of the action, make application to the Court by petition for the appointment of a Receiver of the land which is the subject of the action.

Such application shall be supported by affidavit of the plaintiff stating the sum lent to the mortgagor, the sum, if any, repaid out of the loan, the sums due to the mortgagee by way of principal and interest, and the current market value of the mortgaged land.

(2) Subject as hereinafter provided, the application for the appointment of a Receiver shall, unless the plaintiff otherwise desires, be dealt with *ex parte* by the Court:

Provided, however, that where the application is made at any time after the filing of an answer by the mortgagor, the application shall be dealt with after notice to the mortgagor.

(3) This section and sections 38 to 45 shall not apply to any action upon a mortgage created before the appointed date.

Cases where
Court may
refuse to
appoint
Receiver.

38. (1) The Court may refuse to make an order for the appointment of a Receiver—

- (a) if, having regard to the situation, nature and value of the land and the amount which in the circumstances of the case can reasonably be allowed as remuneration to a Receiver, the Court is of opinion that a suitable person is not available for such appointment;
- (b) if it appears to the Court that the amount claimed by the plaintiff to be due on the mortgage, less such amount if any as may have been brought into Court by the mortgagor is not more than one-third of the current market value of the land.

(2) Save as provided in sub-section (1), the Court shall not refuse to make an order for the appointment of a Receiver upon application duly made in that behalf.

Cancellation
of appoint-
ment.

39. (1) The Court may cancel the appointment of a Receiver—

- (a) at the instance of the plaintiff; or
- (b) where the appointment had been made without notice to the mortgagor, if it is subsequently shown to the satisfaction of the Court that the amount claimed by the plaintiff to be due on the mortgage, less such amount if any as may have been brought into Court by the mortgagor, is not more than one-third of the current market value of the land; or
- (c) if it is shown to the satisfaction of the Court that there had been any substantial default or negligence on the part of the Receiver, or that the amount of the remuneration allowed to the Receiver is excessive and that he is unwilling to accept as remuneration the amount which the Court, after hearing the mortgagor, considers to be reasonable; or
- (d) at the instance of the Receiver, if he is unwilling to continue in his appointment as such.

(2) Where the appointment of a Receiver is cancelled under paragraph (c) or paragraph (d) of sub-section (1), the Court may, if the plaintiff so desires, make a new appointment of a Receiver.

40. (1) Every order for the appointment of a Receiver shall—

Order for appointment, &c.

- (a) provide for the committal of the land to the custody and management of the Receiver;
- (b) fix the amount of the remuneration to be payable to the Receiver, whether specifically or by reference to a specified percentage of the amount of the rents and profits derived from the land.

(2) The Court may, if it considers it necessary so to do, require the Receiver to give such security as the Court may consider adequate.

(3) Where the Receiver is obstructed by any person in taking custody of the land, the Court may after considering such representations as may be made by such person, by order direct the removal of such person from the land.

41. (1) The person appointed under this Part to be the Receiver of any land shall have and may exercise all the rights and powers of the owner of the land for the management, protection, and preservation of the land and the collection of the rents and profits thereof.

Rights and powers of Receiver.

(2) The Court may on application made by the Receiver or any party to the action—

- (a) give such directions as it may consider necessary relating to the exercise of the rights and powers conferred by sub-section (1);
- (b) by order authorise the Receiver to institute or defend any action or proceedings in respect of any matter affecting the land or the administration or management thereof.

42. Every Receiver appointed under the preceding provisions of this Part shall—

Duties and liabilities of Receiver.

- (a) render accounts to the Court in such form and at such times as the Court may direct in that behalf;
- (b) make payment into Court to the credit of the action, from time to time as the Court may direct, of the nett rent and profits of the land;
- (c) be responsible for any damage to the land, or for any loss of income, incurred by his gross negligence or by any intentional act of omission on his part.

43. (1) Where it is shown to the satisfaction of the Court—

Payment of subsistence allowance to mortgagor.

- (a) that the income, if any, derived by the mortgagor from sources other than the land is insufficient to enable the mortgagor to meet the expenses necessary for the subsistence of himself and his dependants, and
- (b) that any balance remains out of the nett rents and profits of the land after payment therefrom of the remuneration of the Receiver, the Court may, after considering how far it is necessary to keep in Court the amount of the rents and profits or any part thereof for the purpose of securing that the land and the amount so kept will provide adequate security for the payment of the amount claimed by the plaintiff to be due to him, direct the payment to the mortgagor, out of the balance so remaining, of a monthly allowance sufficient to meet such expenses of the mortgagor.

(2) Any directions given under sub-section (1) may be varied or revoked by the Court on application made by the plaintiff or the mortgagor.

44. (1) All moneys paid into Court by the Receiver shall, unless the Court otherwise directs, be kept in Court to the credit of the action until the final disposal thereof:

Nett profits to be kept in Court.

Provided that payment may from time to time be made, out of such moneys, of the remuneration due to the Receiver, or of such amounts as may be directed under section 43 to be paid to the mortgagor, or of such amounts as may from time to time be ordered by the Court to be paid to the Receiver for the purposes of the management of the land.

(2) The amount of the moneys in Court shall be applied in satisfaction of the sums if any for which decree is entered in the action.

(3) No seizure of such moneys in execution of any order or decree in any other action shall affect the operation of sub-section (2) of this section.

Restriction of appeals against orders under sections 37 to 43.

45. No appeal shall lie against the refusal of the Court to make any order for the appointment of a Receiver or against any order appointing a Receiver or against any other order or directions made or given under any of the provisions of sections 37 to 43, other than an order made under subsection (3) of section 40.

Sale under Hypothecary Decree.

Property liable to sale in execution of decree.

46. Save as otherwise provided in section 47, no decree in any hypothecary action upon any mortgage of land which is created after the appointed date and no decree in any action for the recovery of any moneys due upon any such mortgage, shall order any property whatsoever, other than the mortgaged land, to be sold for the recovery of any moneys found to be due under the mortgage, and no property whatsoever, other than the mortgaged land, shall be sold or be liable to be sold in execution of any such decree.

In this section "action for the recovery of moneys due upon a mortgage" includes any action for the recovery of any debt secured by a mortgage whether the cause of action sued upon arises by reason of the mortgage or otherwise.

Liability of property (other than mortgaged land) to sale in execution of decree.

47. (1) Where, at the time of the execution of the mortgage bond, the mortgagor executes a separate instrument, attested by the notary attesting the bond and by the witnesses to the bond containing—

- (a) a special declaration on the part of the mortgagor that he renounces the benefit of section 46 and that the effect of such renunciation has been explained to him by the notary; and
- (b) an endorsement signed by the notary to the effect that he has explained to the mortgagor the effect of such renunciation,

then, in addition to the mortgaged land, other property of the mortgagor shall subject to the provisions of sub-section (2), be liable to be ordered to be sold and to be sold under the decree in an action upon the mortgage.

(2) In any case referred to in sub-section (1), no process shall issue for the seizure and sale of any property of the mortgagor, other than the mortgaged land, until the mortgaged land is sold and the proceeds thereof applied in satisfaction of the decree.

(3) Where the separate instrument referred to in sub-section (1) is to be executed by any mortgagor, it shall be the duty of the notary to explain to the mortgagor, that the instruments provides for the renunciation of the benefit of section 46 and that the effect of such renunciation is that, in addition to the mortgaged land, other property of the mortgagor is liable to be sold in execution of a decree in an action upon the mortgage.

No stamp duty shall be payable upon the further instrument referred to in this section.

(4) Where the mortgage is created by an instrument referred to in section 69 which is attested by an officer of an approved credit agency, then for the purposes of the application of the provisions of sub-section (1) and sub-section (3) of this section, any reference in those provisions to the notary attesting the mortgage bond shall be deemed to be a reference to such officer.

(5) Nothing in section 46 or in this section shall apply to any action upon a mortgage created before the appointed date.

Order for sale in, decree, &c.

48. (1) Where in a hypothecary action the Court finds that the mortgage ought to be enforced, the decree shall, in relation to the mortgaged land, order that the land shall be sold in default of payment, within a period of two months from the date of the decree, of the moneys due under the mortgage;

Provided, however, that the Court may, in its discretion and subject to such conditions including the making of specified payments on specified dates as it thinks fit, on application made in that behalf before the entry of the decree and after consideration of the circumstances of both the mortgagor and mortgagee, fix, in lieu of the aforesaid period of two months, such longer period as the Court may consider reasonable.

(2) In issuing the commission for the sale of the mortgaged land the Court shall specify the amount due under the decree at the time of the issue of the commission and the amount so specified shall be mentioned in the advertisement of the sale:

Where the sale is stayed or adjourned and a subsequent advertisement is necessary, the Court shall on application made by the plaintiff and upon his certifying that any part payment has been made of the amount due under the decree, give notice to the Fiscal or auctioneer of the amount due under

the decree at the time of such application, and in such event the amount so notified shall be mentioned in the subsequent advertisement.

49. Subject as hereinafter provided, where the plaintiff desires that the land shall be seized prior to the sale, the Court may order that the land shall be seized by the Fiscal under section 237 of the Civil Procedure Code and where the land is so seized the provisions of the Civil Procedure Code relating to the seizure, sale, confirmation of the sale, and conveyance and delivery of immovable property sold in execution of a decree for the payment of money shall apply accordingly and the provisions of sections 53 to 56 of this Ordinance shall not apply :

Special provision for seizure and sale.

Provided that no such order shall be made in any case where a declaration has been made under section 36.

50. (1) Where no order is made under section 49 for the seizure of the land, the Court may in the decree or subsequently give directions—

Directions and other provisions as to sale.

- (a) specifying the person by whom the land shall be sold ;
- (b) specifying the manner and time of the advertisement of the sale and the person by whom the conveyance to the purchaser is to be executed ;
- (c) prescribing the conditions of the sale ;
- (d) in relation to such other matters for which the Court considers directions to be necessary.

(2) Where the plaintiff so desires the Court may direct the land to be sold by the Fiscal, and in any such case the sale may be conducted on behalf of the Fiscal by the Deputy Fiscal or by any other person authorised in writing by the Fiscal.

(3) Any directions given under the preceding provisions of this section may be altered by subsequent directions of the Court.

(4) Where no order is made under section 49 for the seizure of the land, the following provisions shall apply in relation to the sale—

- (a) the person conducting the sale shall put up the land for sale first at the current market value of the land as appraised by him, or if the appraised value is fixed by the Court under section 51 (3) at such appraised value, and if there be no bidders then at the amount mentioned as required by section 48 in the advertisement as the amount due under the decree and in the event of there being no bidders at such sale also, then immediately thereafter the land shall be put up for sale to the highest bidder :

Provided that where an order has been made under section 52 (1), the land shall not be sold at the first sale if the highest bid is less than the appraised value as fixed under section 51 (3).

- (b) if the judgment debtor or any other person on his behalf, at any time before the hour fixed for the sale, pays to the officer conducting the sale the full amount mentioned as required by section 48 in the advertisement as the amount due under the decree and also the charges incurred for advertisement and incidental to the sale of the land, the sale shall be stayed ;
- (c) in every case where a sale has taken place the person conducting the sale shall (i.) not later than 48 hours after the time of the sale, deposit at the nearest Kachcheri to the credit of the action the amount realised at the sale and forward the Kachcheri receipt to the Court by which the order to sell was issued, and (ii.) in making the report required by section 282 of the Civil Procedure Code, specify the manner in which the sale has been held, the name of each bidder and each bid made by such bidder ;
- (d) every person making a bid at the sale shall be bound by the conditions of sale prescribed by the Court under the preceding provisions of this section whether or not he signs an agreement to be bound thereby ;
- (e) if the Court finds that any sum is due in respect of the sale by reason of the operation of the conditions of sale from any person bound by such conditions, the Court may make order directing the payment of such sum by such person to the credit of the action, and such order may be enforced in the same manner as an order or decree entered by the Court in an ordinary action.

51. (1) The plaintiff in a hypothecary action shall not be entitled to bid for or purchase any mortgaged land sold in execution of the decree unless leave to bid and purchase is granted to him by the Court.

Leave to plaintiff to bid and purchase.

(2) Every application by the plaintiff for leave to bid for and purchase any mortgaged land shall be accompanied by an appraisalment from the person directed to conduct the sale setting out the current market value of the land.

A copy of such appraisalment shall be sent by the Secretary by registered post to the Proctor for the mortgagor or where no proxy has been filed shall be served on the mortgagor in like manner as a summons, and copies shall be sent by registered post to every other party to the action who has registered an address under section 6; the mortgagor or any such party may within a period of fourteen days from the date of the service or posting of the copy make objection to the valuation set out therein.

(3) The Court shall, after consideration of such objections, if any, as may be made under sub-section (2), by order fix the amount which shall be taken, for the purposes of the succeeding provisions of this section, to be the appraised value of the land.

(4) Leave to the plaintiff to bid for and purchase any mortgaged land shall in every case be subject to the condition that the plaintiff shall not bid for or purchase the land except at or above the amount of the appraised value of the land as fixed under sub-section (3) or the amount required by section 48 to be mentioned in the advertisement as the amount due under the decree, whichever such amount is the less.

(5) Where two or more lands are subject to the mortgage and one advertisement only is published in respect of the sale of such lands, it shall be the duty of the Fiscal or auctioneer to specify in the advertisement the order in which such lands will be sold, whether or not directions prescribing the order of sale are given under section 52.

(6) Where application is made under sub-section (2) after the publication of the advertisement of the sale, and it is necessary in consequence of such application to alter the date of the sale and publish a fresh advertisement of the sale, the Court may order that the costs of the postponement and of the fresh advertisement shall be borne by the plaintiff.

(7) No appeal shall lie against any order made under this section.

Directions for second sale if highest bid is less than current market value.

Order of sale where more than one land is mortgaged.

Form of conveyance to purchaser.

Delivery of possession, &c.

Removal of all persons whomsoever where declaration has been made under section 36.

52. (1) The Court may in any hypothecary action on application made by the mortgagor and upon such terms as the Court may think fit, direct that if the highest bid at the sale of any mortgaged land is less than the amount of the appraised value of the land as fixed under section 51 (3), the land shall not be sold at that sale, and that a second sale of the land shall be held.

(2) Where more than one land is subject to the mortgage in suit in the action, the Court may upon application made by the mortgagor in that behalf, prescribe the order in which the lands shall be sold and may fix different dates for the sales of different lands.

53. The conveyance to the purchaser of any mortgaged land sold in execution of a hypothecary decree shall, except in a case to which section 50 applies, be in the form in the First Schedule to this Ordinance:

Provided, however, that such form may in any case be varied or modified by the Court in such manner as the Court may consider necessary in the circumstances of the case.

54. In any case, other than a case in which a declaration has been made under section 36 or in which an order is made under section 50, the Court shall on application made by the purchaser make an order for the delivery of possession to the purchaser or any other person on his behalf, and an order so made shall have the like effect and be enforced in the same manner as an order made under section 287 of the Civil Procedure Code in the case of a sale by the Fiscal under that Code.

55. (1) In any case where a declaration has been made under section 36, the Court shall on application made by the purchaser order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the land, and if need be, by removing therefrom all persons whomsoever who may refuse to vacate the same.

(2) Where an order is made under sub-section (1), and the Fiscal reports to the Court that he was unable to put the purchaser or any other person on his behalf in possession of the land, the Court shall direct the Fiscal to post in conspicuous places on the land a notice in the form set out in the First Schedule to this Ordinance and to report to the Court within seven days of the posting of such notice—

(a) whether or not the purchaser or such other person was put in possession of the land; and

(b) whether he was obstructed in attempting to put the purchaser or such person in possession, and if so, the manner of such obstruction and the person or persons by whom such obstruction was caused.

(3) Where the Court is satisfied upon the report of the Fiscal that any person whosoever refused to yield up possession at any time after the date of the posting of the notice referred to in sub-section (2) or obstructed or resisted the Fiscal at any time after that date, the Court may commit the person so refusing to yield up possession or causing such obstruction or resistance to jail for a term which may extend to thirty days, and direct the purchaser to be put into possession of the land

(4) Where possession of the land is delivered to the purchaser and he is at any time within two months thereafter hindered or obstructed by any person in maintaining effective possession of the land, the Court may commit the person causing such hindrance or obstruction to jail for a term which may extend to thirty days :

Provided, however, that nothing in the preceding provisions of this sub-section shall affect or prejudice the right of the purchaser upon any such hindrance or obstruction being caused (whether within or after the period of two months aforesaid) to any remedy which may be claimed in that behalf under any written or other law.

(5) Nothing in sections 323 to 330 of the Civil Procedure Code shall apply in any case where an order for the delivery of possession to the purchaser or any other person on his behalf is made under this section.

56. Where delivery of possession of a mortgaged land has been made to the purchaser under section 54 or section 55, the Fiscal shall upon a request made in that behalf by the purchaser and the payment by the purchaser of the necessary expenses, cause a plan to be prepared of the land of which possession was delivered. The plan so prepared shall after being endorsed by the Fiscal with a certificate to the effect that it is a plan of the land of which possession was delivered be furnished to the purchaser.

Fiscal to prepare plan of the land of which possession is delivered.

57. Where any land is sold in execution of a hypothecary decree in respect thereof, any person who claims any interest in the balance of the proceeds of sale remaining after satisfaction of the moneys due under the mortgage in suit in the action shall (whether or not he is a party to the action or a person entitled to a notice thereof) be entitled to establish such claim, and where such claim is established to participate in such balance proceeds.

Claims to balance proceeds of sale.

58. (1) where any land is sold in execution of a hypothecary decree in respect thereof—

(a) any judgment-creditor claiming under a notice of seizure of the land which had been duly registered under the registration of Documents Ordinance, before the registration of the *lis pendens* of the hypothecary action shall, whether or not he has registered an address under section 6 of this Ordinance, be entitled to make a claim under section 57 and to participate in the proceeds of sale remaining after satisfaction of the moneys due on the mortgage in suit in the hypothecary action ;

(b) no person claiming under any seizure of the land effected or registered after the date of the registration of the *lis pendens* of the hypothecary action shall, by reason of such seizure, be entitled to participate in such balance proceeds, but nothing in this paragraph shall prejudice the right of such person after the sale of the land to seize the right, title and interest of the mortgagor in such balance proceeds.

Rights of seizing creditor to participate in balance proceeds of sale.

(2) The rights of any person claiming under a notice of seizure to participate in the balance proceeds as provided in paragraph (a) of sub-section (1), shall, as between himself and any other person claiming whether under a notice of seizure or any other instrument, have priority according to the time of registration :

Provided, however, that where two or more notices of seizure of any land are registered by different persons, and no other person has any interest in the land by virtue of any other instrument registered between the dates of the registration of such notices of seizure, such different persons shall be entitled to claim a ratable distribution of the balance proceeds of sale remaining available for distribution.

Miscellaneous.

59. Where a hypothecary action is heard *ex parte* under section 85 of the Civil Procedure Code, the decree shall be a decree absolute and not a decree nisi.

Decree absolute in default of appearance.

Costs.

60. (1) A mortgagee's costs recoverable in a hypothecary action include all costs, charges and expenses properly incurred by him in relation to the action whether before or after the institution of the hypothecary action notwithstanding that they may have been incurred after the entry of decree in the action.

(2) In any case where notice of a hypothecary action is not issued under sub-section (1) of section 9 to a person entitled to such notice and such person is thereafter added as a party whether in pursuance of a notice under sub-section (2) of that section or under section 13 or such person intervenes in the action under section 18, the Court shall have the power to make such orders as to costs, whether as against the plaintiff or otherwise, and to revise any orders previously made in the proceedings, as the Court may think fit in the circumstances of the case.

Application of Chapter XXII. of the Civil Procedure Code.

61. (1) Where the mortgaged land is directed to be sold by any person other than the Fiscal, or where the mortgaged land is directed to be sold by the Fiscal without being previously seized as provided in section 50—

- (a) sections 271, 273, 282, 283, 289 and 291 to 295 of the Civil Procedure Code shall be applicable ;
- (b) sections 296 and 297 of that Code shall be applicable if the property is sold by the Fiscal ;
- (c) sections 338 to 340, 342, 344, 345, 346, 349 and 350 shall be applicable ;
- (d) section 343 shall be applicable, subject to the modification that the Court shall not under that section stay execution proceedings for the purpose only of allowing time for payment by the judgment debtor, unless he satisfies the Court that there is reason to believe that the amount of the decree may be raised by mortgage, lease or private sale of the mortgaged land or of any other immovable property of the debtor, and to the further modification that the time allowed for the purpose aforesaid shall not be longer than one month ;
- (e) sections 288 and 323 to 330 shall be applicable in every case where an order is made under section 54 of this Ordinance for the delivery of possession of the mortgaged land to the purchaser at the sale ;
- (f) save as hereinbefore provided, nothing in Chapter XXII. of the Civil Procedure Code shall be applicable.

(2) For the purpose of the application of the provisions of the Civil Procedure Code where the land is sold by a person other than the Fiscal, any reference in those provisions to the Fiscal shall be deemed to be a reference to the person conducting the sale.

(3) Nothing in sections 298 to 319 of the Civil Procedure Code shall apply in any hypothecary action or any action to enforce payment of the moneys due upon a mortgage of land.

(4) Where the mortgaged land is sold by the Fiscal after being seized as provided in section 50, and an order for the delivery of possession is made under section 287 of the Civil Procedure Code, the provisions of sections 323 to 330 of that Code shall be applicable.

Application of this Part.

62. Save as otherwise hereinbefore provided, the provisions of this Part shall apply to mortgages created before the appointed date :

Provided that nothing in those provisions shall apply to any action instituted before the appointed date, and the provisions of the Mortgage Ordinance (Chapter 74) shall, notwithstanding the repeal thereof, continue to apply in relation to any action instituted before that date.

Part III.

Conventional general mortgage—floating and concurrent mortgages—Power of attorney to confess judgment.

General mortgages abolished.

63. No conventional general mortgage, executed after the fourteenth day of January, Eighteen hundred and seventy-one, shall be valid and effectual, so as thereby to give the mortgagee any lien, charge, claim, or priority over or in respect of any property movable or immovable.

Effect of mortgages to secure future liability, &c.

64. (1) In any of the following cases, that is to say :

- (a) where a mortgage is given to secure future advances (whether with or without any previous advances or other liability) ;
- (b) where a mortgage is given to secure the floating balance from time to time due upon any account ;
- (c) where a mortgage is given to secure any contingent liability,

such mortgage shall, subject to the provisions of sub-sections (2) and (3), be effective to the full extent of the charge intended to be created thereby as against any person claiming under any subsequent mortgage or transfer, notwithstanding that no money may have been actually due at the date of such subsequent mortgage or transfer in respect of the liability intended to be secured, and irrespective of the actual amount so due on such date.

(2) Where any property which is subject to a mortgage given for any purposes mentioned in paragraph (a) or paragraph (b) or paragraph (c) of sub-section (1) is seized in execution of a decree in favour of any person other than the mortgagee, the seizing creditor may make application to the Court by which the decree was entered for the issue of a notice of such seizure on the mortgagee, and where such notice is issued them, notwithstanding anything in sub-section (1), the mortgage shall as against a person purchasing such property at a sale under the seizure or any other person claiming under him, be effective only to the extent of the moneys actually due under the mortgage at the date of the receipt by the mortgagee of the notice issued by the Court under the preceding provisions of this sub-section.

(3) The preceding provisions of this section shall apply to the mortgage of any property movable or immovable :

Provided, however, that where a mortgage of movable property is given for any purpose referred to in paragraph (a) or paragraph (b) or paragraph (c) of sub-section (1), the preceding provisions of this section shall affect only the extent to which the property is subject to the mortgage, and the movable property shall not, by reason of the operation of those provisions, be deemed or construed to continue to be subject to the mortgage to any extent whatsoever as against any person claiming under a subsequent mortgage or transfer, unless—

- (a) such property continues, by virtue of any law other than this Ordinance, to be subject to the mortgage to the extent of the moneys actually due thereunder at the date of the subsequent transfer or mortgage ; or
- (b) where no moneys are actually due at that date, unless such property would by virtue of such other law have continued to be subject to the mortgage if moneys had been actually due thereunder at that date.

(4) In this section "transfer" includes any instrument creating any interest in the mortgaged property.

65. (1) Where a mortgage bond is executed in favour of two or more persons (each of whom is hereinafter referred to as a "mortgagee") in consideration of sums due or to be due to each of such persons by the mortgagor—

Action by concurrent mortgagees.

- (a) any such mortgagee to whom any moneys secured by the mortgage are due and payable, may institute a hypothecary action for the enforcement of the mortgage, and in such action join as a defendant every such mortgagee who is not a plaintiff in the action ;
- (b) any such mortgagee, whether or not he is a plaintiff in the action, shall be entitled to prove before decree the amount of the moneys due to him under the mortgage, and the decree shall order payment of separate amounts to each mortgagee who has so proved the amount due to him ;
- (c) the mortgaged property shall be liable to be sold under the decree on application made by any of the mortgagees to whom payment is ordered by the decree notwithstanding that the amounts due to all the mortgagees have not been proved before decree, and the sale of the mortgaged property in execution of the hypothecary decree shall extinguish the rights in relation to the property of every such mortgagee, whether he is joined as a plaintiff or as a defendant ;
- (d) the Court shall make such orders in relation to the distribution of the proceeds of the sale or the retention thereof in Court, as may be necessary having regard to the rights of the parties to payment out of such proceeds or to any other interests of the parties in such proceeds ; and any mortgagee who has not proved his claim before decree may prove such claim after decree :

Provided, however, that if payment out of the proceeds of the sale is not made to any such mortgagee by reason that a claim of any other such mortgagee in such proceeds has not been proved,

and if such other claim remains unproved for a period of six months after the sale, the Court shall order payment to be made out of such proceeds to such mortgagees whose claims have been proved whether before or after decree ;

- (e) the fact that any such mortgagee may not have proved his claim before decree shall not prejudice his right, subject to the provisions of section 46, to recover by separate section the moneys due to him from the mortgagor less any moneys paid to him under paragraph (d) ;
- (f) each mortgagee to whom payment is ordered by the decree under paragraph (b) shall be entitled, subject to the provisions of section 46, to apply for execution of the decree against other property of the mortgagor to the extent of the amount ordered to be paid to him less any moneys paid to him under paragraph (d).

(2) In any action upon any mortgage bond referred to in sub-section (1), no leave to bid for and purchase any mortgaged land shall be granted to any mortgagee under section 51 except upon the condition that he shall not bid for or purchase the land except at or above the total amount due under the decree to all the mortgagees to whom payment is ordered to be made thereby, or the appraised value of the land as fixed under sub-section (3) of that section, whichever is less.

(3) Where in any action upon any mortgage bond referred to in sub-section (1), the Court has made an adjudication as to the amount due under the mortgage to every mortgagee, then any such mortgagee shall, at the sale of the mortgaged land—

- (a) if the full amount ordered in the decree to be paid to all the mortgagees is greater than the appraised value of the land, be given credit in an amount which bears to the appraised value the same proportion as the amount ordered in the decree to be paid to him bears to the full amount so ordered to be paid to all the mortgagees ; or
- (b) if the appraised value is the same as or greater than the full amount so ordered to be paid, be given credit up to the amount ordered in the decree to be paid to him.

(4) Where in any action upon a mortgage bond referred to in sub-section (1) the Court has made an adjudication as to the amount due under the mortgage to one or some only, but not all, of the mortgagees, no mortgagee shall at the sale of the mortgaged land be given any credit notwithstanding that any amount may be ordered in the decree to be paid to him.

(5) The preceding provisions of this section shall apply in the case of every bond referred to in sub-section (1) notwithstanding anything in the bond contained :

Provided that those provisions shall not apply where the bond contains provision expressly referring to this section and excluding its operation.

Warrant of attorney to confess judgment in mortgage action.

66. (1) In the case of any mortgage created after the appointed date, no warrant or power of attorney shall be given to any person to confess judgment in any action for the enforcement of the mortgage, and no warrant or power so given shall be of any force or effect in law :

Provided that nothing in the preceding provisions of this section shall apply in any case where a general power of attorney referred to in section 25 of the Civil Procedure Code has been granted by any mortgagor.

(2) Where a warrant or power of attorney to confess judgment in any action for the enforcement of a mortgage has, at any time before the appointed date, been given to a Proctor, no judgment or decree in such action, whether entered before or after such date, and no sale in execution of such decree, shall be or be held to be invalid on the ground that—

- (a) the warrant or power, being executed in the form No. 12 in the Second Schedule to the Civil Procedure Code, did not authorise the Proctor to consent to the entry of judgment or decree for the sale of any property of the mortgagor ; or
- (b) the warrant or power was not executed in the aforesaid form No. 12 in that it contained provision authorising or purporting to authorise the Proctor to consent to the entry of judgment or decree for the sale of any property of the mortgagor ; or

- (c) the warrant or power authorised the Proctor to consent to the entry of judgment or decree for a specified sum and not for the sum due and payable under the mortgage.

67. Where the mortgagee of any land is in possession of the title deeds relating to the mortgaged land, the Court having jurisdiction to entertain an action upon the mortgage may, whether or not such action is instituted, if it is satisfied on application made by the mortgagor by petition and affidavit that the mortgagor is likely to be able to effect a sale, mortgage or lease of the land to any other person, make order directing the mortgagee to produce such title deeds and to keep them in the custody of the Court during such period as may be specified in the order, for the purpose of enabling them to be inspected and examined by such person.

Production to Court of title deeds of mortgaged land.

68. Nothing in Chapter XXVIII. of the Civil Procedure Code shall apply in any hypothecary action or in any action to enforce payment of the moneys due upon any mortgage.

No security for costs in actions on mortgage.

Part IV.

SPECIAL MORTGAGE OF LAND ACCOMPANIED BY DEPOSIT OF TITLE DEEDS.

69. (1) The owner of any land may create a mortgage of such land in favour of any approved credit agency by—

Creation of mortgage by deposit of deeds and prescribed instrument.

- (a) the execution of an instrument in the form set out in the Second Schedule to this Ordinance; and
(b) the deposit with such agency of the title deeds of such land.

(2) The Legal Secretary may make rules—

- (a) providing for the amendment of the form set out in the Second Schedule to this Ordinance or the substitution thereof of any new form;
(b) authorising the inclusion in any instrument executed under sub-section (1) of any covenants and agreements on the part of the person creating the mortgage or of the agency in whose favour the mortgage is created;
(c) declaring the offices which shall be prescribed offices for the purposes of section 70.

(3) Every rule made under sub-section (2) shall be submitted to the State Council for approval.

Every rule so approved shall be presented to the Governor for ratification and if so ratified shall be published in the *Gazette*, and shall come into force upon such publication.

70. The instrument referred to in section 69 may be signed in the presence of, and the execution of such instrument may be attested by, the Manager or Secretary or any Director or other person holding any prescribed office in the agency and at least one other witness; and where such instrument is so signed and attested, nothing in section 2 of the Prevention of Frauds Ordinance shall apply thereto.

Execution and attestation of instrument.

71. (1) In the case of an instrument referred to in section 69, an amount equal to one-fifth of the duty chargeable under Schedule A to the Stamp Ordinance in the case of a bond or mortgage of a like nature (which duty so chargeable is hereinafter referred to as the "statutory stamp duty") may be paid at the time of execution, and where such amount is paid, the instrument shall be deemed to be duly stamped for the purposes of that Ordinance if proceedings for the recovery of the moneys secured by the instrument are instituted, or the instrument is discharged, during the period of six months commencing on the date of the execution thereof.

Special provisions as to payment of stamp duty.

(2) In any case where one-fifth of the statutory stamp duty is paid at the time of the execution of any instrument referred to in section 69, the following provisions shall have effect:—

- (a) A further amount equal to one-fifth of the statutory stamp duty may be paid to the Commissioner of Stamps before the expiry of the period of six months referred to in sub-section (1) or within fourteen days thereafter, and upon such payment being certified by the Commissioner of Stamps as hereinafter provided, the instrument shall be deemed to be duly stamped for the purposes of the Stamp Ordinance if proceedings for the recovery of the moneys secured by the instrument are instituted, or the instrument is discharged, during the period of six months immediately succeeding the period referred to in sub-section (1);
(b) A further amount equal to two-fifths of the statutory stamp duty may be paid before the expiry of the succeeding period of six months referred to in

paragraph (a) of this sub-section or within fourteen days thereafter, and upon such payment being certified by the Commissioner of Stamps as hereinafter provided, the instrument shall be deemed to be duly stamped for the purposes of the Stamp Ordinance if proceedings for the recovery of the moneys secured by the instrument are instituted, or the instrument is discharged, during the period of one year immediately succeeding the said period of six months ;

- (c) Where proceedings for the recovery of the moneys secured by the instrument are not instituted, or the instrument is not discharged, before the expiry of a period of two years from the date of the execution thereof, the instrument shall be deemed for the purposes of the Stamp Ordinance to be an instrument which is not duly stamped unless a further amount equal to one-fifth of the statutory stamp duty is paid before the expiry of the aforesaid period of two years or within fourteen days thereafter, and such payment is certified by the Commissioner of Stamps as hereinafter provided ; and where such payment is so made and certified the instrument shall for all purposes be deemed to be duly stamped in like manner as though the statutory stamp duty had been paid at the time of the execution of the instrument ;
- (d) Where, by reason of the fact that payments of duty have not been made as provided in the preceding paragraphs, the instrument is deemed for the purposes of the Stamp Ordinance to be not duly stamped, then, for the purposes of the application of the Proviso to section 35 of that Ordinance, the amount of the duty chargeable on such instrument under that Ordinance shall be deemed to be an amount equal to six-fifths of the statutory stamp duty and the amount of the deficiency to be recovered under that Proviso shall be determined accordingly.

(3) Where the Commissioner of Stamps, or any other officer of his Department duly authorised by him in that behalf, is satisfied, upon presentation to him of an instrument, that a payment has been duly made in accordance with any provision of paragraphs (a) to (c) of sub-section (2), the Commissioner or such officer shall by means of an endorsement under his hand on such instrument certify that such payment has been duly made.

No payment shall be certified by the Commissioner or any officer under the preceding provisions of this sub-section unless the instrument is presented to him within fourteen days of the date of such payment :

Provided, however, that the Commissioner or such officer may in his discretion certify such payment notwithstanding any delay in the presentation of the instrument, if he is satisfied that the delay was due to inadvertence.

(4) All payments of stamp duty under sub-section (2) of this section shall be made by sending to the Commissioner the amount of the further duty from time to time to be paid under that sub-section.

Right of mortgagee to make and recover payments of stamp duty.

72. (1) The payments for which provision is made by section 71 may be made by the approved credit agency without prior reference to the person executing the instrument.

(2) The amount of every payment made as provided by section 71 may be added to the amount the payment of which is secured by the instrument, and if so added, shall be recoverable accordingly.

Part V.

MORTGAGE OF MOVABLES : SPECIAL PROVISIONS APPLICABLE WHERE MORTGAGEE IS AN APPROVED CREDIT AGENCY.

Right of approved agency to realise shares mortgaged in specified circumstances.

73. (1) Where the holder of any shares—

- (a) creates a mortgage of such shares in favour of an approved credit agency by means of an instrument in the form set out in the Third Schedule of this Ordinance, and
- (b) deposits with such agency the certificate or certificates issued to him in respect of such shares, and
- (c) executes and delivers to such agency an instrument of transfer of such shares in favour of such agency or of any nominee of such agency, or an instrument of transfer in which the name of the transferee is not entered at the time of the execution (hereinafter referred to as a "transfer in blank"),

the provisions hereinafter set out shall apply, that is to say—

- (i.) if the shares are mortgaged as security for the payment of any moneys stated to be payable on demand, and

the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency of a notice of demand in accordance with the provisions of section 74, or

- (ii.) if the shares are mortgaged as security for the payment of any moneys stated to be payable on a specified or ascertainable date, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency, after that date, of a notice of demand in accordance with the provisions of section 74,

it shall be lawful for the agency to sell, or as the case may be to cause the nominee to sell, the shares, at their current market value, and where a transfer in blank had been executed, to complete the sale by the insertion in the transfer in blank of the name of the purchaser as the transferee of the shares.

(2) The right of the agency to sell any shares under sub-section (1) shall include the right to purchase the shares at the current market value, or where the transfer had been executed in favour of the agency to retain the shares, credit being in either event given to the mortgagor to the extent of the current market value.

(3) The rights of the agency under the preceding provisions of this section may be exercised in respect of all the shares which are for the time being subject to the mortgage under the instrument referred to in sub-section (1) (a) or separately in respect of any shares so subject.

74. (1) Every instrument of mortgage referred to by paragraph (a) of section 73 (1) shall contain the address to which notice of demand of payment may be sent to the mortgagor by the agency :

Address of mortgagor and issue of notice of demand.

Provided, however, that upon any change of address the mortgagor may notify the new address to the agency and such new address, if acknowledged in writing by the agency, shall, for the purposes of section 73, be the address to which a notice of demand of payment may be sent.

(2) Every such notice of demand shall be sent by registered post in a letter to the address of the mortgagor as stated in the instrument referred to in paragraph (a) of section 73 (1) or to such new address as may for the time being have been notified and acknowledged as provided in sub-section (1) of this section.

75. (1) Upon the exercise under section 73 of the right of sale or purchase of any shares and the completion of a transfer in blank by the insertion of the name of the purchaser as transferee of the shares, the transfer as so completed shall have the like effect as though it had been executed by the mortgagor at the time of completion.

Effect of exercise of right of sale, &c.

(2) Where a transfer (other than in blank) of any shares has been executed by the mortgagor as provided in section 73 in favour of an approved credit agency or a nominee of such agency, the fact that the transfer had been executed by way of mortgage shall not affect the right of the agency or the nominee, during the pendency of the mortgage, to apply to be registered as holder of the shares and to be so registered.

76. Upon the sale or purchase of any shares in exercise of the right conferred by section 73—

Proceeds of sale or purchase to be applied in satisfaction of debt.

(a) the moneys realised upon such sale or credited as provided in section 73 (2) shall be applied by the agency in satisfaction of the debt due and payable under the mortgage, and the mortgagor shall be entitled to receive the balance, if any, remaining after such debt is satisfied ;

(b) if the moneys realised or credited upon the sale or purchase of all the shares mortgaged by the instrument are insufficient to satisfy such debt, the deficiency may be recovered from the mortgagor in the ordinary course of law.

77. Where a mortgage of shares has been created as provided in section 73, and the mortgage is discharged by payment of the moneys due and payable thereunder, or by reason that the moneys realised upon a sale or purchase of some only of the shares so mortgaged are sufficient to satisfy the debt, or otherwise—

Rights of mortgagor on discharge of mortgage.

(a) the mortgagor shall be entitled, in the case of a transfer in blank, to receive from the agency the certificate or certificates in respect of such shares or of the shares remaining unsold, as the case may be, together with the transfer in blank in respect thereof ;

(b) the mortgagor shall be entitled, in the case of a transfer otherwise than in blank, to receive from the agency or its nominee at the instance of the agency, a duly executed instrument of re-transfer of the share or of the shares remaining unsold, as the case may be.

Right to damages, &c., for wrongful sale.

78. (1) Where any shares mortgaged as provided in section 73 are sold or caused to be sold, or are purchased by the agency, otherwise than in the due exercise of the right conferred in that behalf by that section, the mortgagor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by reason of such sale or purchase :

Provided, however, that no such action for any loss or damage shall be maintainable by the mortgagor on the ground that notice of demand under section 74 was not received by him, if it is proved that such notice was sent by registered post in a letter addressed to the mortgagor at the proper address referred to in the aforesaid section 74, and that the right of sale or purchase was exercised after one month from the date of such posting.

Savings for application of company law, &c., as to transfers and registration.

79. The operation of any other written law or of any regulations or provisions which apply to the transfer of shares, or to the registration of the transferee of any shares as the holder thereof, or which confer any right to decline to effect such registration shall not in any way be affected or modified by reason that a transfer of any such shares is effected in the exercise of the right conferred by section 73.

Meaning of "shares".

80. For the purpose of sections 73 to 79—

"shares" means any shares, debentures, stock or other securities in the funds of the Government of any part of the British Empire or in the capital of any company incorporated or registered in any part of the British Empire ;

"certificate" means any share certificate or any other document certifying that a person is the holder of any shares as hereinbefore defined.

Right of approved agency to surrender mortgaged life policy in specified circumstances.

81. Where the holder of a policy of life insurance—

- (a) creates a mortgage of the policy in favour of an approved credit agency by means of an instrument in the form set out in the Third Schedule to this Ordinance, and
- (b) assigns the policy to the agency by way of mortgage and deposits it with such agency,

the following provisions shall have effect that is to say—

- (i.) if the policy is mortgaged as security for the payment of any moneys stated to be payable on demand, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within six months of the issue of notice of demand of payment in accordance with the provisions of section 82, or
- (ii.) if the policy is mortgaged as security for the payment of any moneys stated to be payable on any specified or ascertainable date, and the mortgagor fails to make payment of the moneys due and payable under the mortgage within six months of the issue of notice of demand of payment in accordance with the provisions of section 82, or
- (iii.) if any premium due on the policy remains unpaid after one month from the issue, in accordance with the provisions of section 82, by the agency of a notice demanding payment of such premium to be made to the insurer,

such agency shall be entitled to surrender the policy to the insurer and to receive payment of the surrender value of the policy or of such amount as would have been payable to the assured if the policy had been surrendered by him.

Address of mortgagor and issue of notice of demand.

82. (1) Every instrument of mortgage referred to in paragraph (a) of section 81 shall contain the address to which notice of demand of payment may be sent to the mortgagor by the agency :

Provided, however, that upon any change of address the mortgagor may notify the new address to the agency which shall thereupon acknowledge the new address in writing ; and such new address, if so acknowledged, shall, for the purposes of section 81, be the address to which a notice of demand of payment may be sent.

(2) Every such notice of demand shall be sent by registered post in a letter to the address of the mortgagor as stated in the instrument referred to in paragraph (a) of section 81 or to such new address as may for the time being have been notified and acknowledged as provided in sub-section (1) of this section.

Moneys received upon surrender to be applied in satisfaction of debt.

83. Where any policy of insurance is surrendered in the exercise of the right conferred by section 81—

- (a) the moneys received by the agency from the insurer shall be applied in satisfaction of the debt due and payable under the mortgage ;

- (b) the mortgagor shall be entitled to payment from the agency of the balance, if any, remaining after satisfaction of such debt ;
- (c) if the moneys so received are insufficient to satisfy such debt, the agency shall be entitled to recover the deficiency in the ordinary course of law.

84. If the policy is surrendered by the agency otherwise than in the due exercise of the right conferred by section 81, the mortgagor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by him in consequence of such surrender :

Right to damages, &c., for wrongful surrender.

Provided, however, that no such action for any loss or damage shall be maintainable by the mortgagor on the ground that notice of demand under section 82 was not received by him, if it is proved that such notice was sent by registered post in a letter addressed to the mortgagor at the proper address referred to in the aforesaid section 82, and that the right of surrender was exercised after the period of six months or the period of one month of the date of such posting, whichever such period is applicable.

85. (1) Where a mortgage of any corporeal movables is created in favour of an approved credit agency, it shall be lawful for the agency, subject to the provisions of sub-sections (2) and (3), to sell any of the movables subject to the mortgage which may for the time being be actually in the possession and custody of the agency.

Power of approved credit agency to sell corporeal movables which are subject to mortgage.

(2) The power conferred on the agency by sub-section (1) to sell any movables shall be exercised only if the instrument of mortgage or an agreement between the parties contains provision referring to this section and empowering the agency to exercise the power of sale conferred thereby, and if either of the following conditions is fulfilled, that is to say—

- (a) where the mortgage is created as security for the payment of any moneys stated to be payable on demand, if the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency of a notice of demand in accordance with the provisions of section 86 ; or
- (b) where the mortgage is created as security for the payment of any moneys stated to be payable on a specified or ascertainable date, if the mortgagor fails to make payment of the moneys due and payable under the mortgage within one month of the issue to him by the agency, after that date, of a notice of demand in accordance with the provisions of section 86.
- (3) Every sale in exercise of the power conferred by sub-section (1) shall be by public auction, and it shall be the duty of the agency to take such steps as are necessary to ensure—
- (a) that a notice, containing a description of the movables to be sold and specifying the date fixed for the sale, is published in two issues of a daily newspaper circulating in Ceylon at least one week before the date fixed for the sale ; and
- (b) that the sale takes place on the date so specified, or if the sale is postponed, that a further notice containing the particulars specified in sub-paragraph (a) is published at least one week before the date to which the sale is postponed.

86. (1) The power of sale conferred by section 85 shall not be exercised unless the instrument of mortgage contains an address to which notice of demand of payment may be sent to the mortgagor by the agency ; or where there is no such instrument unless the mortgagor has in writing signed by him furnished an address as aforesaid to the mortgagee :

Notice of demand of payment prior to exercise of power of sale.

Provided, however, that upon any change of address, the mortgagor may notify his new address to the agency, and such new address, if acknowledged in writing by the agency, shall for the purposes of section 85 be the address to which a notice of demand of payment may be sent.

(2) Every such notice of demand of payment shall be sent by registered post in a letter to the address of the mortgagor as stated in the instrument of mortgage or the writing referred to in sub-section (1), or to such new address as may, for the time being, have been notified and acknowledged as provided by that sub-section.

87. Upon a sale of any movables in the exercise of the right conferred by section 85—

Application of proceeds of sale.

- (a) the moneys realised upon such sale shall be applied by the agency in satisfaction of the debt due and payable under the mortgage, and the mortgagor shall be entitled to receive the balance, if any, remaining after such debt is satisfied ;

(b) if the moneys realised upon the sale are insufficient to satisfy such debt, the deficiency may be recovered from the mortgagor in the ordinary course of law.

Damages for wrongful sale of mortgaged property.

88. Where any movables are caused to be sold by the agency otherwise than in the due exercise of the powers conferred in that behalf by section 85 or where the provisions of sub-section (3) of that section are not complied with in relation to the sale, the mortgagor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by reason of the sale or of the non-compliance, as the case may be :

Provided, however, that no action for any loss or damage shall be maintainable by the mortgagor on the ground that notice of demand of payment was not received by him, if it is proved that such notice was sent by registered post in a letter addressed to the mortgagor at the proper address referred to in section 86, and that the power of sale was exercised after one month from the date of such posting.

Meaning of "book debt".

89. In sections 90 to 95 "book debt" means any debt which—

- (a) is due or may become due to any person on account of any loan made in the ordinary course of any business carried on by that person as a money-lender, or on account of goods sold in the ordinary course of any business carried on by that person as a seller of such goods, or on account of work or services performed or rendered in the ordinary course of any business carried on for profit by that person, and
- (b) is shown in the books kept by such person in the ordinary course of the business.

Rights of approved credit agency to which book debts are assigned by way of mortgage.

90. (1) An assignment of any book debt shall, if such assignment is executed in favour of an approved credit agency and is expressed to be by way of mortgage and is duly registered under the Registration of Documents Ordinance, confer on the agency, in addition to the right to enforce such mortgage by action in any competent Court, the right to demand, accept and recover payment of such debt from the person owing such debt to the assignor :

Provided, however, that no right hereinbefore conferred on the agency shall be exercisable—

- (a) unless notice of the assignment is given by the agency, to the person owing such debt, in any manner provided by section 91, and the debt is due and unpaid at the date on which notice is so given ;
 - (b) if the right to demand, accept or receive such payment is, by the instrument of the mortgage declared to be conditional upon the happening of any event or the non-fulfilment of any obligation by the assignor, unless such event has happened or such obligation has not been fulfilled within the time specified in that behalf in the instrument, as the case may be.
- (2) The provisions of sub-section (1) shall apply in relation to a book debt notwithstanding—
- (a) that it may not be specially assigned ; or
 - (b) that it may not have been due, or that the consideration therefor may not have passed, at the time of the execution of the assignment.

Manner of giving notice of assignment to person owing book debt.

91. (1) Notice of the assignment of a book debt may be given by the agency to a person owing such debt in any manner set out hereunder, that is to say—

- (a) by sending or presenting to the person owing such debt a notice addressed to such person and signed by the assignor to the effect that the debt has been assigned to the assignee ; or
- (b) by sending or presenting to such person (i.) a general notice signed by the assignor to the effect that all book debts which are due or may become due have been assigned to the assignee, or (ii.) a copy of such notice certified by a Director, Manager, partner or secretary of the agency.

(2) Any notice referred to in paragraph (a) or paragraph (b) of sub-section (1) may be signed by the assignor at the time of the execution of the assignment or at any time thereafter, and may be sent or presented to the person owing the debt at any time while the assignment is operative.

Application of moneys received in payment of mortgage debt.

92. Where payment of a book debt is made to the agency upon demand made in that behalf of the person owing such debt, the amount of the payment shall be applied in satisfaction of the moneys for the time being due and payable to the agency under the mortgage, and the balance, if any, remaining out of such proceeds shall be payable to the assignor.

93. Where any book debt is recovered by the agency otherwise than in the due exercise of the powers conferred, by section 90, the assignor shall be entitled to recover from the agency the amount of any loss or damage suffered or incurred by reason of such recovery.

Damages for wrongful exercise of power to recover book debt

94. Notwithstanding the execution of any assignment referred to in section 90, but subject as hereinafter provided, the assignor shall, unless and until notice of the assignment is given to the person owing the debt, have the same right to recover such debt from such person whether by way of action or otherwise, and to appropriate to his own use any moneys so recovered, as though the assignment had not been executed :

Provision for recovery of book debt by assignor notwithstanding assignment.

Provided, however, that the agency shall be entitled, upon making application to any Court in which an action for the enforcement of the assignment can properly be instituted; by petition supported by an affidavit declaring that moneys are due and payable to him under the mortgage, to obtain *ex parte* an injunction restraining the assignor from recovering any such debt, and if need be an order authorising the Fiscal—

- (a) to enter the premises in which the assignor carries on his business, together with a person nominated in that behalf by the assignee and approved by the Court ;
- (b) to take possession of any such books kept or found therein as may contain entries relating to the book debts which are subject to the assignment ; and
- (c) to deliver such books to the assignee for the purpose of enabling him to recover such debts from the persons by whom they are owing,

and where an injunction is so issued nothing in the preceding provisions of this section shall authorise or be deemed to authorise the assignor to recover or sue for any debt in breach of such injunction.

(2) Where an injunction has been issued under sub-section (1) or any order relating to the books has been made under that sub-section, the Court may thereafter upon application made by the assignor and after such inquiry as it may consider necessary, make such order in relation to the injunction and to the books as the Court may think fit.

95. Notwithstanding the execution of any assignment referred to in section 90 the assignee shall not be entitled to demand or recover payment of any book debt which is subject to the assignment from the person owing such debt if such debt had been paid by such person to the assignor before notice under section 91 is received by him.

Protection for debtor paying without notice of assignment.

Part VI.

MORTGAGE OF MOVABLES : GENERAL.

Appointment of Receiver.

96. (1) Where a mortgage is created in respect of the entirety of the goods which are, or may at any future time be, in any specified premises, or of the goods which constitute or may at any future time constitute the entire stock in trade in any specified premises, and an action is instituted by the mortgagee for the enforcement of the mortgage or the recovery of the moneys due thereunder, the mortgagee may, at or after the time of the institution of the action, make application to the Court by petition for the appointment of Receiver of the mortgaged property.

Application for appointment of Receiver where entire stock in trade, &c., is mortgaged.

(2) Such application shall be supported by affidavit of the mortgagee stating the sum lent to the mortgagor, the sum, if any, repaid out of the loan, and the sums due to the mortgagee by way of principal and interest.

(3) Subject as hereinafter provided, the application for the appointment of a Receiver shall, unless the mortgagee otherwise desires, be dealt with *ex parte* by the Court :

Provided, however, that where the application is made at any time after the filing of an answer by the mortgagor, the application shall be dealt with after notice to the mortgagor.

97. The Court may refuse to make an order for the appointment of a Receiver under section 96, if having regard to the value and nature of the business the stock in trade of which is the subject of the mortgage, or the nature and value of the goods, as the case may be, and to the amount which in the circumstances of the case can reasonably be allowed as the remuneration of the Receiver, the Court is of opinion that a suitable person is not available for such appointment.

Refusal to appoint Receiver.

Save as hereinbefore expressly provided, the Court shall not refuse to make order for the appointment of a Receiver upon application duly made in that behalf in any case to which section 96 applies.

Directions
in order of
appointment.
&c.

98. (1) Every order for the appointment of a Receiver in any case to which section 96 applies shall—

- (a) provide for the committal of the mortgaged property and if need be of the business carried on by the mortgagee at the specified premises to the custody and the management of the Receiver ;
- (b) contain such directions as the Court may in its discretion consider necessary authorising the Receiver to carry on the business of the mortgagor at the premises, to sell all or any of the mortgaged property whether by public auction or otherwise, and to exercise in respect of the mortgaged property such other rights as may be specified in the order.

(2) The Court may, by subsequent order, on application made by the Receiver, the mortgagor or the mortgagee—

- (a) give any directions which might have been given in an order under sub-section (1), or vary any directions previously given whether under that sub-section or under the preceding provisions of this sub-section ;
- (b) authorise the Receiver to institute or defend any action or proceedings in respect of any matter affecting the mortgaged property or the management and administration of the business or the recovery of any moneys due upon the sale of the mortgaged property.

(3) The person appointed to be the Receiver of the mortgaged property shall, for the purposes of the exercise of the rights conferred on him by any directions given under the preceding provisions of this section, have and be entitled to exercise all the rights and powers of the owner of the mortgaged property.

(4) Where the Receiver is obstructed in taking possession of the mortgaged property, the Court may after inquiry make such orders as may be necessary for the purpose of securing that delivery of possession is given to the Receiver.

Duties and
liabilities
of Receiver.

99. Every Receiver appointed in any case to which section 96 applies shall—

- (a) render accounts to Court in such form and at such times as the Court may direct in that behalf ;
- (b) make payment to Court to the credit of the action, from time to time as the Court may direct, of the nett receipts received by him in his capacity as such ;
- (c) be responsible for any damage to the mortgaged property, or for the loss of any income, incurred by his gross negligence or by any intentional act on his part.

Moneys to
be kept in
Court.

100. (1) All moneys paid into Court by the Receiver under section 99, shall, unless the Court otherwise directs, be kept in Court to the credit of the action until the final disposal of the action.

Provided that payment may from time to time be made out of such moneys of the remuneration due to the Receiver.

(2) The amount of the moneys in Court to the credit of the action at the date of the decree entered in the action shall be applied in satisfaction of the amount stated in the decree to be due upon the mortgage.

(3) No seizure of such moneys in execution of any order or decree in any other action (other than an action for the enforcement of a mortgage having priority to the mortgage in suit in the action referred to in section 96) shall affect the operation of sub-section (2) of this section.

Restriction
of appeals
against
appointment,
&c., of
Receiver.

101. No appeal shall lie against the refusal of the Court to make any order for the appointment of a Receiver upon application under section 96 or against any order or directions made or given under any of the provisions of sections 97 to 100, other than the provisions of sub-section (4) of section 98.

Mortgage of Motor Cars.

Special
registration
of mortgage
of motor car.

102. (1) Where any motor car is mortgaged to any person—

- (a) the instrument of mortgage shall, on presentation to the Commissioner of Motor Transport, be registered by means of an entry made in the Register of Motor Cars kept under the Motor Car Ordinance, No. 45 of 1938 ;
- (b) the certificate of registration issued under that Ordinance to the registered owner of the motor car may be presented to the Commissioner of Motor Transport, who shall, on such presentation, make an endorsement on the certificate to the effect that the motor car has been mortgaged by the instrument of mortgage.

(2) Application for registration under sub-section (1) shall be made by the mortgagor and shall be accompanied by a fee of one rupee.

(3) The Commissioner shall, on application made in that behalf by any person interested and on payment of a fee of one rupee, issue a certified copy of any entry made under sub-section (1).

(4) In this section and in sections 103 and 104, "moto car" has the same meaning as in the Motor Car Ordinance, No. 45 of 1938.

103. Where the instrument of mortgage of any motor car has been registered under section 102, the following provisions shall apply:—

- (a) notwithstanding anything in any other law, any sale or other disposition of the motor car by or against the mortgagor shall not, so long as the mortgage continues in force, extinguish or be deemed to extinguish the mortgage of the motor car, which shall remain subject to the mortgage in the hands of the transferee or other person in whose favour such disposition is effected;
- (b) upon the issue by the Commissioner under the Motor Car Ordinance, No. 45 of 1938, of any new certificate of registration to any person registered as the new owner or of a duplicate certificate, the Commissioner shall make an endorsement on the certificate to the effect that the motor car has been mortgaged by the instrument referred to in paragraph (a) of section 102 (1).

Registered mortgage of motor car to subsist notwithstanding sale, &c. to third party.

104. The registration by the Commissioner of an instrument of mortgage of a motor car and any endorsement made upon the certificate of registration under section 102 or under section 103 to the effect that the motor car is mortgaged, shall be cancelled by the Commissioner at the request of the mortgagee or upon an order being made by a District Court directing such cancellation upon application made to it in that behalf by petition and affidavit.

Cancellation of registration of mortgage of motor car.

105. (1) Where any movable property whatsoever which is subject to a mortgage is seized in execution of a decree in favour of any person other than the mortgagee—

- (a) the claim of the mortgagee shall not be investigated or dealt with as provided in sections 241 to 247 of the Civil Procedure Code;
- (b) the mortgagee shall be entitled to make application to be added as a party to the proceedings in which the seizure was effected;
- (c) where the mortgagee is so added before the sale under the seizure, and makes application in that behalf supported by affidavit declaring that the property is subject to a mortgage in his favour, the Court shall order that the sale under the seizure be stayed and that the property be sold by public auction by an auctioneer to be appointed under sub-section (2).

Rights of mortgagee of moveables seized by other creditor.

(2) Notice of an order under sub-section (1) (c) shall be given to the parties to the action, and the Court shall after such inquiry as may be necessary appoint an auctioneer to conduct the sale and give directions as to the time and manner of such sale.

(3) Where the seizure of the movable property is released after the making of an order under sub-section (1) (c) for the sale thereof, the order under that sub-section shall be annulled and no further proceedings shall be taken thereon.

(4) Where the mortgagee is added under sub-section (1) as a party to the action and the movable property is or has been sold, whether under the seizure or under an order made under sub-section (1) (c), and it is proved to the satisfaction of the Court (after trial of such relevant issues as may be framed) that the movable property was at the date of such addition subject to the mortgage and either (i) that any sum was due and payable under the mortgage at that date or on demand, or (ii) that any sum, the amount of which is ascertainable, is certain to fall due for payment under the mortgage upon the effluxion of time without the happening of any future event or the future fulfilment of any condition—

- (a) the Court shall order that payment shall be made to the mortgagee, out of the proceeds of the sale of the property, of the sum so proved;
- (b) the balance, if any, remaining out of such proceeds shall be deemed to be the proceeds of a sale held under the seizure and be available for distribution accordingly;

(c) if the proceeds of the sale are insufficient to satisfy the sum so proved, the payment of such proceeds to the mortgagee shall not prejudice his right to recover any amount outstanding by subsequent action against the mortgagor, but in any such action every determination of the Court under the preceding provisions of this sub-section shall be *res adjudicata* as between all persons who were parties to the proceedings under this section.

Rights of mortgagee of moveables upon insolvency of mortgagor

106. (1) Where any movable property whatsoever is subject to a mortgage, and the mortgagor is adjudicated insolvent, the mortgagee shall, upon making an application in that behalf by petition and affidavit in the proceedings upon such insolvency, be entitled to obtain in those proceedings an order directing that the property be sold by public auction by an auctioneer approved by the Court in accordance with such directions as may be issued by the Court in that behalf.

The Court may, if it thinks fit, before approving the auctioneer or giving such directions, issue notice to the assignee of the estate of the insolvent

(2) Where any property is sold upon application made under sub-section (1), and it is proved to the satisfaction of the Court, after trial of such relevant issues as may be framed, that the movable property was at the date of the application subject to the mortgage and either (i) that any sum was due and payable under the mortgage on that date or (ii) that any sum, the amount of which is ascertainable, is certain to fall due for payment under the mortgage upon the effluxion of time without the happening of any future event or the future fulfilment of any condition—

- (a) the Court shall order that payment shall be made to the mortgagee, out of the proceeds of sale of the property, of the sum so proved ;
- (b) the balance if any remaining out of such proceeds shall be kept in Court to the credit of the assignee ;
- (c) if the proceeds of sale are insufficient to satisfy the sum so proved, the payment of such proceeds to the mortgagee shall not prejudice his right to prove his claim in respect of the deficiency in the proceedings upon insolvency.

Decree and sale of Movables in Hypothecary Action.

Order for sale and directions.

107. Where in a hypothecary action in respect of any movable property the Court finds that the mortgage out to be enforced, the decree shall, in relation to the mortgaged movables, order that the movables shall be sold in default of payment within such period as may be specified by the Court not exceeding one month from the date of the decree, of the moneys due under the mortgage :

Provided, however, that the Court may in its discretion and subject to such conditions, including the making of specified payments on specified dates as it thinks fit, on application made in that behalf before the entry of the decree fix such longer period than one month as the Court may consider reasonable.

Manner of sale of mortgaged movables.

108. Subject as hereinafter provided the mortgaged movables shall be seized and sold by the Fiscal under Chapter XXII. of the Civil Procedure Code and all the provisions of that Code relating to the seizure and sale and delivery to the purchaser of movable property seized in execution of a decree for the payment of money shall apply accordingly :

Provided, however, that the Court may in its discretion if it thinks fit so to do, either in the decree or subsequently direct that the property shall be sold by the Fiscal or by an auctioneer approved by the Court, without being previously seized, and shall in such case in the decree, or subsequently give directions as to the conduct and conditions of sale to the delivery of possession to the purchaser at such sale, and as respects such other matters as the Court may find necessary.

Application of this Part.

109. The provisions of sections 96 to 106 shall not apply to any mortgage created before the appointed date.

Part VII.

MISCELLANEOUS.

Rights of Landlord in relation to Goods upon Permisses of which Rent is in Arrear.

Injunction to restrain removal of goods from premises the rent of which is in arrear.

110. (1) A plaintiff in an action for the recovery of the rent due from a tenant in respect of any premises shall be entitled, upon satisfying the Court that rent is due from the tenant and has remained unpaid for one week after demand thereof, to obtain from the Court, *ex parte*, an injunction restraining the tenant from removing any goods from the premises or causing or permitting the removal therefrom of

any goods, at any time while any rent remains due and unpaid, unless authority has been granted in that behalf under sub-section (3).

(2) Every application for an injunction under sub-section (1) shall be made in the manner provided by section 662 of the Civil Procedure Code and all the provisions of Chapter XEVI. of that Code, other than section 664, shall apply accordingly.

(3) When an injunction has been issued under sub-section (1) in respect of the goods upon any premises and is for the time being in force, the Court may upon application made by petition supported by affidavit, and after notice to the plaintiff and such inquiry as the Court may deem necessary, by order authorise the removal of any goods from the premises if satisfied—

- (a) that such goods are owned by any person other than the tenant or a member of his family, or
- (b) that such goods are not household goods and are owned by a member of the family of the tenant.

(4) Where an injunction has been issued under sub-section (1) in respect of the goods upon any premises and is for the time being in force, any person who knowing or having reason to believe that it is unlawful for the tenant to remove or cause or permit the removal of the goods from the premises, removes or assists in the removal from the premises of any goods the removal of which is not authorised by order under sub-section (3), may be punished as for a contempt of Court in like manner as a tenant in case of disobedience.

111. (1) Subject to the Proviso to section 218 of the Civil Procedure Code, all goods belonging to a tenant and all household goods belonging to any member of his family as hereinafter defined and for the time being upon any premises shall be liable to be seized in execution of a decree in an action against the tenant for rent due in respect of the premises, and where such goods are so seized and sold, the payment of the amount of the decree shall be a first charge on the proceeds of sale in preference to any other charge or interest whatsoever other than a charge in favour of His Majesty or of any local authority.

Liability of goods to seizure under decree for rent.

(2) No action for damages shall lie by reason of the seizure, in execution of any decree in an action for rent due in respect of any premises, of any goods for the time being upon the premises, on the ground only that they do not belong to the tenant or to a member of his family as hereinafter defined.

112. A landlord of any premises shall not, by reason of the non-payment of rent of such premises, have any right in respect of the goods which are or may have been upon the premises, other than the right conferred by section 110 and the right to seize goods which are declared by section 111 to be liable to such seizure, or which, being goods belonging to the tenant, are liable to seizure under the Civil Procedure Code.

Rights of landlord in relation to goods on premises.

113. In section 110 to 112, "member of the family", in relation to a tenant, means the wife or any child of the tenant residing with him, and includes any relative or other person dependent upon the tenant and residing with him.

"Member of the family" defined.

Approval of Credit Agencies, &c.

114. (1) Every application for a declaration of any company, firm, institution or individual as an approved credit agency under paragraph (c) of section 3 shall be made to the Director of Commerce and Industries.

Approval of credit agencies, &c.

Every such application shall be referred to a Board appointed by the Governor, and consisting of a Chairman and two other persons nominated by the Minister for Labour, Industry and Commerce

(2) The Director shall, if the Board so recommends upon any application, by notification published in the *Gazette* declare the applicant to be an approved credit agency for the purposes of this Ordinance.

(3) The decision of the Board upon any such application shall be final.

(4) Where any company, firm, institution or individual has been declared under paragraph (c) of section 3 to be an approved credit agency, the Board of its own motion or on representations made by the Director of Commerce and Industries may recommend to the Director that the declaration made under that paragraph should be revoked with effect from a date specified by the Board. The decision of the Board in any such case shall be final, and upon such recommendation being made the Director shall by notification in the *Gazette* revoke the declaration with effect from the date so specified.

Provided, however, that the revocation shall not in any way affect the validity or the operation of any instrument duly executed in favour of such agency under any provision of this Ordinance or of any other Ordinance prior to the date on which the revocation takes effect, or to affect the power of such agency to exercise after that date any right which may be exercised under any such Ordinance by virtue of the instrument so executed before that date.

(5) The members of the Board may be paid such remuneration (not exceeding fifty rupees for each sitting) as may be fixed by the Governor, out of moneys voted for the purpose by the State Council.

(6) The members of the Board shall hold office for such period as may be specified by the Governor at the time of appointment; but any such appointment may be revoked by the Governor at any time.

(7) Nothing in Part IV. or Part V. of this Ordinance shall be deemed or construed to authorise any institution mentioned in paragraph (b) of section 3 to make loans upon the security of any property, if the power to make loans on such security is not conferred on such institution by the Ordinance providing for the establishment, powers and functions of such institution.

Saving for appointment of Receivers under Civil Procedure Code.

Saving for appointment of Receivers under Civil Procedure Code.

115. The powers conferred by this Ordinance for the appointment of Receivers of mortgaged property shall be in addition to and not in substitution or derogation of the power to appoint Receivers which is conferred by Chapter L of the Civil Procedure Code :

Provided that nothing in that Chapter shall apply in any case where application is duly made under this Ordinance for the appointment of a Receiver.

Repeal of Chapter 74.

Repeal of Chapter 74.

116. The Mortgage Ordinance (Chapter 74) is hereby repealed :

Provided that such repeal shall not affect the operation of the provisions of sub-section (3) of section 17 of that Ordinance or of the Proviso to section 62 of this Ordinance.

FIRST SCHEDULE.

Form 1.

(Section 6.)

Application for Registration of Address for Service of
Legal Documents.

To the Registrar of Lands of _____.

I (name in full and address) _____ apply under section 6 of the Mortgage Ordinance, for registration in or in continuation of the folio (or folios) specified in B. below of the address specified in A. below as the address for service on me of legal documents in any hypothecary action to enforce any mortgage registered in the folio or folios specified in B. below. Particulars of the instrument under which I derive title are given in C. below.

A.

Address for Service.

(Name of person to whom legal documents are to be sent. This person may be the applicant or another person.)
(Full postal address in the Island.)

e.g., H. John Perera,
No. 18, Maliban Street,
Pettah, Colombo.

B.

Folio (or folios) in which the Address is to be registered.

Volume : _____.

Folio : _____.

Volume : _____.

Folio : _____.

C.

Particulars of Instrument under which Applicant derives Title.

(1) Number and date of deed : _____.

(2) Name of attesting notary : _____.

(3) Volume and folio where the deed is registered : _____.

2. I further declare that my address for service previously registered with you on _____ in volume _____ folio _____ is hereby cancelled.

3. The registration fee of Rs. _____ is enclosed in stamps.

(Signature of applicant or agent)*.

* Agent means an agent authorised in writing by the applicant or proctor or notary public.

Form 2.

(Sections 9 and 10.)

Notice of Hypothecary Action.

In the District Court/Court of Requests of _____.

Action No. _____ plaintiff/s.
vs.
_____ defendant/s.

To *_____ of (registered address.)

Notice is hereby issued to you in terms of section 9 (1)/9 (2) of the Mortgage Ordinance, No. _____ of 194____, of the above action instituted upon a mortgage of the land/s described in the Schedule hereto.

*Name of each person to whom notice is issued.

_____,
Secretary.*Schedule.*(Description of Land/s).
_____**Form 3.**

(Section 34.)

Notice.

In the District Court/Court of Requests of _____.

Action No. _____ plaintiff/s.
vs.
_____ defendant/s.

Notice is hereby given—

- (a) that the plaintiff in the above action has made application under section 34 of the Mortgage Ordinance, No. _____ of 194____, for a declaration that in the event of decree being entered for the sale of the land described in the Schedule hereto, the Court will order the removal of all persons whomsoever who may resist the delivery of possession of the land to the purchaser at the sale ;
- (b) that any person claiming to be entitled to possession of the land or any portion thereof shall be entitled to make application within two months to this Court under section 35 of the Ordinance to be added as a party to the above action and to secure an adjudication upon his claim.
- (c) that a plan of the land has been filed of record in this Court and is available for inspection by any person interested.

_____,
Secretary.*Schedule.*(Description of land.)
_____**Form 4.**

(Section 55.)

Conveyance.*(Title.)*

To all to whom these presents shall come, greeting.

Whereas by a mortgage bond dated _____, and bearing number _____ and attested by _____, notary public, and registered in the _____ District Land Registry at folio _____ the payment to _____ of the sum of _____ rupees was secured with interest by mortgage of the property hereinafter described and hereby conveyed.

And whereas by a decree entered in action No. _____ of the District Court of _____ on the _____ day of _____ it was ordered and decreed that _____ the defendant in the said action do pay to _____ the plaintiff in the said action forthwith the sum of _____ rupees (Rs. _____), being the aggregate amount of the principal, interest, and costs due in respect of the said mortgage bond, together with interest thereon at the rate of _____ per centum per annum from the date of the said decree until payment. And that in default of payment of the said sum, interest, and costs within (state period) from the date of the said decree the said property be sold :

And whereas an order for the sale of the said premises was subsequently given by the Court to the Fiscal/* _____ under section 49/50* of the Mortgage Ordinance, No. _____ of 19____.

And whereas after due notice and publication in manner by law prescribed the said property was exposed to public sale on the _____ day of _____, 19____, by _____ acting under the authority of the said Fiscal/* _____ and was sold to _____ as the highest bidder at the said sale for the sum of _____ rupees :

And whereas the said (purchaser) has duly paid the whole of the said purchase money and thus became entitled to a conveyance of the said property (or, where the plaintiff is purchaser) and whereas the said (purchaser) has been allowed the amount of the purchase money (or as the case may be) in reduction of his claim, and has produced the order of Court, copy whereof is hereunto annexed, and has thus become entitled, &c. :

And whereas the said Court by an order dated the _____ day of _____, 19____, copy of which is hereunto annexed, has duly confirmed the said sale.

Now these presents witness that the said Fiscal/* _____ in consideration of the said sum of _____ rupees so paid by (or credited to) the said (purchaser) as aforesaid, the receipt whereof the said Fiscal/* doth hereby acknowledge, hath sold and assigned, and by these presents doth sell and assign, unto the said (purchaser), his heirs, executors, administrators, and assigns, the property described in the Schedule hereto. To have and to hold the same with their and every of their appurtenances to him, the said (purchaser), his heirs, executors, administrators, and assigns for ever :

In witness whereof the said Fiscal/* _____ hath hereunto subscribed his name at _____ this _____ day of _____, 19—.

(Signature) _____.

Witnesses : _____

Schedule.

(To contain a description of the property conveyed.)

* Strike out what is inapplicable.

Form 5.

(Section 55.)

In the District Court of _____.

No. _____.

Whereas the land known as _____ situated at _____ and more fully described in the Schedule hereto was, under the decree in the above action, sold to _____ of _____ hereinafter referred to as "the purchaser" and whereas it has been reported to this Court that the Fiscal was obstructed in attempting to put the purchaser or some other person on his behalf in possession of such land in terms of the order made under this action and dated the _____ day of _____.

Now, therefore, this is to direct ALL PERSONS WHOMSOEVER forthwith to yield up possession thereof, without obstruction or resistance, to the purchaser or such other person upon pain of suffering the penalties prescribed in that behalf in section 55 of the Mortgage Ordinance, No. _____ of 194—.

By Order of the Court,

(Secretary.)

Schedule.

(Description of Land.)

SECOND SCHEDULE.

Form 6.

(Section 69.)

I/We* _____ of _____ do hereby, in terms of section _____ of the Mortgage Ordinance mortgage the land described in the First Schedule hereto to _____ of _____, an approved credit agency as defined in that Ordinance, as security for the payment of all sums due and owing or which may be or become due and owing from me/us* to the said agency/on* account of the matters and transactions mentioned/(or)* under the instrument entered into this day and referred to/in the Second Schedule hereto.

And I/We* hereby declare that the title deeds of the land aforesaid have been deposited with the agency in terms of the said section.

(Signature) _____.

† (Where not
notarially
executed).

† Signed by the aforesaid _____ of _____ in the presence of _____ (Manager/† Director/† Prescribed Officer) and of (1) _____ and (2) _____ (witnesses).

(Signatures) _____.

First Schedule.

(Description of Land.)

Second Schedule.

(Matters or transactions referred to (or) instrument referred to.)

* Delete if inapplicable.

THIRD SCHEDULE.

Form 7.

(Section 73.)

I/We*, _____ of _____ do hereby mortgage the shares described in the First Schedule hereto to _____ of _____, an approved credit agency within the meaning of the Mortgage Ordinance, No. _____ of _____, as security for the payment of all sums due and owing from me/us* to the said agency/on* account of the matters and transactions mentioned/(or)* under the instrument entered into this day and referred to/in the Second Schedule hereto.

And I/We* hereby declare that the share certificates relating to the said shares have been deposited with the said agency and that I/We* have executed a transfer/transfer* in blank of the said shares and delivered such transfer to the said agency.

(Signature) _____
Signed by the said _____ of _____ in the presence of (1)
_____ and (2) _____ (witnesses).
(Signatures) _____.

First Schedule.

(Description of shares.)

Second Schedule.

Matters or transactions referred to/(or)/instrument referred to.

* Delete if inapplicable.

Form 8.

(Section 81.)

I/We* _____ of _____ hereby mortgage my/our* rights under the policy of life insurance mentioned in the First Schedule hereto to _____ of _____, an approved credit agency within the meaning of the Mortgage Ordinance, No. _____ of _____, as security for the payment of all sums due and owing or which may be or become due and owing from me/us* to the agency/on* account of the matters and transactions/(or)/* under the instrument entered into this day and referred to/in the Second Schedule hereto.

And I/We* hereby declare that the policy has been assigned to the said agency by way of mortgage and has been deposited with the agency.

(Signature) _____
Signed by the said _____ of _____ in the presence of (1)
_____ and (2) _____ (witnesses).

First Schedule.

(Particulars of Policy.)

Second Schedule.

Matters and transactions referred to/ (or)/instrument referred to.

* Delete if inapplicable.

Objects and Reasons.

The Mortgage Commission in its Second Interim Report (Sessional Paper V. of 1945) recommended substantial alterations of the law relating to mortgage, especially in regard to the procedure in a hypothecary action. This draft Bill was prepared by the Commission in order to give effect to its recommendations. The objects and reasons are set out in Chapter VI. of the Report which is reproduced below for reference :—

“ Chapter VI.—PROPOSED DRAFT MORTGAGE ORDINANCE
(APPENDIX 1).

Part I.

120. *Clause 1* provides that the Ordinance should come into operation on a date appointed by Proclamation. We suggest that this Ordinance and the other Ordinances set out in Appendices 2 to 5, if enacted, be brought into operation on the same date.

Clause 3 contains the definition of “ approved credit agencies ”. We have explained in paragraphs above our reasons for recommending that the definition should only include recognised banking companies, special institutions established by Ordinance, and other specially approved agencies.

Part II.

121. Part II of the draft Ordinance deals with the procedure in an action upon a mortgage of land. *Clauses 5 to 11* deal with the issue of the notice of the action on persons who have interests in the land under instruments registered subsequent to the mortgage. We have explained in paragraphs 24 and 25 that these provisions are designed as far as possible to ensure that all such persons will if they have registered an address under *Clause 6* have an opportunity of intervening in the action if they so desire.

122. *Clause 5 (2)* declares that a person who has seized any land which is subject to a mortgage will be entitled to notice of the action. Upon an interpretation of section 6 of the existing Mortgage Ordinance (Chapter 74) it has been held (39 N. L. R. 143) that such a person is not a “ necessary party ” on the ground that a seizure does not create an interest in the land within the meaning of that section. The new *Clause 6* proposed by us will expressly declare that the seizing creditor is entitled to notice of the mortgage action if he registers his address before the registration of the *lis pendens* of the action.

123. *Clause 14* deals with the special case where a person who is entitled to notice is given that notice not at the time of the institution of the action but during its pendency, or where such a person of his own motion intervenes in the action under *Clause 13*. Where such a person is added as a party he will not be bound by any finding or order previously made in the action and he will be entitled to raise any question or issue which he may have raised if he had originally been a party. For this reason it is necessary that there should be a fresh trial of the issues previously raised except of course if the added party consents to be bound by the previous finding. If a party is added after the entry of decree it will be possible to suspend the operation of that decree and thereafter either to confirm it or to enter a new decree as the circumstances of the case may require.

124. *Clause 15* declares that every party to a hypothecary action, and every person entitled to notice of the action to whom that notice is issued or who himself intervenes will be bound by the decree and sale in the action.

125. *Clause 16* declares that a person whose interest in the mortgaged land is subsequent to the mortgage but who is not entitled to notice of the action (whether by failure to register his instrument or his address), will be bound by the decree and sale in the action. Such person can however be allowed to intervene in the action upon terms and if he is so added he will be bound by the orders previously made in the action unless the Court otherwise determines.

126. As stated in paragraph 26, we are satisfied that the provisions in the draft Ordinance for the compulsory registration of the *lis pendens* of a hypothecary action, for the filing by the plaintiff's proctor of a list of persons entitled to notice of the action, for the right of the plaintiff or the mortgagor to have notice issued even at any time before sale, and for the right of a person entitled to notice to intervene before sale, for the re-opening of a decree and for entering a fresh decree upon such notice or intervention, should ensure in the vast majority of cases that all persons entitled to notice will have been bound by the decree upon which a sale takes place.

Clause 9 (2) will make it possible for the plaintiff and for every other party to a mortgage action, on discovery at any time before the sale under the decree that the notice requisite for binding a person with an interest subsequent to the mortgage has not been issued to cause it to be issued forthwith.

Clause 13 will provide that such a person may also on his own application be added as a party. When such a person either on his own application or at the instance of a party already in the action is brought into it, he may raise any questions which he might have raised if he had been originally noticed (*Clause 14*), and for this purpose proceedings will be re-opened and a decree if entered may be suspended. After the questions have been settled the decree will be confirmed or a fresh decree entered. Suitable orders as to costs will be made against the plaintiff owing to whose default fresh proceedings became necessary (*Clause 60 (2)*). When a person entitled to notice to whom notice by inadvertence has not issued at the proper time is brought in or comes into the action in the manner described, the Ordinance provides (*Clause 15*) that he be bound by the decree.

127. In spite of all the safeguards mentioned above we cannot entirely eliminate the possibility that a hypothecary action may have proceeded to the stage of decree and sale without notice having been issued to a person entitled to such notice. In such an event the person, unless he had himself intervened, would not be bound by the decree and sale in the action. We will now proceed to explain in some detail the provision we have made for meeting such an inconvenient and difficult situation, and in doing so, refer to such a person as a "party omitted".

128. It is abundantly clear (*vide* paragraphs 26 to 28) that the law should not allow the party omitted to be prejudiced in any manner by the failure of the plaintiff to cause notice of the hypothecary action to be issued, and should, as far as possible, place him in the same position as he would have been if he had been given an opportunity to be added as a party to the action. Considering the matter in this light, the party omitted should have the right to challenge the validity of the mortgage itself, or to dispute the amount of the moneys due thereunder, and to claim the proceeds of re-sale less the amount of all claims having priority to the instruments under which his interest in the land arises. We recommend that if the party omitted becomes aware of the action after sale but prior to the distribution of the proceeds of sale, an opportunity should be afforded to him

of intervening in the action so as to have any questions settled in the same proceedings prior to distribution. Effect is given to this recommendation in Clause 18 of the draft Ordinance whereby a party omitted who chooses to abide by the sale may intervene even after the sale where the proceeds are still in Court. He may then dispute the amount found to be due to the plaintiff upon his mortgage. If he does so successfully, the decree will be amended but only so far as it relates to the amount so due. The plaintiff will then be entitled to draw only the reduced amount out of the proceeds of sale and the party omitted will be entitled to participate in the balance. The party omitted may not however be able or wish to dispute the amount decreed and may choose nevertheless to make a claim to participate in the balance proceeds. In either event whenever he intervenes in the action he must be deemed to have waived any rights accruing in consequence of the failure to issue notice and will be bound by the decree and sale.

The party omitted may, however, not become aware of the sale prior to the stage of distribution, or having become aware of it may not elect to be bound by it. His principal right is against the land and he cannot therefore be forced to be bound by a sale in which he had no voice and of which no prior knowledge can be imputed to him. In that event his rights should be preserved intact.

We have made express and detailed provision for this case; the party omitted will be given the right to institute an action against the purchaser and in that action to raise any questions and to make any claims which he could have made if he had been a party to the original hypothecary action; similarly a purchaser at a prior sale will be given the opportunity, by way of an action against the party omitted, to settle all outstanding questions and to clear away the cloud which hangs over his title (*Clause 19*).

129. What should be the rights of the party omitted? We will take separately the two cases where he is a mortgagee and where he is a transferee.

Where he is a transferee his transfer is subject to the rights of persons claiming under instruments prior to his and subject to the mortgage. The latter rights will have been converted in the action in which the sale took place into rights against the proceeds of sale and (whether satisfied or not as such) should no longer be considered to exist against the land. It is with the purchase money that the rights have been totally or partially satisfied. To the extent that they have been properly satisfied, that is to say to the extent that the purchase money was available to pay claims found after investigation (to which the party omitted is a party) to have been properly due on prior instruments, the purchaser ought to have a charge superior to that of the party omitted. Not only should this charge in favour of the purchaser be regarded as superior, but it is the only charge that should be regarded as superior, as the rights of the party omitted have to be preserved intact. Consequently it should be open to the party omitted, when a transferee, on payment of such amount to the purchaser, to obtain a title free of the encumbrances covered in the action from which he was omitted. Effect is given to this conclusion in Clause 22. If the party omitted when a transferee, does not pay such amount the land ought to be sold for its payment and the party omitted is entitled to receive any balance left over.

When the party omitted is a mortgagee, the purchaser should be able to free the land of the mortgage by paying whatever is found to be due on it. If he does not do so, rights can be adjusted only on a re-sale. What should be the rights upon a re-sale? For reasons identical with those explained above, the purchaser should have a charge over the land superior to that of the party omitted in respect of such amounts as have properly been paid from the purchase money in satisfaction of claims on prior instruments. Next in order of priority comes the claim of the party omitted. After this has been satisfied the balance proceeds should go to the purchaser. This conclusion has been embodied in Clause 21.

130. Where in the proceedings recommended an amount is found to be due from the mortgagor to a puisne mortgagee who is a party omitted, there will be a legal liability on the mortgagor to pay this amount where he has renounced the benefit of Clause 46 and elected that property other than the mortgaged property belonging to him may be sold against him. He cannot be heard to say that the earlier sale of which he had full knowledge before confirmation did not fetch a proper price. He may even have participated in the distribution of the proceeds at that sale. Clause 21 (3) provides for such a case. If the mortgagor had in the bond executed by him in favour of the party omitted, re-

nounced the benefit of Clause 46, the mortgagor will be ordered to pay to the purchaser the whole amount which the party omitted recovers in the action under Clause 19; if there has been no such renunciation the mortgagor will have to make a payment to the purchaser only if and to the extent to which he has drawn anything from the proceeds of the prior sale.

131 It will be seen that if the party omitted successfully disputes the amount paid off in the hypothecary action to any mortgagee, the mortgagee will have taken more than is due to him unless perhaps the proceeds of the prior sale have been insufficient. Where such an overpayment has been made to the prior mortgagee, there is no reason why he should be allowed to retain the amount of the overpayment at the expense either of the purchaser at the prior sale or of the party omitted. Accordingly we recommend that if the price fetched at the re-sale of the land is such that the party omitted is unable to obtain payment of his claim, he should be entitled to an order against the prior mortgagee, either to the full amount of his claim, or to the extent of the overpayment made to the prior mortgagee in the earlier action, whichever is less (Clause 23 (1) (a)). If, however, any moneys are actually paid to the party omitted by the purchaser in compliance with the decree in the subsequent proceedings referred to in paragraph 128 or upon a re-sale of the land, the purchaser at the prior sale should be entitled to seek re-imburement from the prior mortgagee to the extent to which moneys are paid out to the party omitted in the subsequent proceedings or to the extent of the overpayment, whichever is less (Clause 23 (1) (b)). If the party omitted is a transferee, the purchaser will not be able (as in the case when the party omitted is a mortgagee) to retain title to the land by payment of a sum of money. We think, therefore, that where a party omitted, who is a transferee, successfully disputes the amount paid out on a prior mortgage, the purchaser at the prior sale (whose moneys went into the re-payment) should be entitled to an order directing payment to him by the prior mortgagee of the excess paid. Effect has been given to these recommendations in Clause 23 (1) (c).

132. *Clauses 24 and 25* are designed to provide for cases where a land which is subject to more than one mortgage is sold in execution of decrees in hypothecary actions instituted separately upon such mortgages. Clause 24 contains the necessary definitions of "prior mortgage" and "puisne mortgage". If there has been a sale in execution of the decree upon a puisne mortgage and a conveyance of the land has been executed in favour of the purchaser, the position of the latter in relation to an action upon a prior mortgage will depend on the question whether his conveyance is registered before the registration of the *lis pendens* of an action on the prior mortgage. If his conveyance is so registered he will by reason of the operation of Clause 6 be a person entitled to notice of the action on the prior mortgage and no practical difficulties should arise. If it happens that he is a party omitted from the latter action Clauses 17 to 23 will become applicable. If however the sale under the puisne mortgage takes place after the date of the registration of the *lis pendens* of an action upon the prior mortgage or the conveyance to the purchaser at such sale is executed or registered after that date, the purchaser will not be entitled to notice of the action on the prior mortgage, but will nevertheless be bound by the decree and sale in that action owing to the fact that his interest in the property is derived from an instrument registered after the registration of the *lis pendens* of the action. It is possible, however, that there will be one exception to this rule, namely in a case where the mortgagee under the puisne mortgage (if he is, as would ordinarily be the case, a person entitled to notice of the action on the prior mortgage) is not in fact given notice of the latter action. In such a case the purchaser at the sale in execution of the puisne mortgage should be placed in the shoes of his mortgagee who was omitted and should therefore himself have the rights of the "party omitted". Whether or not the purchaser is entitled to notice of the action on the prior mortgage he will have the right to make a claim to participate in the balance proceeds of sale remaining after satisfaction of the amount decreed to be due upon the puisne mortgage.

133. *Clauses 26 to 32* of the draft Ordinance will provide for the case of death, insolvency or disability of a mortgagor or of a person entitled to notice of a hypothecary action. Section 7 of the existing Ordinance (Chapter 74) enables the Court to make a special appointment of a representative of a deceased mortgagor but does not provide for such an appointment to represent the estate of a puisne encumbrancer. Further that section applies only where the

value of the mortgaged property does not exceed Rs. 2,500, or where "the granting of representation to the deceased is, in the opinion of the Court, likely to be unduly delayed". The practice in most cases is for the plaintiff to declare by affidavit that there is likely to be undue delay and it is difficult for the Court properly to determine whether this is so or not. In this respect also the present law requires clarification.

Clause 26 of the draft Ordinance confers on the Court the power to make an appointment of a person to represent the mortgagor or any other party to a hypothecary action if any of the following conditions are satisfied :—

- (a) if the value of the mortgaged property does not exceed two thousand five hundred rupees, or
- (b) if a period of six months has elapsed after the death of the deceased and probate or letters of administration have not issued within that time; or
- (c) if delay would result in the right of action becoming prescribed.

134. The existing Ordinance makes no provision for the case where a "necessary party" is under a disability. Our attention was drawn by the Law Society to a case in which the puisne encumbrancer had been made a party to the action and service effected in the manner provided by section 9 of the existing Ordinance. After a sale had taken place under the decree the encumbrancer pleaded that he was a minor and that since he had not been properly represented in the mortgage action he was not bound by the decree. In that particular case the decree held good owing to the fact that the encumbrancer had not properly registered an address for service and therefore not being a necessary party was bound in any event by the decree under section 6 (3) of the existing Ordinance. The result would probably have been different if he had actually registered an address. Consideration of this case drew our attention to the possibility that a puisne encumbrancer who had properly registered an address might before the institution of the hypothecary action die or become insolvent or a lunatic. The plaintiff would not usually be aware of this. There would ordinarily be no contact between him and the puisne encumbrancer at any time whether before or after the interest of the latter arose. Even if the plaintiff were placed on inquiry he may have no means of ascertaining whether or not the puisne encumbrancer is dead or under disability. We find it necessary therefore to devise some means whereby the mortgagee will know to whom notice of action should be sent, and whereby the interests of the estate of the puisne encumbrancer can be protected as far as possible without placing an impossible burden on the plaintiff.

135. *Clause 28* provides that the executor, or administrator, or assignee, or curator of the estate of the puisne encumbrancer may register an address for the service of process. If no such appointment has been made it will be possible for any other person concerned in looking after the interests of the estate to register an address. Where an address is so registered notice of the action will be sent not only to the address specified by the puisne encumbrancer but also to the address registered under this clause. When the notices are sent the person who has registered an address under this clause will have an opportunity of being added as a party, or if he is himself not a duly appointed representative to ask the Court to make a special appointment for the purposes of the action. Since the clauses will afford facilities for the protection of the interests of the estate by the provision for additional registration of addresses, *Clause 29* declares that the estate will be bound by the decree if the notices are properly sent.

136. The existing Ordinance makes no express provision for a case where a person who had not registered an address dies or is under disability before the institution of the hypothecary action. In order to resolve doubts which may arise in such a case *Clause 30* provides that the estate will be bound by the decree and sale in the action. We think this proper since persons interested in the estate should have no reason for complaint if any loss is suffered by reason of the failure of an encumbrancer to register an address before he died or came under disability. It should be noted that even though the encumbrancer had himself failed to register an address it will be open to persons interested in the estate to cure that default by effecting registration under *Clause 28*.

Since the provisions of *Clauses 28 to 30* effect a somewhat important change in procedure we think that they should not apply where an action is instituted for the enforcement of a mortgage created before the draft Ordinance comes into operation, and we suggest special provision in *Clause 31*

for such cases. The effect of the clause is that the estate of the puisne encumbrancer will not be bound unless the duly appointed representative of the estate or a person specially appointed by the Court is either added as a party to the action or elects to be so bound by making a claim to participate in the balance proceeds of sale.

137. *Clause 32* will provide expressly that if the mortgagor dies or is adjudged insolvent or lunatic after the entry of decree and before the sale under the decree, execution proceedings should not be taken until the executor or administrator or a special representative of the deceased or the assignee or the manager of the estate of the insolvent or lunatic is made a party to the action.

138. We have recommended in paragraph 30 above that it is advisable to permit a plaintiff in a hypothecary action, if he desires to eliminate the possibility of a claim being made to the land after a sale in the action, to join as a party a person who he thinks may put forward such a claim after the sale. The necessary legal provision is contained in *Clause 33*. Where a person is so joined he will be able to raise any issue upon a question relating to the right of ownership or possession of the land and the Court will make an adjudication upon such an issue. If the Court finds that the mortgagor is not entitled to the land or to any part or share thereof no decree will be entered for the sale of the land or such part or share thereof. If the adjudication of the Court is against the claimant he will be bound by the decree and will not be able to re-agitate his claim (*Clause 33 (4)* and *Clause 15*).

139. *Clauses 34 to 36* are designed to give effect to our recommendations in paragraph 31. *Clause 34* gives to the plaintiff at the time of the institution of an action the option of applying for a declaration from Court to the effect that if a decree is entered for the sale of the land the Court will order the removal therefrom of all persons whomsoever who may resist delivery of possession to the purchaser. Notices of such application will be published in newspapers and posted upon the land and in Courts and other such places in the area where the land is situated and will in addition be proclaimed by beat of tom-tom. We think that by this means everything possible will have been done to draw the attention of persons claiming any interest in the land to the fact that the action has been instituted. The notices will contain information that a plan of the land which is the subject of the action is available for inspection, thus affording to prospective claimants an opportunity of examining the plan and of ascertaining whether the boundaries have been so defined as to include areas which do not in fact belong to the mortgagor.

Clause 35 will enable a claimant within two months of the publication of the notices to apply to the Court to be added as a party to the action for the purpose of securing an adjudication upon his claim; he will be able to raise any issue upon the right of possession to the land. Where no claims are made or the Court is satisfied that none of the claimants is entitled to possession, the Court will make the declaration prayed for by the plaintiff. Where the adjudication upon the claim is that the claimant is entitled to possession of the land or of any part thereof the Court will not make a declaration in relation to the land or to the particular part thereof. Where the adjudication is that the mortgagor is not entitled to the land or to any part or share thereof, the action will be dismissed in so far as it relates to the land or such part or share. The decision of the Court upon these claims will operate as *res adjudicata* as between all the parties to the action including the added claimants (*Clause 36*).

140. It is convenient at this stage to refer to those clauses of the Ordinance which deal with procedure after decree where a declaration is made under *Clause 36*. *Clause 56* provides that where such a declaration has been made the purchaser at the sale under the decree will be entitled to an order that delivery be made to him if need be by removing therefrom all persons whomsoever who may refuse to vacate the land. Where such an order is made and the Fiscal reports inability to put the purchaser in possession a notice will be posted on the land directing all persons to vacate the land forthwith. A person who refuses to yield up possession after this notice is posted will be liable to be committed to jail for thirty days. The ordinary provisions in sections 323 to 330 of the Civil Procedure Code will not apply where a declaration under section 36 has been made.

The fact that possession is given to the purchaser in terms of the declaration will not affect the right of a person, who is neither bound by the decree nor makes a claim in the hypothecary action, to institute proceedings for the recovery of the possession of the land from the purchaser or for a declaration of title to the land. (*Clause 36 (5)*).

141. *Clauses 37 to 45* deal with the appointment, rights and duties of a Receiver and the disposal of the rents and profits of the land placed under Receivership. If an application for the appointment of a Receiver is made before an answer is filed by the defendant the application will be dealt with *ex parte* (Clause 37). Clause 38 empowers the Court to refuse an application if it is of opinion, having regard to the situation, nature and value of the land and the amount of remuneration that can reasonably be allowed that a suitable person is not available for appointment. The Court will also refuse an application if the amount claimed by the plaintiff is less than one-third of the market value of the land. Except in these two cases the Court will not refuse to make the appointment.

The defendant will be given by Clause 39 an opportunity to have the appointment cancelled if he subsequently satisfies the Court that the application should have been refused.

Clauses 40, 41 and 42 make necessary provision in detail for the rights and duties of a Receiver.

Clause 43 makes special provision empowering a Court, after considering the interests of both parties to make an order that a part of the profits of the land should be paid to the mortgagor if he is unable by other means to meet the expenses necessary for the subsistence of himself and his dependents.

142. *Clauses 46 and 47* contain provisions necessary to give effect to our recommendations in paragraph 117. The effect of these clauses is that no property whatsoever other than the mortgaged land will be liable to be sold in execution of any decree in a hypothecary action upon a mortgage of land or in any action for the recovery of moneys due upon a mortgage of land, unless the mortgagor has executed a separate instrument by which he renounces the benefit of Clause 46. The limitation will apply even where the mortgagee seeks to recover the debt in an action of another form. The separate instrument of renunciation must be one attested by the same notary who attested the bond and by the witnesses to the bond; it must contain a special declaration renouncing the benefit of Clause 46, as well as an acknowledgment by the mortgagor and an endorsement by the notary that the effect of the renunciation has been explained to the mortgagor by the notary. Clause 47 (2) provides that even where there has been a renunciation, process will not issue for the sale of unsecured property until the mortgaged land has been sold and the proceeds applied in satisfaction of the decree.

For obvious reasons, the modifications of the law effected by Clauses 46 and 47 should not apply in the case of a mortgage created before the new Ordinance comes into operation (Clause 47 (5)).

143. The decree in a mortgage action will order the sale of the mortgaged land in default of the payment of the moneys due under the mortgage within a period of two months of the date of the decree, but the Court will have the discretion to fix a longer period than two months if application is made for that purpose before the entry of the decree. In exercising this discretion the Court will have the power to impose appropriate conditions including a condition that specified payments be made on specified dates (Clause 48). The Court will inform the person conducting the sale of the amount due under the decree at the time the commission is issued (Clause 48 (5)).

144. The land will be sold either by an auctioneer approved by the Court or by the Fiscal. In the latter case the order for the seizure of land before sale can be made if the plaintiff so desires (Clause 49). In a case where a declaration has been made under Clause 36, prospective claimants will have had an opportunity of making their claims under Clause 35, and it would be inappropriate to permit of seizure and claims after the decree. Hence no order for seizure should be made where there has been such a declaration. If an order for seizure is made, the seizure and sale will be conducted under the Civil Procedure Code and the provisions of Chapter XXII. of the Code will be generally applicable in the same way as they apply to a sale of immovable property in an ordinary action.

145. Where the land is to be sold by an auctioneer or by a Fiscal without seizure, the provisions of Clause 50 will apply. It empowers the Court to give necessary directions, whether in the decree or subsequently, and also lays down certain rules which will always apply in such a case. We would refer here specially to the provision that a person making a bid will be bound by the conditions of the sale prescribed by the Court, whether or not he has agreed expressly to be bound by them. Subject to a few exceptions Chapter XXII. of the Code will not apply in such cases (*vide* Clause 61).

146. *Clause 51* will prevent a plaintiff in a hypothecary action from bidding for or purchasing the mortgaged land at the execution sale unless leave has been granted to him by the Court. The application for leave must be accompanied by an appraisal of the current market value of the land. This appraisal will be sent to the proctor for the mortgagor or if no proxy has been filed will be served on the mortgagor in the same way as summons. Copies will also be sent to other parties to the action who have registered their addresses. An opportunity will be afforded to all these persons to object to the valuation. Thereafter the Court will have to make order fixing the amount which in its opinion is a proper value of the land (referred to in the draft Ordinance as the appraised value). Leave to the plaintiff to bid and purchase will always be subject to the condition that he shall not bid for or purchase the land except at or above the amount due under the decree or the amount of the appraised value, whichever is less. The amount for the time being due under the decree will have been notified by the court to the auctioneer or the Fiscal and specified by him in the advertisement of the sale under *Clause 48 (5)*.

The reasons underlying our recommendations in regard to bidding by the plaintiff are explained in paragraphs 35 to 40 above.

The mortgagor who wishes to guard against the possibility that the proper value of the land will not be realised at the sale will be afforded an opportunity to obtain from the Court a direction that if the highest bid at the sale is less than the appraised value of the land, a second sale of the land shall be held (*Clause 52 (1)*). Where more than one land is subject to the mortgage the mortgagor can apply to the Court to prescribe the order in which the lands shall be sold and to fix definite dates for the sales (*Clause 52 (2)*).

147. *Clauses 55 and 56* provide for the delivery of possession to the purchaser at the sale in all cases where the land has not been seized before sale. If a declaration has not been made under *Clause 36* the Court will make an order for the delivery of possession to the purchaser and the order will be enforced in the same manner as an order made under section 287 of the Civil Procedure Code.

Clause 56 which provides for delivery where a declaration has been made under *Clause 36* has already been explained in paragraph 140 above.

148. *Clause 57* confers a general right on all persons claiming an interest in the balance proceeds of sale remaining after satisfaction of the moneys due under the decree to prove such claims and to participate in the balance proceeds. A person will have this right whether or not he is party to the action or a person entitled to notice of it.

Clause 58 deals specially with the case where a person making such a claim is a judgment creditor who had seized the land in execution of a decree in a different action. If his seizure was registered prior to the registration of the *lis pendens* of the hypothecary action he will be entitled to make a claim under *Clause 57* and to participate in the balance proceeds; if his seizure was effected or registered after that date the seizure will not entitle him to participate in the balance proceeds. But he will of course retain the right to seize the right title and interest of the mortgagor in the balance proceeds.

The *Proviso to Clause 58 (2)* seeks to preserve as far as possible the ordinary rule of concurrence between seizing creditors; if there are two or more seizing creditors and no other person has registered any instrument between the dates of the registration of the notices of seizure, then the seizing creditors will share rateably in the proceeds of sale remaining available after distribution. If, however, after the registration of a notice of seizure an instrument creating another interest is registered, then a creditor subsequently registering a notice of seizure will not be entitled to claim concurrence with the first seizing creditor. In cases like these the ordinary rule of priority according to registration will be applicable.

149. Doubts and difficulties have arisen in the Courts as to the extent to which the provisions of Chapter XXII. of the Civil Procedure Code apply in hypothecary actions. We think it necessary to obviate such a possibility for the future. *Clause 61 (1)* of the draft Ordinance mentions expressly the sections of the Code which will apply where a mortgaged land is to be sold either by an auctioneer or by the Fiscal without being previously seized. Section 343 of the Code is included among the sections which will be applicable, but we think that it should not be used for the purpose only of allowing time for payment unless the Court is satisfied that the debtor is likely to be able to raise the amount due by the mortgage, lease or private sale of the mortgaged land or of

other immovable property Clause 61 (1) (d) gives effect to our view. No provision in Chapter XXII. will apply where there has been no seizure unless that provision is made expressly applicable by Clause 61.

We do not think that the provisions in Chapter XXII. which impose the liability to imprisonment for debt should apply in a hypothecary action, or in an action to enforce payment of the moneys due upon a mortgage of land. Provision to this effect is made in Clause 61 (3).

As we have stated earlier (paragraph 144) where the land is seized before sale the provisions of Chapter XXII. will be generally applicable subject to the exception mentioned in the preceding sentence.

150. Although the provisions of Part II. of the draft Ordinance will introduce substantial and sometimes drastic changes in the procedure in a hypothecary action we see no reason why the new procedure should not apply to actions upon mortgages created before the new Ordinance comes into operation. It cannot be said that the changes in procedure which we have recommended will prejudice the rights of interests of the parties who have entered into transactions in the belief that the existing law would govern procedure for enforcement. There are however in Part II. certain provisions which though procedural in form do effect some modification of the substantive law. We would refer specially to Clauses 28 to 30, 37 to 45 and 46 and 47. These provisions should not apply in cases where a mortgage is created before the appointed date. Clause 62 gives effect to our recommendations on this point.

Part III.

151. Clause 63 re-enacts the provisions of section 3 of the existing Ordinance (Cap. 74) which invalidates conventional general mortgages executed after January 14, 1871.

152. Clause 64 re-enacts the provisions of section 17 of the existing Ordinance subject to the alteration to which we have referred in paragraph 73 above. Under the new provision a mortgage given to secure future advances or a floating balance or a contingent liability will be fully effective as against a person claiming under any subsequent instrument even in a case where the property subject to the mortgage is movable property.

The provisions in this clause differ in one respect from those in section 17 of the existing Ordinance. It can be contended, under that section as it now stands that if the mortgaged property is seized in execution of a decree in favour of a third party the mortgage will be effective against the purchaser in execution in respect of advances made after the seizure and even after the sale. If this contention is upheld the section can be used to place property outside the reach of a seizing creditor for all practical purposes. There is no limit to the extent to which a purchaser in execution may find himself embarrassed by reason of advances made under the mortgage after he purchases the property.

Accordingly we recommend that where the mortgaged property is seized notice of the seizure will at the instance of the seizing creditor be issued by the Court to the mortgagee. Where such a notice is issued the mortgage will be effective as against the purchaser in execution only to the extent of the moneys due at the time of the notice.

153. Clause 65 gives effect to our recommendation as to the enforcement of a mortgage bond by a concurrent mortgagee. In such a case any mortgagee to whom moneys are due may institute a hypothecary action even though the other mortgagees do not join as plaintiffs; if they do not they must be joined as defendants. Any such mortgagee whether a plaintiff or not will in the action be entitled to prove the amount due to him and if he does so the decree will order payment of a separate amount to him. Any of the mortgagees to whom payment is ordered by the decree may apply for execution and sale and the rights against the property of all the mortgagees to whom payment is ordered will be extinguished by the sale. The Court will have the power to make special orders in relation to the distribution of the proceeds of sale or their detention in Court for the purpose of protecting the rights and interests of the parties; if a mortgagee has not proved his claim in the action before a decree he may prove it after decree, but if he fails to prove it within six months of the decree the delay should not prevent the other mortgagees who have proved their claims from obtaining payment from the proceeds and the Court will make order accordingly (Clause 65 (1)).

Difficulties have arisen in the past as to the terms on which a concurrent mortgagee should be allowed to purchase the land which is subject to a mortgage. Clause 65 (4) will provide that no mortgagee will be given leave to purchase

except at or above the appraised value or the total amount due under the decree to the mortgagees to whom payment is ordered by the decree. Special provision is also made as to the amount of credit which will be allowed to any mortgagee.

154. *Clause 66* declares that a warrant or power of attorney to confess judgment in an action upon a mortgage will be of no force or effect. The reasons for our recommendation will be found in paragraph 43 above.

Clause 66 (2) seeks to resolve doubts as to the validity of decrees and sales in hypothecary actions in cases where consent to judgment was entered by proctors holding warrants of attorney under section 31 of the Code. These doubts have arisen owing to the fact that the prescribed form of warrant does not contain authority to consent to entry of a decree for the sale of the mortgaged land or for the actual amount found to be due upon the mortgage.

155. *Clause 68* will declare that the provisions of Chapter XXVIII. of the Civil Procedure Code shall not apply in actions upon a mortgage. We do not think it necessary that the plaintiff in such an action should be required to give security for costs. The institution of such an action is well within the contemplation of parties at the time the mortgage is executed, and it is rarely if at all that the action can be said to be vexatious.

Part IV.

156. *Clauses 69 to 72* contain provisions which will give effect to our recommendations for the creation in favour of approved credit agencies of mortgages of land by the execution of instruments in simple form and the deposit of title deeds. The purpose and effect of these clauses have been explained in paragraphs 44 to 50 above.

Part V.

157. This part of the Ordinance will confer on approved credit agencies certain qualified rights of parate execution where mortgages of movable property are created in their favour. We have discussed in Chapter III. our reasons for making recommendations to this effect.

158. Where a mortgage of shares is created in favour of an approved credit agency in a prescribed form and the share certificates are deposited and the borrower executes a transfer or a transfer in blank of the shares by way of mortgage, the agency will by *Clause 73* be given the power to sell the shares if the borrower makes default in payment. The power to sell can only be exercised after default has been committed by the borrower and one month's time has expired after a special notice of demand is addressed to him. The address of the borrower will be specified in the instrument of mortgage and any change of address will be subsequently notified to the agency. The notice of demand must be sent to that address by registered post (*Clause 74*).

Clause 75 will confer validity on the completed transfer of shares which will become necessary when the power of sale is exercised. The agency must apply the moneys realised by the sale in satisfaction of the debt and pay any balance to the mortgagor; if the moneys realised are insufficient to satisfy the debt the agency will be able to proceed aliunde (*Clause 76*).

Clause 78 confers on the borrower a right of action for damages in a case where the agency sells the shares otherwise than in the proper exercise of the power of sale. The provisions in the draft Ordinance as to the right to sell shares are not intended to enable the mortgagee to compel a company to register transfers otherwise than in compliance with the ordinary provisions of the company law. Saving provisions for this effect is in *Clause 79*.

159. *Clause 81* will confer on an approved credit agency in whose favour a mortgage of a life policy has been executed the right to surrender the policy to the insurer in the event of default being committed by the mortgagor.

Clause 82 to 84 contain in regard to the giving of notice of demand, application of the amount of surrender value and the right of action for damages similar provisions to those which will obtain in the case of a mortgage of shares.

160. *Clause 85* will confer on an approved credit agency the power to sell any corporeal movable subject to a mortgage in its favour if such movables are actually in the possession and custody of the agency. In this case also the exercise of the power will be conditional upon the mortgagor being in default and his failing to pay within one month of the issue of the notice of demand. *Clauses 87 and 88* contain the necessary ancillary provisions.

161. *Clauses 89 to 95* deal with the assignment of book debts by way of mortgage in favour of an approved credit agency. "Book debt" is defined so as to include a debt which comes into existence after the date of the mortgage. *Clause 90* declares that the agency will be entitled to recover the book debts from the person owing them on certain conditions, namely that notice should be given to the person owing the debt and that the right to receive payment should be exercised subject to any stipulations contained in the instrument of mortgage.

Where a debtor mortgages his book debts it will ordinarily be the intention of the parties that he should be able to carry on his business as usual and to recover debts which may from time to time become owing to him in the course of his business, and not that the mortgagee should immediately after the execution of the mortgage proceed to make recovery of the debts. Hence the mortgagee will not usually give immediate notice of the assignment to the debtors but will only do so when there is actual default and it is necessary to protect himself against loss. *Clause 94* provides that the assignment will not preclude the mortgagor from recovering any particular debt until notice of the assignment of that debt is actually given to the person who owes it. It may happen, however, that a mortgagor even after default will attempt to make recovery knowing fully well that such recovery would seriously prejudice the mortgagee. The clause therefore contains a Proviso under which the mortgagee will be able, immediately upon filing an action for the enforcement of the assignment, to obtain an injunction restraining the assignor from recovering any debt as well as an order which will enable the mortgagee to take possession of the necessary books.

Part VI.

162. This Part seeks generally to confer on mortgagees of movables such protection as can practically be afforded against attempts by the mortgagor to deprive him of his security.

One of the means by which the safeguard can be afforded is by providing for the appointment of a Receiver. Such a course would however not be practical in most cases. If some only of the articles on any premises have been mortgaged, it would be difficult to justify the appointment of a Receiver to take charge of all the articles on the premises, nor would such a course be practicable. The only case where the appointment of a Receiver would be both practical and equitable is the case where all the goods in specified premises have been mortgaged. This would include the case where the entire stock in trade in any premises are subject to mortgage.

Clause 96 provides that in such a case the mortgagee will be entitled, on instituting an action for the enforcement of his mortgage, to obtain an order for the appointment of a Receiver. The provisions of *Clauses 97 to 101* which deal with the powers and duties of a Receiver, the payment of moneys into Court, and the application of such moneys are similar to those in the earlier sections in Part II. which apply in a case where an appointment is made of a Receiver of mortgaged land.

163. As we have stated in paragraph 72, a motor car is property which (owing to the requirements as to registration and licensing imposed by other law) is readily identifiable. If a motor car has been mortgaged and the mortgage is registered, it will be a matter of no difficulty for a third party to ascertain from that register that it is subject to a mortgage. A prospective buyer of a motor car has in any event to obtain the certificate of registration from the registered owner and to transmit it to the Commissioner of Motor Transport together with a notice of transfer in order that he may be registered as the new owner. It appears to us therefore that the appropriate register in which an entry as to a mortgage should be made is the register maintained under the Motor Car Ordinance, No. 45 of 1938. If such an entry is made inspection of it would clearly show whether or not a particular motor car has been mortgaged.

Clause 102 will enable the instrument of mortgage to be registered by the Commissioner of Motor Transport. In addition to the certificate of registration may also be presented at the same time and if so, the Commissioner will make an endorsement on it to the effect that the motor car has been mortgaged. Once registration has been effected any third party who proposes to buy the motor car or acquire any other interest in it will have a ready means of ascertaining whether it is subject to a mortgage and accordingly it is proper that the motor car, notwithstanding a sale or other disposition, should remain subject to the mortgage. This result will be achieved by *Clause 103*.

164. *Clause 105* will provide that if any mortgaged movables are seized in execution of a decree the mortgagee will have the right to apply to Court for an order staying the sale under the seizure and directing the property to be sold by an auctioneer appointed by the Court. In this way the mortgagee who becomes aware of the seizure can protect himself not only against the likelihood that a low price will be fetched at a Fiscal's sale, but also against the possibility that he may be denied recourse to the proceeds of the sale under the seizure. When the sale takes place, the mortgagee's rights will be converted to rights against the proceeds of the sale. He will be able to prove the amount due to him under the mortgage and to obtain payment of it from the proceeds; if the amount is ascertainable and is certain to fall due upon the effluxion of time he will be able to recover it at once.

165. *Clause 106* contains provision on similar lines for a case where the owner of mortgaged movables is declared insolvent. The mortgagee, if he intervenes in the insolvency proceedings can have the movables sold and the amount of his claim determined and will have a preferent right to the payment of his claim out of those proceeds. The provisions of Clauses 96 to 106 will not be applicable to any mortgage created before the new Ordinance comes into operation—(Clause 109).

166. *Clause 108* provides that in the usual case a decree in an action on a mortgage of movables will be enforced by seizure and sale of the movables in the ordinary way under the Civil Procedure Code. The sale of the "right, title and interest" of a mortgagor in goods which are not under the physical control of the auctioneer or fiscal will not be a satisfactory proceeding. Seizure means physical control and carries with it an assurance of delivery. The Court will however, be given the power in an appropriate case to direct that the property be sold without being seized. If it does so it will give directions as to the manner and conduct of the sale and other necessary matters.

Part VII.

Clause 110 to 113.

167. Under the Roman Dutch Law (*vide* 37 N. L. R., page 157) the tacit hypothec given to a landlord over the goods of his tenant for arrears of rent may be enforced only through judicial process. The application of this principle gives rise to a practical difficulty in that the goods may be removed before the landlord can obtain the necessary sanction of Court. Again the hypothec under the Roman Dutch Law attaches not only to the goods of a tenant but also to other goods found upon the premises in particular circumstances. A landlord has also the right of "quick pursuit" by means of which the hypothec can be made effective against goods subject to it even after they have been removed from the premises. The law governing the two latter matters is of a somewhat complicated nature and its practical application leads to doubts and difficulties. The landlord may under an honest but mistaken impression that certain goods are subject to a hypothec or that he has a right to pursue them after they have left the premises, find that he has exceeded his rights and rendered himself liable to an action for damages.

168. It is unnecessary to consider the merits and disadvantages of the Roman Dutch principles as compared with those obtaining for instance under the English Law. All that is needed is that our law should expressly specify the goods to which the landlord can have recourse and prescribe some means whereby without undue disadvantage to all parties he can effectively have such recourse.

The object which the law should achieve is that the goods will in the event of decree being entered against the tenant be available to satisfy that decree. We think it unwise that the landlord should be allowed to take steps for this purpose without the intervention of the Court. This would make the landlord a judge in his own cause and perhaps give occasion for breaches of the peace. Some authority from the Court is therefore necessary, but in order to be effective the authority should be given at an early stage of the proceedings upon an *ex parte* application supported by an affidavit of the landlord. We have considered whether it is necessary that the Court should authorise the landlord to take actual physical possession of the goods and detain them during the pendency of the action but we do not think that this course is essential. Nor is it proper that the right of physical detention should be given to the landlord at a stage before the matters in dispute have been judicially investigated.

169. Accordingly we recommend (Clause 110) that if the rent is unpaid for one week after demand a landlord, immediately on filing an action for arrears of rent, will be able to obtain *ex parte* and injunction restraining the tenant from removing any goods while the injunction is operative.

The right of the landlord to obtain an injunction is no doubt of a different nature to the right of actual physical detention but the protection afforded to the landlord by the grant of an injunction will be adequate. It is our experience that cases of disobedience to injunctions are rare in this country.

This will prevent any goods whatsoever from being removed whether or not they are goods to which the landlord is entitled to have recourse. Hence it will be necessary to enable a third party to make an application in respect of goods alleged to be his and to obtain an order permitting their removal. Such an order will be made after notice to the landlord.

170. We recommend (Clause iii.) that all goods belonging to a tenant and all household goods in the premises which belong to any member of his family who resides with him will be liable to seizure in execution of a decree for rent. If other goods belonging to a third party are on the premises and are seized by the landlord in execution of his decree it is not equitable that he should be liable in damages. He would ordinarily act on the presumption that the goods on the premises belong to the tenant.

171. Since our recommendation is that the provisions made in sections 110 and 111 should be substituted for those applicable under the Roman-Dutch Law, Clause 112 expressly provides that the rights conferred by the former two clauses are the only rights which he will have in respect of goods on the premises. Saving provision is however made so as to preserve intact the right of the landlord to seize in execution of the decree, goods of the tenant (other than goods on the premises) which are liable to seizure under the Civil Procedure Code.

172. The effect of the definition in Clause 113 will be that the landlord can have recourse against all household goods which belong to the wife or any child of the tenant residing with him or of any relative or other person dependent on the tenant and residing with him. This may at first sight appear somewhat arbitrary, but in the absence of such a provision it is always open to a tenant to set up a false plea that particular goods do not belong to him. Moreover, if a member of the family of the tenant who resides with him on the premises is possessed of household goods which are kept on the premises, it is not inequitable that recourse to such goods should be available to the landlord in the event of rent not being paid.

173. The existing law under which the rights of parties are uncertain, is found to be difficult of application in practice. Under our recommendations the law will be free from uncertainty, and such departure as we have made from the existing law will not bear hardly on either landlord or tenant.

174. The purpose for which Clause 114 has been included in the draft has been explained in paragraph 51 above."

Colombo, 14 October, 1946.

J. H. B. NICHILL,
Legal Secretary.

MINUTE.

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

An Ordinance to amend the Civil Procedure Code.

Vol. II.
page 428.

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 Civil Procedure Code (Amendment) Ordinance, No. of 194, and shall come into operation on such date as may be appointed by the Governor by Proclamation published in the *Gazette*.

Short title
and date of
operation.

2. Section 30 of the Civil Procedure Code (hereinafter referred to as "the principal Ordinance") is hereby amended by the addition, at the end of that section, of the following :—

Amendment
of section 30 of
Chapter 86.

"No appointment under this section shall be of any force or effect for the purpose of enabling or authorising process to be served on an agent so appointed in any action to recover money due upon the mortgage of immovable property".

Insertion of new section 30A in principal Ordinance.

“ Agent to accept service in action upon mortgage of immovable property.

3. The following new section is hereby inserted immediately after section 30 of the principal Ordinance and shall have effect as section 30A of that Ordinance :—

30A (1) The mortgagor of any immovable property may make application for the registration of the address of any proctor or any person for the service of process in any action upon the mortgage. The application shall be made substantially in the form No. 11A in the second schedule hereto.

(2) the address for service shall be registered in or in continuation of the folio in which is registered the mortgage of the immovable property.

(3) where the applicant declares in his application that a previously registered address is cancelled, the Registrar shall make a new entry in the register and cancel the registration of the previous address.

(4) the fee for registration of the address for service or for a change of such address shall be fifty cents, with an addition of ten cents for each folio after the first in which the address is to be registered.

Amendment of section 60 of the principal Ordinance.

4. Section 60 of the principal Ordinance is amended by the addition, at the end of that section, of the following proviso :—

“ Provided, however, that where such a return is made by the Fiscal in an action for the recovery of money due on the mortgage of immovable property, the Court shall not under the preceding provisions of this section have the power to prescribe any other mode of service as an equivalent for personal service, but the following provisions shall apply whether or not the Court is satisfied that the defendant is within the Island :—

(a) if the Court is satisfied upon a certificate filed in that behalf by the Proctor for the plaintiff that the mortgagor has not registered an address for service under section 30A, or if such an address having been registered the Court is satisfied that the Fiscal was unable to effect service on such agent under section 64A, the Court shall upon application made by the plaintiff, order that copies of the summons in such language as the Court may consider appropriate shall be affixed by the Fiscal in at least three conspicuous places upon the mortgaged property and at the Court house, and may in its discretion direct such other acts or things to be done as the Court may consider appropriate (including in a case where an address has been registered under section 30A, the sending of a copy of the summons by registered post to that address).

(b) service effected in the manner specified in paragraph (a) shall be deemed to be service on the defendant.

Amendment of section 60 of the principal Ordinance.

5. Section 64 of the principal Ordinance is hereby amended by the addition thereof of the following :—

“ Nothing in the preceding provisions of this section shall be deemed to authorise summons in an action to recover moneys due on a mortgage of immovable property to be served on any agent appointed under section 30 or on any proctor holding a warrant or a power of attorney under section 31.”

Insertion of new section 64A in the Principal Ordinance.

“ Service on agent in mortgage action.

6. The following new section is hereby inserted immediately after section 64 of the principal Ordinance and shall have effect as section 64A of that Ordinance :

Where the mortgagor has registered the address of an agent under section 30A, service of summons may be made on such agent and shall be sufficient.”

Amendment of section 66 of the principal Ordinance.

7. Section 66 of the principal Ordinance is hereby amended as follows :

“ (a) by the omission of the words ‘ to recover money due on a mortgage secured upon immovable property, or ’;

(b) by the omission of all the words from ‘ but without prejudice ’ to the end of that section ”.

Insertion of new section 327A in the Code.

Power to direct possession where claim of person resisting or obstructing is frivolous or vexatious.

8. The following new section is hereby inserted immediately after section 327 of the principal Ordinance, and shall have effect as section 327A of that Ordinance :—

327A. If the resistance or obstruction was occasioned by a person other than the judgment debtor and the Court finds that the claim of such person to be in possession of the property, whether on his own account or on account of some person other than the judgment debtor is frivolous or vexatious, the Court may by order direct the judgment creditor to be put into possession of the property :

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

9. Chapter XLVI. of the principal Ordinance is hereby repealed.

Repeal of
Chapter XLVI.
of the principal
Ordinance.

Objects and Reasons.

This amendment of the Civil Procedure Code was recommended for enactment by the Mortgage Commission in Sessional Paper V. of 1945. The objects and reasons which were explained in the Commission's Report are reproduced below :—

“ 175. We recommend for enactment the draft Ordinance to amend the Civil Procedure Code

176. In order that credit on mortgages should flow easily it is necessary, as we have stated earlier, that mortgagees should feel free from undue embarrassment in the recovery of their loans. One respect in which an improvement should be effected in this direction is by amendments of the Civil Procedure Code in regard to the service of summons.

Under the existing law if personal service cannot be effected because a defendant is evading service, or because without any attempt at evasion on his part the defendant cannot be found, the Court can, under section 60 of the Civil Procedure Code, order substituted service. Such service may, however, be ordered only where a Court is satisfied that a defendant is within the Island. If he is outside the Island leave may be obtained for serving him with summons in whatever part of the world he may be, but it is obviously impossible for a mortgagee who does not know where a mortgagor is to take any action. The mortgagor may move from place to place. In any event if at a subsequent date the mortgagor challenges the fact of service reported by a process server in a foreign country, the mortgagee will find it very difficult to obtain the necessary evidence to meet the challenge. We think, therefore, that more reasonable facilities for service should be afforded to the mortgagee. In doing so the interests of the mortgagor must also be safeguarded and provision must be made whereby a prudent mortgagor could assure himself that in the event of an action notice of it will reach him.

We recommend (Clause 3) that it should be possible for a mortgagor to register the address of a proctor or other person on whom service can be effected. We think this measure will afford complete protection to a prudent mortgagor. If the mortgagor does not take advantage of this facility for the registration of the address of an agent, and if personal service cannot be effected on him, the Court will be able to order substituted service, whether or not the mortgagor is resident in the Island.

We recommend that the Court should have the power to order substituted service in the manner thought most appropriate by the Court in the circumstances of each case, but that in all cases, whatever mode of service is prescribed, notice of the action should be affixed in conspicuous places on the land (Clause 4.) The mortgagor who does not actually live on the land will in the ordinary course of events have some person in possession of the property on his behalf who will become aware of the notice. We recommend that before substituted service in this way is ordered by the Court it should be satisfied by the certificate of a proctor that the mortgagor has not left the address of an agent for service of summons. We think that the recommendation we have made strengthens the position and gives added security to both the mortgagee and the mortgagor. The existing provision for substituted service may cause hardship particularly in case where a Fiscal's process server without adequate search reports that the mortgagor is not to be found. There is no means at present by which a mortgagor can protect himself against such a report and a form of substituted service ordered thereafter which does not reach him.

177. We would make reference here to a provision to be found in section 30 of the Civil Procedure Code similar to the one we have suggested in paragraph 176 above, but inadequate for the purpose. The section provides for an appointment in writing of “an agent to accept service of process”. To be effective the appointment must contain an address at which service may be made and the original or the duly attested copy must be filed in Court. It is not

clear from the section in which of the several Courts in the Island the instrument must be filed, and even if the Court be known there is no provision for a register by the inspection of which the fact of the existence or absence of an appointment can be readily ascertained. Our recommendation (effect is given to it in Clause 3) is that a special section 30A be enacted providing that the address of the agent of the mortgagor will be registered in the folio in which the mortgage itself is registered. As a consequential amendment Clause 2 will provide that the present provisions in section 30 of the Code will not apply to an action upon a mortgage of immovable property.

178. *Clause 5* is designed to make an amendment in section 64 of the Code consequential upon Clause 2 of this Bill and upon the declaration in Clause 66 of the draft Ordinance in Appendix 1 which declares that a power of attorney to confess judgment will be of no effect in a mortgage action.

179. In order to implement the new section 30A, Clause 7 will insert in the Code a new section which will authorise service to be effected on the agent appointed by the mortgagor under that section.

180. Section 66 of the Code provides that in a mortgage action or in an action to obtain relief respecting or compensation for wrong to immovable property, service may be made "on any agent of the defendant in charge of the property". This section is liable to abuse to the prejudice of a mortgagor. The plaintiff who knows who the actual agent is may cause the summons to be served on another person and support the service by plausible evidence which the Court will not be in a position to reject in the absence of the mortgagor and his actual agent. The plaintiff may find it difficult to ascertain who the actual agent is and in such event the temptation to proceed in a similar manner to that just mentioned would be very great. Courts are usually satisfied by an affidavit from the plaintiff to the effect that "to the best of his knowledge and belief" the person served is the agent of the mortgagor, and even where such a statement is deliberately false there is insufficient material for a prosecution.

We consider therefore that this section is in need of amendment. It is unnecessary however, so far as mortgage actions are concerned, to effect the amendment, because the new provisions which we have recommended for substituted service on a mortgagor by the posting of notices and other means will afford an adequate alternative. Clause 6 will therefore make section 66 of the Code inapplicable in a mortgage action.

181. Section 327 of the Code provides that where there is resistance to a Fiscal seeking to deliver possession of land to a judgment creditor and the Court is satisfied that the resistance is offered by a person other than the judgment debtor *claiming in good faith to be in possession of the property*, the Court will direct the petition of complaint to be registered as a plaint between the decree holder and the claimant. No provision however is made for the case where the obstruction offered by a person other than the judgment debtor is found by the Court to have been *offered in bad faith*. This defect is one which gives rise to difficulty and delay not only in mortgage actions but also in ordinary cases where land is sold in execution of a decree. We are directly concerned with the section only in so far as it applies in a mortgage action, but we feel justified in recommending a general amendment since the sections clearly need it. The object of *Clause 8* is to introduce into the Code a new section 327A providing that where the resistance or obstruction is occasioned by a person other than the judgment debtor and the Court finds that his claim to possession is frivolous and vexatious the Court may direct the judgment creditor to be put in possession. The new section will also contain provision similar to that found in section 330 of the Code whereby the person ejected will have an opportunity within one month to institute an action to establish his right to possession.

182. The principal purpose of sections 646 to 649 of the Code is to impose a sanction (that of sequestration of the mortgaged property) in a case where the defendant evades summons. These provisions are somewhat harsh and open to abuse. Moreover the other amendments we have suggested in the Code are adequate to deal with evasion. There will therefore be no need for the application of the provisions of these sections, and the object of *Clause 9* of the draft Ordinance is to repeal them".

MINUTE.

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

L. D.—O. 45/46

An Ordinance to amend the Ceylon Post Office Savings Bank Ordinance, No. 18 of 1941.

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 Ceylon Post Office Savings Bank (Amendment) Ordinance, No. of 1946. Short title.

2. Section 7 of the Ceylon Post Office Savings Bank Ordinance, No. 18 of 1941, is hereby amended as follows :— Amendment of section 7 of Ordinance No. 18 of 1941.

(1) by the substitution, for sub-section (2), of the following new sub-section :—

“ (2) No interest shall be payable—

(a) on any amount in deposit which is less than the amount prescribed as the minimum amount on which interest is payable ; or

(b) on the sum, if any, by which an amount in deposit exceeds the amount prescribed as the maximum amount on which interest is payable. ”

and

(2) by the insertion, immediately after sub-section (2), of the following new sub-section :—

“ (2A) Interest shall be payable only on such complete unit or units of a prescribed sum as may be comprised in the amount in deposit. ”

Objects and Reasons.

Under section 7 (2) of the Ceylon Post Office Savings Bank Ordinance, No. 18 of 1941, interest is not to be paid on any deposit which is less than five rupees. That section also stipulates that interest is payable only on each complete unit of five rupees forming part of a deposit. This minimum deposit and the unit of five rupees referred to in the section are to be increased in a short while to ten rupees. As it may be necessary to vary from time to time, the minimum deposit on which interest is payable and the unit on which interest is calculated and paid, and as each such variation in the present state of the law will involve an amending Ordinance, power is taken by this Bill to prescribe for these matters by regulation.

2. This Bill also includes a provision by which it is possible to fix by regulation the maximum deposit on which interest is payable.

J. L. KOTELAWALA,

Minister for Communications and Works.

Colombo, October 30, 1946

DISTRICT AND MINOR COURTS NOTICES.

IN terms of Section 19 (2) of the Rural Courts Ordinance, No. 12 of 1945, I do hereby notify that the office of the Divisional Revenue Officer, Vavuniya North, at Oddusuddan will be the court-house of the Nedunkerni Rural Circuit Court from November 1, 1946, to January 31, 1947.

District Court,
Vavuniya, October 19, 1946.

V. S. GUNAWARDANA,
District Judge.

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, M. N. PIERIS,
Secretary.

October 18, 1946.

In the District Court of Colombo.

No. 5,717. In the matter of the insolvency of J. D. Peter of Insolvency. 47/11, Station passage, Slave Island, Colombo, insolvent.

WHEREAS the above-named J. D. Peter has filed a declaration of insolvency, and a petition for the sequestration of his estate has also been filed by D. A. Douglas of 109, Stewart street, Colpetty, Colombo, under the Ordinance No. 7 of 1853: Notice is hereby given that the said court has adjudged the said J. D. Peter insolvent accordingly, and that two public sittings of the court, to wit, on December 6, 1946, and on December 20, 1946, 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, M. N. PIERIS,
Secretary.

October 24, 1946.

In the District Court of Kandy.

No. I. 123. In the matter of the insolvency of Dianysius Senanayake of Kandy.

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 November 26, 1946, to consider the granting of a certificate of conformity to the above-named insolvent.

By order of court, T. J. M. FERNANDO,
Secretary.

October 29, 1946.

NOTICES OF INSOLVENCY.

In the District Court of Colombo

No. 5,703. In the matter of the insolvency of Joseph Perera Sandanayaka of 617, Mirihana, insolvent.

NOTICE is hereby given that a meeting of the creditors of the above-named insolvent will take place at the sitting of this court at 10.45 in the forenoon on November 8, 1946, for the examination of the insolvent.

By order of court, M. N. PIERIS,
Secretary.

October 29, 1946.

In the District Court of Colombo.

No. 5,716. In the matter of the insolvency of Christopher Lloyd Fonseka of 89, Pickermings road, Kotahena, Colombo, insolvent.

WHEREAS the above-named Christopher Lloyd Fonseka has filed a declaration of insolvency, and a petition for the sequestration of his estate has also been filed by N. Shelton Perera of Station road, Kelaniya, under the Ordinance No. 7 of 1853: Notice is hereby given that the said court has adjudged the said Christopher Lloyd Fonseka insolvent accordingly; and that two public sittings of the court, to wit, on November 29, 1946, and on December 13, 1946,

NOTICES OF FISCALS' SALES.

Western Province.

In the District Court of Kalutara.

(1) Uduwage Arnolis Appuhamy, (2) Benaragama Vidanelage James Appuhamy, both of Uratudawa Plaintiffs.
No. 24,339. Vs.

(1) Singha Bahu Aratchige Garlis Appuhamy, (2) ditto Albi Singho, both of Kesellenawa, (7) Amaratunga Jayaneris alias Dinoris of Detagoda Defendants.

NOTICE is hereby given that on Saturday, December 7, 1946, at 10 o'clock in the forenoon, will be sold by public auction at the respective premises the right, title, and interest of the said 1st, 2nd and 7th defendants in the following property for the recovery of the sum of Rs. 1,760 65, to wit:—Rs. 990 damages and Rs. 770 65 costs, viz. :—

(1) All that undivided 1/16 share belonging to the 1st and 2nd defendants and undivided $\frac{1}{2}$ share belonging to the 7th defendant of the field called Kanuketiya situated at Kesellenawa in Munwattabage pattu of Ragam korale, Kalutara District, Western Province; bounded on the north by Panaduragewatta, east by Ramaradekumbura, south by another land called Kanuketiyelekumbura, west by Medagodadeniya; and containing in extent about 2 pelas and 5 kurnes of paddy sowing.

(2) All that undivided 15/288 shares belonging to 1st and 2nd defendants of the land called Wilakumbura alias Wewakumbura situated at Kesellenawa aforesaid; bounded on the north by Kalderakumbura and Tumpela, east by Crown forest, south by Irawallekumbura, west by Crown land; containing in extent about 1 amunam of paddy sowing.

(3) All that undivided 15/288 shares belonging to the 1st and 2nd defendants of the land called Pahala Ramaradekumbura situated at Kesellenawa aforesaid; bounded on the north by Kudaralalagewatta, east by Goandige Irawalla, south by Delwagurekumbura, west by Thalaramaradekumbura; and containing in extent about 2 bushels of paddy sowing.

(4) All that undivided 21/288 shares belonging to the 1st and 2nd defendants of the land called Heen Irawallekumbura situated at Kesellenawa aforesaid; and bounded on the north by Goandige-watta, east by Kurunde Irawalla, south by Kurunduwatta, west by Palle Keiyakumbura; and containing in extent about 2 pelas of paddy sowing.

(5) All that undivided 17/192 shares belonging to 1st and 2nd defendants of the land called Bopekumbura situated at Kesellenawa aforesaid; bounded on the north by Deniya worked by Tambiappu, east by Henadragedemya, south by Kurundekumbura, west by Paluwatta alias Gamagewatta; containing in extent about 3 pelas of paddy sowing.

(6) All that undivided 31/192 shares belonging to 1st and 2nd defendants of the land called Maha Irawallekumbura situated at Kesellenawa aforesaid; bounded on the north by Kurundekumbura, east by Henadragedemya, south by Heen Irawalla, west also by Heen Irawalla; containing in extent about 2 pelas of paddy sowing.

(7) All that undivided $\frac{1}{4}$ share belonging to the 1st and 2nd defendants of the land called Mahawatta alias a portion of Makulugahawatta together with the entire tiled house standing thereon, situated at Kesellenawa aforesaid; bounded on the north by high road, east by Udupitawatta, south by a portion of this land, west by Medagodawatta; containing in extent about 1 acre.

(8) All that undivided $\frac{1}{4}$ share of a portion of Dawatagahawatta and of the rubber plantation and of the tiled house standing thereon belonging to the 7th defendant, situated at Detagoda in Munwattabage pattu aforesaid; bounded on the north by Midellagadeniya, east by main road, south by Batadombagahawatta, and west by a portion of the same land called Dawatagahawatta; containing in extent about 1 acre.

(9) All that undivided 1/10 share of the land and $\frac{1}{4}$ share of the rubber plantations belonging to the 7th defendant of the land called Wewakumbura situated at Detagoda aforesaid; bounded on the north by Batadombagahawatta and Palliyewatta, east by high road, south by Warakawela, and west by Maragahawatta; containing in extent about 1 acre and 2 roods.

(10) All that undivided 33/960 shares belonging to the 1st and 2nd defendants of the land called Maragahawatta situated at Detagoda aforesaid; bounded on the north by Kahatagahawatta, east by Batadombagahawatta and Wewakumbura, south by Waduwa-kumbura, and west by Pitamullekumbura and Gallelekumbura; containing in extent about 1 acre.

(11) All that undivided $\frac{1}{4}$ share belonging to the 2nd defendant of the land called Polwatta situated at Kesellenawa aforesaid; bounded on the north by Ratugahawatta, east by Miriswatta and Diganewatta, south by Kekirawatta, and west by Egodagewatta and Waduwakumbura; containing in extent about 2 acres.

Fiscal's Office,
Panadure, October 26, 1946.

B. D. FERNANDO,
Deputy Fiscal.

Eastern Province.

In the District Court of Trincomalee.

Pitcharthamby Varisaithamby of Thoppur Plaintiff.
No. 2,665. Vs.

(1) Kayathumma wife of Sathakulevvai; (2) Segumohitheen Nachia, wife of Pekurtamby; (3) Asiathumma wife of Sahathu Mohammathu, all of Thoppur in Trincomalee, legal heirs of the estate of the late Mimon Nachia widow of Mohideen Pichai late of Thoppur Defendants.

NOTICE is hereby given that on Saturday, November 30, 1946, at 11.30 in the forenoon, will be sold by public auction the following properties for the recovery of the sum of Rs. 646 35, with further

interest thereon on Rs. 465 at 18 per cent. from May 4, 1945, till August 28, 1945, and thereafter with legal interest on the aggregate and costs reserved, Fiscal's fees, charges, and poundage, viz. :—

1. A piece of field called Koddankeethu situated at Thoppur in Koddiyarpattu, Trincomalee District, Eastern Province. Boundaries:—North by field of K. Packeerthamby, west by field of K. Packeerthamby, south by fields of Pichai Thamby Mahayatheevava and others, and east by lands of Varisaithamby Abdulgaffoor and Crown land. Extent: 1 acre 2 roods and 3 perches.

2. A piece of land called Peekadduchenai situated at Thoppur in Koddiyarpattu, Trincomalee District, Eastern Province. Boundaries:—North by lane belonging to Crown, west by road, south by land of Seenuthamby Sathakkulevvai, and east by lands of M. Kayathu Muhammathu and others. Extent: north 9 fathoms 1 cubic, west 16 fathoms, south 10 fathoms, east 14 fathoms.

Deputy Fiscal's Office,
Trincomalee, October 28, 1946.

B. VRASPILLAI,
Additional Deputy Fiscal.

NOTICES IN TESTAMENTARY ACTIONS.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of the Last Will and Testament of the Jurisdiction. late Dompayalahunge Hendrick Fernando of Dompe in the Gangaboda pattu of Siyane korale, deceased.
No. 12,076.

Dompayalahunge Eramon Fernando of Dompe aforesaid Petitioner.

Vs.

(1) Dompayalahunge Soiya Fernando, (2) Dompayalage Lewis Fernando, (3) Dompayalahunge Thuno Fernando, all of Dompe aforesaid Respondents.

THIS matter coming on for disposal before N. Sinnetamby, Esq., Additional District Judge of Colombo, on September 12, 1946, in the presence of Mr. G. A. Nissanka, Proctor, on the part of the petitioner above named; and the affidavit of the said petitioner dated September 10, 1946, and the affidavit of the attesting witnesses dated August 19, 1946, having been read:

It is ordered that the last will and testament of Dompayalahunge Hendrick Fernando of Dompe, the deceased above named the original of which has been produced and is now deposited in this court be and the same is hereby declared proved, and the petitioner is the executor named in the said will and the said petitioner be and he is hereby declared entitled to have probate of the said will issued to him accordingly, unless the respondents above named or any person or persons interested shall, on or before November 7, 1946, show sufficient cause to the satisfaction of this court to the contrary.

September 18, 1946.

N. SINNETAMBY,
Additional District Judge.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of the Last Will and Testament of Jurisdiction. the late Johana Elizabeth Salgadoe of 321, Galle road, Colpetty, deceased.
No. 12,120.

Johana Nelsma Fonseka of 321, Galle road, Colpetty .. Petitioner.

THIS matter coming on for disposal before N. Sinnetamby, Esq., Additional District Judge of Colombo, on September 24, 1946, in the presence of Messrs. Arunachalam & Karunaratne, Proctors, on the part of the petitioner above named; and the affidavit of the said petitioner dated September 24, 1946; and the affidavit of the attesting notary and one witness dated August 31, 1946, having been read:

It is ordered that the last will and testament of Johana Elizabeth Salgadoe, the deceased above named the original of which has been produced and is now deposited in this court be and the same is hereby declared proved, and the petitioner is the executor named in the said will and the said petitioner be and she is hereby declared entitled to have probate of the said will issued to her accordingly, unless any person or persons interested shall, on or before November 7, 1946, show sufficient cause to the satisfaction of this court to the contrary.

October 8, 1946.

N. SINNETAMBY,
Additional District Judge.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of the late Jurisdiction. Wilegodamudalage Don Edwin Wilegoda of No. 12,123 Ratnapura, deceased.

Hingalagoda Lekamalage Podimenike Wilegoda of Ratnapura Petitioner.

Vs.

(1) Wilegodamudalage Don Jayartne Wilegoda, (2) Wilegodamudalage Wimala Beatrice Wilegoda, (3) Wilegodamudalage Don Walter Karunaratne Wilegoda, (4) Wilegodamudalage Dona Amara Wilegoda, all of Dewalagama, Ratnapura, (5) Wilegodamudalage Don Gilbert Wilegoda of Padukka Respondents.

THIS matter coming on for disposal before N. Sinnetamby, Esq., Additional District Judge of Colombo, on September 24, 1946, in the presence of Mr. N. V. T. Cooray, Proctor, on the part of the petitioner above named; and the affidavit of the said petitioner dated August 6, 1946, having been read:

It is ordered that the 5th respondent above named be and he is hereby declared appointed guardian *ad litem* over the minors, the 1st, 2nd, 3rd, and 4th respondents above named, and the petitioner above named be and she is hereby declared entitled, as the widow of the deceased, to have letters of administration to the estate of the said deceased, issued to her accordingly, unless the respondents above named or any person or persons interested shall, on or before November 7, 1946, show sufficient cause to the satisfaction of this court to the contrary.

N. SINNETAMBY,
Additional District Judge.

September 30, 1946.

In the District Court of Colombo.
Order Nisi.

Testamentary In the Matter of the Intestate Estate of the late
Jurisdiction. Harry Alexander Fernando of 68, Pagoda road,
No. 12,126. Nugegoda, deceased.

Mildred Hazel de Silva *nee* Fernando of 19/11, Puvilingam place,
Colombo Petitioner.

Vs.

(1) Mrs. Minna Elizabeth Fernando, (2) Adeline Juliet
Fernando, (3) St. Elmo Harris Fernando, (4) Hugh Clifford
Fernando, a minor, by his guardian *ad litem*, (5) St. Elmo
Harris Fernando, all of 203, Old Kolonnawa road,
Colombo Respondents.

THIS matter coming on for disposal before N. Sinnetamby,
Esq., Additional District Judge of Colombo, on September 26, 1946,
in the presence of Mr. S. Kanagarajah, Proctor, on the part of the
petitioner above named; and the affidavit of the said petitioner
dated September 23, 1946, having been read:

It is ordered that the 5th respondent above named be and he is
hereby declared appointed guardian *ad litem* over the minor, the
4th respondent above named, and that she is hereby declared entitled,
as the daughter and one of the heirs of the deceased, to have letters
of administration to the estate of the said deceased issued to her
accordingly, unless the respondents above named or any person or
persons interested shall, on or before November 14, 1946, show
sufficient cause to the satisfaction of this court to the contrary.

N. SINNETAMBY,
Additional District Judge.

October 10, 1946.

In the District Court of Colombo.
Order Nisi.

Testamentary In the Matter of the Intestate Estate of the late
Jurisdiction. Jayasingha Kankanamalage Daniel Singho of
No. 12,146. Ellakkala, deceased

Jane Wijetunga of Ellakkala Petitioner.

Vs.

(1) Chandrasa Jayasingha, (2) Mahina Jayasingha, minor,
(3) Karunaratne Jayasingha, minor, (4) Rajawansa Jaya-
singha, minor, (5) Malcolm Clarkius Konstz of Esson,
Avondale road, Maradana, guardian of 2nd, 3rd, and 4th
minor respondents Respondents.

THIS matter coming on for disposal before N. Sinnetamby, Esq.,
Additional District Judge of Colombo, on October 4, 1946, in the
presence of Mr. H. E. V de Silva, Proctor, on the part of the
petitioner above named; and the affidavit of the said petitioner
dated September 25, 1946, having been read:

It is ordered that the 5th respondent above named be and he is
hereby declared appointed guardian *ad litem* over the minors, the
2nd, 3rd, and 4th respondents above named and the petitioner above
named be and she is hereby declared entitled, as the widow of the
deceased, to have letters of administration to the estate of the said
deceased issued to her accordingly, unless the respondents above
named or any person or persons interested shall, on or before
November 21, 1946, show sufficient cause to the satisfaction of
this court to the contrary.

N. SINNETAMBY,
Additional District Judge.

October 11, 1946.

In the District Court of Colombo.
Order Nisi.

Testamentary In the Matter of the Last Will and Testament of the
Jurisdiction. late Oduma Lebbe Marikar Ojecha Umma of
No. 12,154. Mill View, Norris road, Colombo, deceased.

M. L. M. Mackeen of 98, Braybrooke place,
Colombo Petitioner.

THIS matter coming on for disposal before N. Sinnetamby, Esq.,
Additional District Judge of Colombo, on October 8, 1946, in the
presence of Mr. John Wilson, Proctor, on the part of the petitioner
above named; and the affidavit of the said petitioner dated
September 19, 1946, and the affidavit of the attesting notary and
witnesses dated September 30, 1946, having been read:

It is ordered that the last will and testament of Oduma Lebbe
Marikar Ojecha Umma, the deceased above named the original of
which has been produced and is now deposited in this court be and
the same is hereby declared proved and the petitioner is one of the
executors named in the said will and the said petitioner be and he is
hereby declared entitled to have probate of the said will issued to
him accordingly, unless any person or persons interested shall, on
or before November 28, 1946, show sufficient cause to the satis-
faction of this court to the contrary.

N. SINNETAMBY,
Additional District Judge.

October 22, 1946.

In the District Court of Colombo.

Notice of Application.

Testamentary In the Matter of the Last Will and Testament and
Jurisdiction. Codicil of Charles Fitzwalter Bethune of "Hol-
No. 12,159. combe", Moretonhampstead in the County of
Devon, England, deceased.

And in the matter of the British Courts Probates
(Ro-sealing) Ordinance (Chapter 84.)

NOTICE is hereby given that after the expiry of twenty-one
days from the date hereof, application will be made to the District
Court of Colombo under the British Courts Probates (Ro-sealing)
Ordinance (Chapter 84) for the sealing of a certified copy of probate
of the last will and testament and codicil of Charles Fitzwalter
Bethune of "Holcombe", Moretonhampstead in the County of
Devon, England, deceased granted by the District Probate Registry
of His Majesty's High Court of Justice at Exeter on November 6,
1945.

JULIUS & CREASY,
Proctors for Edgar Winney, Attorney for The National
Provincial Bank, Limited, the sole Executor of the
Last Will and Testament and Codicil of Charles
Fitzwalter Bethune, deceased.

Colombo, October 7, 1946.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of the Last Will and Testament of
Jurisdiction. Robert William Sutherland of Colombo in the
No. 12,165. Island of Ceylon, Merchant, deceased.

THIS matter coming on for disposal before N. Sinnetamby,
Esq., Additional District Judge of Colombo, on October 11, 1946,
in the presence of Messrs. Julius & Creasy, Proctors, on the part of the
petitioner, John Wilfred Edwin Adamson of Colombo; and the
affidavit of the said petitioner dated September 11, 1946, an affidavit
as to the due execution of the will, original will, certificate of death
of the above-named deceased and power of attorney in favour of the
petitioner, having been read: It is ordered that the will of the
said deceased dated February 21, 1938, of which the original has
been produced and is now deposited in this court, be and the same
is hereby declared proved; and it is further declared that the said
petitioner is one of the attorneys of the sole executrix named in the
said will and that he is entitled to have letters of administration with
a copy of the said will annexed issued to him accordingly, unless
any person or persons interested shall, on or before November 7,
1946, show sufficient cause to the satisfaction of this court to the
contrary.

N. SINNETAMBY,
Additional District Judge.

October 17, 1946.

In the District Court of Colombo.

Order Nisi.

Testamentary In the Matter of the Intestate of the late Francis
Jurisdiction. Dias Gunasekera of Kodagoda, Imaduwa,
No. 12,166. deceased.

Edmund Dias Gunasekera of Diyatalawa Petitioner.

Vs.

(1) Orina Dias Gunasekera of Kodagoda, (2) Wilmot Dias
Gunasekera of the Y. M. B. A., Colombo, (3) Harry Dias
Gunasekera of Diyatalawa, (4) Lily Dias Gunasekera and
(5) Arthur Dias Gunasekera, both of Kodagoda, minors, by their
guardian *ad litem* the 2nd respondent above named Respondents

THIS matter coming on for disposal before N. Sinnetamby,
Esq., Additional District Judge of Colombo, on October 11, 1946,
in the presence of Mr. C. E. A. Goonesekera, Proctor, on the part
of the petitioner above named; and the affidavit of the said
petitioner dated September 17, 1946, having been read:

It is ordered that the 2nd respondent above named be and he is
hereby declared appointed guardian *ad litem* over the minors, the
4th and 5th respondents above named, and the petitioner above
named be and he is hereby declared entitled, as the eldest son of
the deceased, to have letters of administration to the estate of the
said deceased issued to him accordingly, unless the respondents
above named or any person or persons interested shall, on or before
November 28, 1946, show sufficient cause to the satisfaction of this
court to the contrary.

N. SINNETAMBY,
Additional District Judge.

October 22, 1946.

In the District Court of Colombo.

Order Nisi declaring Will proved.

Testamentary In the Matter of the Last Will and Testament (with
Jurisdiction. Codicil) of Ernest Hughes of Cavendish Hotel,
No. 12,168. Belgrave road, Torquay in the County of Devon,
England, Clerk in Holy Orders (Retired), deceased.

THIS matter coming on for disposal before N. Sinnetamby,
Esq., Additional District Judge of Colombo, on October 14, 1946,
in the presence of Messrs. F. J. & G. de Saram, Proctors, on the part
of the petitioner, Andrew Earl McCartney of The Chartered Bank
of India, Australia and China, Colombo; and (1) the affidavit of the
said petitioner dated October 10, 1946, (2) the power of attorney
dated January 31, 1946, and relative deed of substitution dated
September 23, 1946, and (3) the order of the Supreme Court dated
September 19, 1946, having been read. It is ordered that the will
of the said Ernest Hughes, deceased dated November 6, 1934, and a
codicil thereto dated February 9, 1939, a certified copy of which
under the seal of His Majesty's High Court of Justice in England
has been produced and is now deposited in this court, be and the

same is hereby declared proved; And it is further declared that the said Andrew Earl Mc Cartney is the substituted attorney in Ceylon the sole executrix named in the said will and that he is entitled to have letters of administration (with will and codicil annexed) issued to him accordingly, unless any person or persons interested shall, on or before November 14, 1946, show sufficient cause to the satisfaction of this court to the contrary.

October 17, 1946.

N. SINNETAMBY,
Additional District Judge.

In the District Court of Colombo.

Notice of Application.

Testamentary Jurisdiction. In the Matter of the Last Will and Testament of Henry Horwitz alias Henry Howitt late of 1A, Musoum road, Bangalore, Mysore, India, deceased.

No. 12,170.

And in the Matter of the British Courts Probates (Re-sealing) Ordinance (Chapter 84).

NOTICE is hereby given that after the expiry of fourteen days from the date hereof, application will be made to the District Court of Colombo under the British Courts Probates (Re-sealing) Ordinance (Chapter 84) for the sealing of the letters of administration (with will annexed) of the estate of Henry Horwitz alias Henry Howitt late of 1A, Musoum road, Bangalore, Mysore, India, deceased, granted by the High Court of Judicature at Fort William in Bengal on the fifth day of September one thousand nine hundred and forty-five.

P. R. SITTAMPALAM,
Proctor for the Administrator General of Bengal, the administrator (with will annexed) of the estate of Henry Horwitz alias Henry Howitt, deceased, care of Messrs. F. J. & G. de Saram, Proctors, Colombo.

Colombo, November 1, 1946.

In the District Court of Colombo.

Order Nisi declaring Will proved.

Testamentary Jurisdiction. In the Matter of the Last Will and Testament (with three Codicils) of Lionel Edwards of Langmead Hall, Blundley Heath in the County of Surrey, England, and of 3, Rainey Park, Calcutta, India, Merchant, deceased.

No. 12,173.

THIS matter coming on for disposal before N. Sinnetamby, Esq., Additional District Judge of Colombo, on October 17, 1946, in the presence of Messrs. F. J. & G. de Saram, Colombo, Proctors, on the part of the petitioner, Alexander Godfrey Donn of Colombo; and (1) the affidavit of the said petitioner dated October 10, 1946, (2) the power of attorney dated July 13, 1946, and (3) the order of the Supreme Court dated October 5, 1945, having been read: It is ordered that the will of the said Lionel Edwards deceased dated October 16, 1936 (with three codicils thereto dated September 15, 1939, September 22, 1939 and February 4, 1944, respectively), a certified copy of which under the seal of His Majesty's High Court of Justice in England had been produced and is now deposited in this court, be and the same is hereby declared proved; And it is further declared that the said Alexander Godfrey Donn is the attorney in Ceylon of the proving executors of John Albert Leighton deceased, the sole executor of Lionel Edwards, deceased, and that he is entitled to have letters of administration (with will and codicils annexed) issued to him accordingly, unless any person or persons interested shall, on or before November 28, 1946, show sufficient cause to the satisfaction of this court to the contrary.

October 24, 1946.

N. SINNETAMBY,
Additional District Judge.

In the District Court of Colombo.

Notice of Application.

Testamentary Jurisdiction. In the Matter of the Last Will and Testament and two codicils of Carbery Lumsden Egan late of the Homestead, Kotagiri, Nilgiris, South India, Planter, deceased.

No. 12,174.

And in the Matter of the British Courts Probates (Re-sealing) Ordinance (Chapter 84).

NOTICE is hereby given that after the expiry of fourteen days from the date hereof, application will be made to the District Court of Colombo, under the British Courts Probates (Re-sealing) Ordinance (Chapter 84) for the sealing of the exemplification of the probate of the will and codicils of Carbery Lumsden Egan, late of the Homestead, Kotagiri, Nilgiris, South India, Planter, deceased, granted by the High Court of Judicature at Madras on the eighteenth day of January one thousand nine hundred and forty-six.

F. J. & G. DE SARAM,
Proctors for the Imperial Bank of India, the sole executor named in the will.

Colombo, November 1, 1946.

In the District Court of Colombo.

Notice of Application.

Testamentary Jurisdiction. In the Matter of the Last Will and Testament of John William Anderson of Greystones, St. George's Hill, Weybridge in the County of Surrey, England, East India Merchant (retired), deceased.

No. 12,175.

And in the Matter of the British Courts Probates (Re-sealing) Ordinance (Chapter 84).

NOTICE is hereby given that after the expiry of fourteen days from the date hereof, application will be made to the District Court of Colombo, under the British Courts Probates (Re-sealing) Ordinance (Chapter 84) for the sealing of the probate of the will of John William Anderson of Greystones, St. George's Hill, Weybridge, in the County of Surrey, England, East India Merchant (retired), deceased, granted by the Principal Probate Registry of His Majesty's High Court of Justice in England at Llandudno, on the twenty-fifth day of February one thousand nine hundred and forty-six.

P. R. SITTAMPALAM,
Proctor for the Governor and Company of the Bank of Scotland, the sole executor named in the will of John William Anderson, care of Messrs. F. J. & G. de Saram, Proctors, Colombo.

Colombo, November 1, 1946.

In the District Court of Panadura.

Order Nisi.

Testamentary Jurisdiction. In the Matter of the Last Will and Testament of Rajapaksepathirannehelage Jane Nona of Dambara in Raigam korale, deceased.

No. 43.

Don Simon Kotalawala of Dambara in Raigam korale. Petitioner.

And

(1) Rajapaksepathirannehelage Jimanona, (2) ditto Charlotte-nona, (3) ditto Simeon Singho, (4) ditto Lily Nona, all of Udampitigama, Dompeppu Sivan korale, (5) ditto Punchinona of Arukwatta in Padukka, (6) ditto Thomas, (7) ditto Memona, both of Udampitigama aforesaid, (8) ditto Dosimona of Poregedara in Padukka, (9) Bentara Arachchige Simeon, (10) ditto Podihamy, (11) ditto Robert, (12) ditto Kularatne, (13) ditto Esawathie, (14) ditto Yasawathie, (15) ditto Karunapala, all of Poregedara in Padukka, (16) Rajapaksepathirannehelage Sirsena Sirwardene, (17) ditto Fonseka Sirwardene, (18) ditto Seelawathie, Sirwardene, (19) ditto Wimalawathie Sirwardene, all of Udampitigama aforesaid, (20) Ponnampereuma Arachchige Leelawathie of Delugama, Kelaniya. Respondents.

THIS matter coming on for disposal before L. W. de Silva, Esq., District Judge of Panadura, on October 1, 1946, in the presence of Mr. Victor Tilakaratne, Proctor, on the part of the petitioner above named; and the affidavit of the petitioner dated September 26, 1946, and the affidavit of the witnesses to the last will of the deceased above named dated August 7, 1946, having been read:

It is ordered that the last will of the above-named deceased dated April 21, 1946, the original of which has been produced and is now deposited in this court be and the same is now declared proved, and the petitioner above named, as sole devisee under the said last will, is hereby declared entitled to have letters of administration to the estate of the said deceased with copy of will annexed issued to him, unless the respondents above named or anyone else interested shall, on or before November 20, 1946, show sufficient cause to the satisfaction of this court to the contrary.

October 1, 1946.

L. W. DE SILVA,
District Judge.

In the District Court of Nuwara Elya holden at Hatton.

Order Nisi declaring Will proved.

Testamentary Jurisdiction. In the Matter of the Last Will and Testament of Thomas Utten Todd of Strathdon and Panmure estates, Hatton, in the Island of Ceylon, Planter, deceased.

No. 235.

THIS matter coming on for disposal before M. M. Maharooof, Esq., District Judge of Nuwara Elya, on October 21, 1946, in the presence of F. V. H. La Brooy, Proctor, on the part of the petitioner, Alexander Godfrey Donn of Colombo; and (1) the affidavit of the said petitioner dated October 8, 1946, (2) the power of attorney dated June 14, 1946, and (3) the affidavit of the attesting notary dated September 26, 1946, having been read: It is ordered that the will of the said Thomas Utten Todd, deceased, No. 437 dated March 14, 1946, and attested by Francis Victor Herman La Brooy of Hatton, Notary Public the original of which has been produced and is now deposited in this court be and the same is hereby declared proved; And it is further declared that the said Alexander Godfrey Donn is the attorney in Ceylon of the executor named in the said will and that he is entitled to have letters of administration (with will annexed) issued to him accordingly, unless any person or persons interested shall, on or before November 26, 1946, show sufficient cause to the satisfaction of this court to the contrary.

October 21, 1946.

M. M. MAHAROOOF,
District Judge.

In the District Court of Matara.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of the late
Jurisdiction. Wickremasuriya Patabendige Mallis Appu of
No. 4,319. Talaramba, deceased.

Boda Hennedige Yasohamy of Talaramba Petitioner.
Vs.

(1) Wickremasuriya Patabendige Wijepala, (2) ditto Ariyapala,
(3) ditto Leelawathie, (4) ditto Premawathie, (5) ditto
Sumanawathie, (6) ditto Gunapala, (7) ditto Sunanda,
(8) Boda Hennedige David Silva, all of Talaramba; 3rd to
7th are minors by their proposed guardian *ad litem* the 8th
respondent Respondents.

THIS matter coming on for disposal before K. D. de Silva, Esq., District Judge of Matara, on September 2, 1946, in the presence of Mr. W. J. Serasinghe, Proctor, on the part of the petitioner; and the affidavit of the above-named petitioner dated July 25, 1946, having been read:

It is ordered that the petitioner be declared entitled, as widow of the deceased, to claim letters of administration and that the same be issued to her, unless the respondents above named or any other person or persons interested in the estate shall, on or before September 23, 1946, show sufficient cause to the satisfaction of this court to the contrary.

It is further ordered that the said 8th respondent be appointed guardian *ad litem* over the 3rd to 7th respondents (minors), unless the respondents or any other person or persons interested in the estate shall, on or before September 23, 1946, show sufficient cause to the satisfaction of this court to the contrary.

September 2, 1946.

K. D. DE SILVA,
District Judge.

Extended for November 25, 1946.

September 23, 1946.

K. D. DE SILVA,
District Judge.

In the District Court of Jaffna.

Order Absolute in the First Instance.

Testamentary In the Matter of the Last Will and Testament of
Jurisdiction. the late V. K. Gnanasunderam, Proctor, S. C.,
No. 594. Kokuvil, Jaffna, deceased.

Chellammah widow of V. K. Gnanasunderam of Kokuvil,
Jaffna Petitioner.

THIS matter coming on for final determination before R. R. Selvadurai, Esq., District Judge, Jaffna, on August 13, 1946, in the presence of Mr. R. C. Subramaniam, Proctor, on the part of the petitioner; and the affidavit of the petitioner and that of Mr. E. Murugesampillai, attesting notary and Messrs. Karalapillai Mudaliar Shanmugam and Tellipallai Chinnappah Rasaratnam, Proctor, S. C., the attesting witnesses having been read:

It is ordered that the last will of the late V. K. Gnanasunderam, Proctor, S. C., the deceased dated July 18, 1941, and now deposited in this court be and the same is hereby declared proved and that probate of the said last will be issued to the petitioner who is the executrix named in the said last will accordingly.

August 13, 1946.

A. V. KULASINGHAM,
District Judge.

B 9

In the District Court of Jaffna.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of the late
Jurisdiction. Mylvaganam Murugosu alias Murugasapillai of
No. 605. Neervely, deceased.

Annapillai widow of Mylvaganam Murugasapillai of
Neervely Petitioner.
Vs.

(1) Murugasapillai Poopalasingham of Neervely presently of
74, Vihare lane, Mount Lavinia, (2) Murugasapillai Poopala-
sundaram of Neervely, (3) Nakuleswari daughter of Muru-
gasapillai of ditto, (4) Thaneyeswari daughter of Murugesapillai of ditto, (5) Rohini Devi daughter of Murugasapillai of ditto; the 2nd, 3rd, 4th, and 5th respondents are minors appearing by their guardian *ad litem* the 1st respondent Respondents.

THIS matter coming on for disposal before R. R. Selvadurai, Esq., District Judge, Jaffna, on September 9, 1946, in the presence of Mr. W. Muttukumaraswamy, Proctor, on the part of the petitioner; and the affidavit of the petitioner having been read and filed of record:

It is ordered that the 1st respondent above named be appointed guardian *ad litem* over the 2nd, 3rd, 4th, and 5th respondents, who are minors, to represent them in this action and that letters of administration be granted to the petitioner and that she be declared administratrix of the estate of the above-named deceased, unless the respondents above named or any other person show sufficient cause to the contrary to the satisfaction of this court on or before November 4, 1946. It is further ordered that the proposed guardian *ad litem* do produce the minors 2nd, 3rd, 4th, 5th respondents in court on November 4, 1946.

September 9, 1946.

R. R. SELVADURAI,
District Judge.

In the District Court of Jaffna.

Order Nisi.

Testamentary In the Matter of the Estate of the late Sabapathy
Jurisdiction. Mylvaganam of Uduvil, deceased.
No. 609

Nagamamah widow of S. Mailvaganam of Uduvil Petitioner.
Vs.

(1) Parameswary daughter of S. Mailvaganam, (2) Mailva-
ganam Mahesan, (3) Mailvaganam Mahendran, (4) Ras Saheb
Murugosar Sinnathambippillai all of Uduvil Respondents.

THIS matter coming on for disposal before R. R. Selvadurai, Esq., District Judge, Jaffna on September 19, 1946, in the presence of Mr. S. Kanagasabapathy, Proctor for petitioner; and the affidavit and petition of the petitioner having been read:

It is ordered that the above-named 4th respondent be appointed guardian *ad litem* over the minors, 1st to 3rd respondents, for the purpose of protecting their interests and of representing them in these testamentary proceedings and that letters of administration in respect of the estate of the said deceased be issued to the petitioner, as his lawful widow, unless the said respondents or any other person shall appear before this court on November 14, 1946, and show sufficient cause to the satisfaction of this court to the contrary.

September 19, 1946.

R. R. SELVADURAI,
District Judge.

In the District Court of Jaffna.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of the late
Jurisdiction. Sivasubramaniam Siva Sithamparanathan of
No. 617. Vannarponnai East, deceased.

Visaladchy widow of Kandiah of Vannarponnai East .. Petitioner.

Vs.

Sabapathipillai Arunachalam of Kopay, Jaffna..... Respondent.

THIS matter coming on for disposal before R. R. Selvadurai, Esq., District Judge of Jaffna, on October 1, 1946, in the presence of Messrs. Saravanamuttu & Nadarajah, Proctors, on the part of the petitioner; and the affidavit of the petitioner dated September 27, 1946, having been read:

It is ordered that the above-named petitioner is entitled to have letters of administration over the estate of the above-named deceased Sivasubramaniam Siva Sithamparanathan and the same be issued to her accordingly, unless the respondent or others shall, on or before November 13, 1946, show sufficient cause to the satisfaction of this court to the contrary.

October 1, 1946.

R. R. SELVADURAI,
District Judge.

In the District Court of Jaffna.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of the late
Jurisdiction. Saraswathy wife of Nagalingam Amrthalingam of
No. 620. Vannarponnai West, Jaffna, deceased.

Nagalingam Amrthalingam of Vannarponnai West,
Jaffna Petitioner.

Vs.

(1) Amrthalingam Shrirathan of Vannarponnai, (2)
Thamby Sivarajah, Apothecary, Sanatorium, Kankesan-
turai Respondents.

THIS matter coming on for disposal before R. R. Selvadurai, Esq., District Judge of Jaffna, on October 3, 1946, in the presence of Messrs. Saravanamuttu & Nadarajah, Proctors, on the part of the petitioner; and the affidavit of the petitioner dated October 2, 1946, having been read:

It is ordered and decreed that the 2nd respondent be appointed guardian *ad litem* over the minor, the 1st respondent, and that the deceased is entitled to have letters of administration over the estate of the above-named deceased, Saraswathy, and that the same be issued to him accordingly, unless the respondents or any other person or persons shall, on or before November 14, 1946, show sufficient cause to the satisfaction of this court to the contrary.

October 3, 1946.

R. R. SELVADURAI,
District Judge.

In the District Court of Kurunegala.

Order Nisi.

Testamentary In the Matter of the Estate of the late Ranamuka
Jurisdiction. Dewage Charles Fernando of Teldeniya, deceased.
No. 4,655.

Ranamuka Dewage PUNCHI Nona Fernando of Kon-
pola Petitioner.

Vs.

(1) Ranamuka Dewage Romanis Fernando, (2) ditto Eusa
Fernando, (3) ditto Podisingho Fernando, all of Konpola,
(4) Edirisinghe Dewage Beatrice Nona, (5) ditto Jeelin
Nona, (6) ditto Mango Nona, all of Bowilgamuwa .. Respondents.

THIS action coming on for disposal before T. P. P. Goonetilleke, Esq., District Judge of Kurunegala, on October 3, 1946, in the presence of Messrs. Ratnayake & Perera, Proctors for the petitioner above named, and the affidavit of the said petitioner dated September 30, 1946, having been read:

It is ordered that the said petitioner be and she is hereby declared entitled, as eldest surviving sister of the above-named deceased, to have letters of administration to his estate issued to her, unless the respondents or any other person or persons interested shall, on or before November 15, 1946, show sufficient cause to the satisfaction of this court to the contrary.

October 3, 1946.

T. P. P. GOONETILLEKE,
District Judge.

In the District Court of Chilaw.

Order Nisi.

Testamentary In the Matter of the Intestate Estate of Kuranage
Jurisdiction. Johanis Perera of Ihalagama, Madampe, deceased.
No. 2,380.

Wijesinghe Ekanayake Baby Nona of Ihalagama,
Madampe Petitioner.

Vs.

(1) Kumarage Gilbert Perera, (2) Kumarage Benedict Perera,
(3) Kumarage Arthur Perera, (4) Kumarage Anulawathie
Perera, (5) Kumarage Chandrawathie Perera, (6) Kumarage
Gunadasa Perera, all of Ihalagama, Madampe Respondents.

THIS matter coming on for disposal before Earl Wijeyawardene, Esq., District Judge of Chilaw, on October 10, 1946, in the presence of Mr. H. H. A. Jayewardene, Proctor, on the part of the petitioner above named; and the affidavit of the said petitioner dated October 10, 1946, having been read:

It is ordered that the above-named 2nd respondent be and he is hereby appointed guardian *ad litem* over the 4th, 5th, and 6th respondents above named, who are minors, for the purpose of these proceedings, and that the said petitioner be and she is hereby declared entitled, as widow of the said deceased Kumarage Johanis Perera, to have letters of administration to his estate issued to her accordingly, unless the said respondents or any other person or persons interested shall, on or before November 7, 1946, show sufficient cause to the satisfaction of this court to the contrary.

October 10, 1946.

E. WIJEYAWARDENE,
District Judge.