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PART II — LEGAL

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AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO MORTGAGE.

[Date of Assent : March 15, 1949.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows :—

PART I.

SHORT TITLE AND INTERPRETATION.

1. This Act may be cited as the Mortgage Act, No. 6 of 1949, and shall come into operation on such date (hereinafter referred to as " the appointed date ") as may be appointed by the Minister by Notification published in the *Gazette*.

Short Title
and date of
operation

2. In this Act, unless the context otherwise requires—

Interpretation.

" 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 Act “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, by notification published in the *Gazette*, to be an approved credit agency for the purposes of this Act;
- (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, by notification published in the *Gazette*, to be an approved credit agency for the purposes of this Act.

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 *lis pendens* 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 Act,

and includes a person declared by subsection (2) of this section to be entitled to notice of the action;

Cap 101.

“registered address” means an address registered in accordance with the provisions of section 6 of this Act.

(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 *lis pendens* 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 Act.

(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.

(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—

- (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.

Registration
of address
for service
of documents

Actions
on mortgage
Cap. 86

Lis pendens
to be registered,
&c

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

Notice of hypothecary action.

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

(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.

Manner of issue of notice.

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—

(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.

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

Rights of person to whom notice is issued

- (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 that section, 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

13. Any person entitled to notice of a hypothecary action to whom such notice has not been issued under section 9 and in the 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

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

14. Where any person, to whom notice of a hypothecary action has been issued under subsection (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—

Rights of person added during pendency of action

- (a) no finding, order, decree or proceeding 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.

Persons
noticed or
added to be
bound by
decree and
sale

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 the 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.

Intervention
by person
interested
who is not
entitled to
notice

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.

Meaning of
"party
omitted"

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.

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

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.

(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 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.

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.

Procedure where Court finds that moneys are due to party omitted from 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:—

- (1) *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 subparagraphs (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, 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 the mortgage was created after the appointed date, 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 mortgage"), 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 (i) 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.*

Meaning of
"prior mort-
gage",
"puisne mort-
gage", &c.

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

Effect of
conveyance
upon sale
under puisne
mortgage

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:—

- (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.*

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:

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

Cap 55.

(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.

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

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.

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

(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

(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.

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.

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

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.

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 Rural Court, 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

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

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

within two months of the date of the last publication of the notice under paragraph (a) of section 34 (2), to be added as a party to the action for the purpose of securing an adjudication by the Court upon his claim.

(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.

Order of
Court upon
application
under section
36.

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):

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 35 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 Act 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

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.

Application
for appoint-
ment of
Receiver of
mortgaged
land

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

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

Cases where
Court may
refuse to
appoint
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.

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

Cancellation
of appoint-
ment.

- (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 the Court considers such cancellation expedient owing to any default or negligence on the part of the Receiver, or if the Court is satisfied 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.

Order for
appointment,
&c.

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

- (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.

Rights and
powers of
Receiver.

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.

(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

Duties and
liabilities of
Receiver.

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

- (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.

Payment of
subsistence
allowance to
mortgagor.

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

- (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.

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 sub-section (3) of section 40

Restriction of appeals against orders under sections 37 to 43.

Sale under Hypothecary Decree

46. 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.

Property liable to sale in execution of 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

47. The provisions of section 46 shall have effect notwithstanding anything in any other law or in any mortgage bond or other instrument

Operation of section 46

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 :

Order for sale in, decree, &c.

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.

Special provision for seizure and sale.

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 Act shall not apply :

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

Directions and other provisions as to sale.

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—

- (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.

(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 subsection (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

Leave to
plaintiff to
bid and
purchase

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.

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.

Order of sale where more than one land is mortgaged.

(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.

Form of conveyance to purchaser.

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 49 applies, be in the form in the First Schedule to this Act:

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.

Delivery of possession, &c.

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 49, 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.

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

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 Act 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

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

hypothecary action shall, whether or not he has registered an address under section 6 of this Act, 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.

(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.

Decree
absolute
in default of
appearance

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.

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 49—

- (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 of that Code shall be applicable;
- (d) section 343 of that Code 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 of that Code shall be applicable in every case where an order is made under section 54 of this Act 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 49, 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

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

Application
of this Part

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 MORTGAGE —POWER OF ATTORNEY TO CONFESS JUDGMENT.

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

General
mortgages
abolished

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);

Effect of
mortgages
to secure
future
liability, &c

- (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, then, 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 Act, 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.

Action by
concurrent
mortgagees.

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,

- (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.

(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 First 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.

Production to Court of title deeds of mortgaged land.

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

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 Act, and
- (b) the deposit with such agency of the title deeds of such land.

(2) The Minister of Justice may make rules—

- (a) providing for the amendment of the form set out in the Second Schedule to this Act or the substitution therefor 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 Senate and the House of Representatives for approval.

Every rule so approved 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

Cap. 57.

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.

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

Right of mortgagee to make and recover payments of stamp duty

(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.

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 to this Act, 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"),

Right of approved agency to realise shares mortgaged in specified circumstances

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.

Address of mortgagor and issue of notice of demand.

74. (1) Every instrument of mortgage referred to in 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

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.

Effect of exercise of right of sale, &c.

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.

(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.

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

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

(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.

Rights of mortgagor on discharge of mortgage.

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—

- (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.

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:

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

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.

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.

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

80. For the purpose of sections 73 to 79—

Meaning of "shares".

"shares" means any shares, debentures, stock or other securities in the funds of the Government of any part of His Majesty's dominions or in the capital of any company incorporated or registered in any part of those dominions,

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

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

Rights of approved agency to surrender mortgaged life policy in specified circumstances

- (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 Act, 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, after that date, 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.

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

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:

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.

Application
of proceeds
of sale

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

- (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.

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.

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.

Manner of giving notice of assignment to person owing book debt

Application of moneys received in payment of mortgage debt.

Damages for wrongful exercise of power to recover book debt.

Provision for recovery of book debt by assignor notwithstanding assignment

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:

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.

Protection for debtor paying without notice of assignment

95. Notwithstanding the execution of any assignment referred to in section 90, the assignee shall not be entitled to demand or recovery 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.

PART VI:

MORTGAGE OF MOVABLES: GENERAL.

Appointment of Receiver.

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

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 a Receiver of the mortgaged property.

(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.

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

Directions
in order of
appointment,
&c.

- (a) provide for the committal of the mortgaged property and if need be of the business carried on by the mortgagor 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, "motor 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 sales, &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—

Rights of mortgagee of movables seized by other creditor

- (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)

(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 movables 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.

107. Where in a hypothecary action in respect of any movable property the Court finds that the mortgage ought 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 :

Order for
sale and
directions

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.

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 :

Manner of
sale of
mortgaged
movables

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.

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

Application
of this Part.

PART VII

MISCELLANEOUS

Rights of Landlord in relation to Goods upon Premises of which Rent 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 been in arrear for one month after it has become due, 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).

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

(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 XLVIII. 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.

Liability of goods to seizure under decree for rent.

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.

(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.

Rights of landlord in relation to goods on premises

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.

"Member of the family" defined

113. In sections 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

Approval of Credit Agencies, &c

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.

Every such application shall be referred to a Board consisting of a Chairman and two other persons nominated by the Minister

(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 Act.

(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 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 Act or of any other written law prior to the date on which the revocation takes effect, or affect the power of such agency to exercise after that date any right which may be exercised under any such written law 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 Minister, out of moneys voted for the purpose by Parliament.

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

(7) Nothing in Part IV. or Part V. of this Act 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 written law providing for the establishment, powers and functions of such institution.

Saving for appointment of Receivers under Civil Procedure Code.

115. The powers conferred by this Act 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 Act for the appointment of a Receiver.

Saving for
appointment
of Receivers
under Civil
Procedure
Code.

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 Act.

Repeal of
Chapter 74.

Amendment of Chapter 101.

Amendment of
section 17 of
Chapter 101.

117. Section 17 of the Registration of Documents Ordinance is hereby amended in sub-section (2) thereof by the substitution, for the words "nor to choses in action" of the words "nor to choses in action, other than book debts as defined in section 89 of the Mortgage Act, 1949"

*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 Act, 1949, 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 Act 1949, of the above action instituted upon a mortgage of the land/s described in the Schedule hereto.

Secretary.

Schedule

(Description of Land/s).

*Name of
each person
to whom
notice is
issued.

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 Act, 1949, 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 Act 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 50 of the Mortgage Act, 1949;

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 Act, 1949

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 Act, 1949, mortgage the land described in the First Schedule hereto to———— of————, an approved credit agency as defined in that Act, 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)————.

† 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 of transactions referred to (or) instrument referred to.)

* Delete if inapplicable.

† (Where not
notarially
executed).

THIRD SCHEDULE

Form 7.

(Section 73)

I/We* _____ of _____ do hereby mortgage the shares described on the First Schedule hereto _____ of _____, an approved credit agency within the meaning of the Mortgage Act, 1949, 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 Act, 1949, 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

Civil Procedure Code (Amendment) Act, No. 7 of 1949.

AN ACT TO AMEND THE CIVIL PROCEDURE CODE

Chapter 86
Vol. II
page 428

[Date of Assent: March 15, 1949.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Civil Procedure Code (Amendment) Act, No. 7 of 1949, and shall come into operation on such date as may be appointed by the Minister by Notification published in the *Gazette*.

Short title
and date of
operation

Amendment of
section 30 of
Chapter 86

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:—

" 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.

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:—

Agent to
accept
service in
action upon
mortgage of
immovable
property

" 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 prescribed form.

(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."

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

Amendment of section 64 of the principal Ordinance

" 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."

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:

Insertion of new section 64A in the principal Ordinance.

{ 64A. 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."

Service on agent in mortgage action

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

Amendment of section 66 of the principal Ordinance.

(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

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:—

Insertion of new section 327A in the principal 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:

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

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.

L.D.—O.48/48.
B. 18 (L.G.S.C.)

*Local Government Service (Amendment) Act,
No. 8 of 1949*

AN ACT TO AMEND THE LOCAL GOVERNMENT SERVICE
ORDINANCE, NO 43 OF 1945

[Date of Assent : March 15, 1949.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the Local Government Service (Amendment) Act. No. 8 of 1949.

Replacement of
section 3 of
Ordinance
No 43 of 1945

2. Section 3 of the Local Government Service Ordinance, No. 43 of 1945, (hereinafter referred to as "the principal enactment") is hereby repealed and the following new section substituted therefor:—

Constitution of
Commission.

3 (1) The Commission shall be constituted in accordance with the succeeding provisions of this section

(2) The Commission shall consist of the following members:—

(a) the person for the time being holding the office of Commissioner of Local Government,

(b) four other persons nominated by the Minister in his absolute discretion; and

(c) four other persons nominated by the Minister to be, respectively,—

(i) the representative of the Colombo Municipal Council;

(ii) the representative of all other Municipal Councils;

(iii) the representative of all Urban Councils and Town Councils; and

(iv) the representative of all Village Committees.

(3) No person who is for the time being a Senator or member of Parliament or of any local authority shall be eligible for nomination under this section as a member of the Commission.

(4) The representative specified in each of the sub-paragraphs of subsection (2) (c) shall be selected for nomination by the Minister, in his absolute discretion, from among persons recommended by the appropriate advisory body, or in the case of the representative specified in sub-paragraph (ii) or sub-paragraph (iii) of that subsection, by each of the appropriate advisory bodies; and it shall accordingly be the duty of any such advisory body, within fourteen days of the receipt of a written request in that behalf from the Commissioner of Local Government, to recommend in writing

to the Minister, for the purpose of the selection aforesaid, the names of not more than such number of persons as may be specified in the request in accordance with directions given by the Minister:

Provided, however, that in the event of such recommendation not being duly made by the appropriate advisory body, or, as the case may be, by all the appropriate advisory bodies, such representative shall be nominated by the Minister in his absolute discretion.

(5) For the purposes of this section, the expression "appropriate advisory body"—

- (a) in relation to the nomination of a person as the representative of the Colombo Municipal Council, means the Council;
- (b) in relation to the nomination of a person as the representative of all other Municipal Councils, means each such Council;
- (c) in relation to the nomination of a person as the representative of all Urban Councils and Town Councils, means the executive committee of each of the following bodies, namely, the association of Urban Councils and the association of Town Councils (by whatever name called); and
- (d) in relation to the nomination of a person as the representative of all Village Committees, means the executive committee of the association of Village Committees (by whatever name called)

3. Section 5 of the principal enactment is hereby amended as follows:—

Amendment of section 5 of the principal enactment

- (1) by the substitution, for the first proviso to that section, of the following new proviso:—

" Provided that notwithstanding the term of any such appointment—

- (a) any such member may at any time resign from his office or be removed from office by the Minister; and
- (b) any such member shall, upon his becoming a Senator or member of Parliament or of any local authority, *ipso facto* vacate his office";

and

- (2) in the second proviso to that section, by the substitution, for the words "removal from office", of the words "removal from, or vacation of, office"

4. Section 6 of the principal enactment is hereby amended, in sub-section (3) thereof, by the substitution, for the word "Three", of the word "Five".

Amendment of section 6 of the principal enactment.

Amendment of
section 11 of
the principal
enactment.

5. Section 11 of the principal enactment is hereby amended as follows:—

(1) in sub-section (1) of that section—

(a) by the substitution, for paragraphs (e) and (f), of the following new paragraphs:—

“(e) to classify the posts in the Service into classes or grades, to determine the qualifications necessary for appointment to any such post or to posts in any class or grade, to fix the scale of salaries to be attached to any such post or to posts in any class or grade, and to revise or adjust from time to time any scale so fixed;

(f) to determine the cases in which disciplinary action against members of the Service may be taken by local authorities generally or by local authorities of any specified description, or by any particular local authority, and the punishments which such authorities or authority may impose on such members;”;

(b) by the substitution in paragraph (h), for the words “such information”, of the words “such files, other documents or information”;

(c) by the substitution, for paragraph (i), of the following new paragraph:—

“(i) upon the failure of any local authority to furnish any files, other documents or information required under paragraph (h), to authorise, with the approval of the Minister, any member or officer of the Commission to enter the office of the local authority and to obtain such files, other documents or information, as the case may be, and for the purpose of obtaining such files or other documents or information, to search that office and to remove such files or other documents from that office to the office of the Commission and to keep such files or other documents in the office of the Commission for such period as the Commission may deem necessary, and to inspect and take copies of any books, accounts or other documents kept in the office of the local authority;” and

(d) by the substitution, for paragraph (j), of the following new paragraph:—

“(j) to regulate in the prescribed manner a scheme for providing medical facilities to members of the Service and their wives and children, and for providing financial assistance or relief to members of the Service who are in debt;”

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

“(3) Regulations may be made under this Ordinance empowering the Commission, whether generally or specially,—

(a) to authorise any committee consisting of at least two members of the Commission, to hold an inquiry, in any case involving the exercise of the disciplinary powers of the Commission or in any such case of any specified class or description, for the purpose of making recommendations to the Commission in regard to the exercise of such powers in such case; and

(b) to delegate to local authorities of any specified description or to any particular local authority any of the powers (other than the power to appoint or dismiss members of the Service), duties or functions conferred or imposed upon, or vested in, the Commission by or under this Ordinance.”

6. (1) Sections 11A and 11B of the principal enactment are hereby repealed and the following new sections substituted therefor:—

11A. The Commission constituted under this Ordinance or any Committee thereof shall, in the case of any inquiry held into any matter involving the exercise of any disciplinary power vested in that Commission or any such Committee by or under this Ordinance, have the same powers as a Commission appointed under the Commissions of Inquiry Act, No. 17 of 1948; and accordingly, any reference in any provision of that Act to a Commission shall be deemed to include a reference to the Commission constituted under this Ordinance or to any such Committee thereof.

11B. Every post on the staff of the Commission is hereby declared to be a pensionable post in the Service of Ceylon within the meaning and for the purposes of the application of the

Replacement of sections 11A and 11B of the principal enactment. Application of Act No. 17 of 1948.

Posts on staff of Commission to be pensionable

Minutes on Pensions; and the holder of any such post is hereby declared to be a public servant within the meaning and for the purposes of the application of the said Minutes and the Widows' and Orphans' Pension Fund Ordinance

Csp 296

(2) The amendments made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the tenth day of December, 1945

Amendment of section 14 of the principal enactment

7. Section 14 of the principal enactment is hereby amended by the omission of the words "Sanitary Boards,"

Amendment of section 19 of the principal enactment.

8. Section 19 of the principal enactment is hereby amended as follows—

(1) by the substitution for the words "appointed to any post", of the words "appointed by the Commission to any post"; and

(2) by the substitution, for all the words from "The preceding provisions" to the end of that section, of the following:—

" Provided, however, that the preceding provisions of this section shall not apply—

(a) in the case of any appointment to any post, if the Commission so determines, or if no such regulations are for the time being in force in respect of that post; or

(b) to any person who is transferred to the Service under section 45 or section 53 "

Amendment of section 21 of the principal enactment.

9. Section 21 of the principal enactment is hereby amended by the repeal of sub-section (1) of that section and the substitution therefor of the following:—

" (1) Every local authority shall cause and permit each member of the Service who is appointed by the Commission to any post in the service of that authority to perform and discharge the functions and duties of that post, and shall, out of its funds, pay the salary and allowances of each such member "

Amendment of section 22 of the principal enactment.

10. Section 22 of the principal enactment is hereby amended, by the addition, immediately after sub-section (2) of that section, of the following new sub-section:—

" (3) Where a member of the Service is transferred from a post under one local authority to a post under any other local authority, the Commission may determine the amount payable to that member as costs incurred by reason of such transfer, and determine which local authority is responsible for the payment of the costs of the transfer.

Such determination shall be final and shall be communicated in writing to the local authority concerned; and such local authority shall, upon the receipt of such communication, forthwith pay out of its funds the costs of the transfer as so determined "

11. (1) Section 29 of the principal enactment is hereby amended, in sub-section (1) thereof, by the substitution, for all the words from "Every member" to "shall," of the following—

Amendment of section 29 of the principal enactment.

"Every member of the Service, other than (1) a transferred member as defined in section 44 who is eligible for the grant of a pension, gratuity, retiring or long service allowance under any by-laws or rules of the local authority in whose employ he was immediately prior to his transfer to the Service, or (ii) a person who immediately prior to his becoming a member of the Service was the holder of a pensionable office in the service of the Government of Ceylon shall,"

(2) The amendment made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the first day of April, 1946

12. The principal enactment is hereby amended by the insertion, immediately after section 43, of the following new Part which shall have effect as Part IIIA of that enactment—

Insertion of new Part IIIA in the principal enactment.

" PART IIIA

PENSION SCHEMES, ETC

43A. The Commission may, in accordance with regulations made under this Ordinance, establish and regulate—

Power to establish pension schemes, etc

- (1) a Scheme (hereinafter referred to as the "Pension Scheme") for the payment of pensions, gratuities or retiring allowances to members of the Service; and
- (2) a Widows' and Orphans' Pension Fund or Scheme for providing pensions for the widows and children of members of the Service.

In this Part. "retiring allowance" includes a long service allowance

43B. The Pension Scheme shall apply to every member of the Service who is the holder of a post declared to be pensionable by the Commission, but shall not apply to any transferred member of the Service as defined in section 44 who is eligible for the grant of a pension, gratuity or retiring allowance under any by-laws or rules of the local authority in whose employ he was immediately prior to his transfer to the Service, notwithstanding that he is the holder of a post in the Service which is so declared to be pensionable; and accordingly such transferred member shall not be eligible for the grant of a pension, gratuity or retiring allowance under such Scheme

Application of Pension Scheme

43c. The Widows' and Orphans' Pension Fund or Scheme shall not apply to any person who immediately prior to his becoming a member of the Service was the holder of a pensionable office in the service of the Government of Ceylon

Widows' and Orphans' Pension Fund or Scheme not to apply in certain cases.

Pensions, etc
to be paid by
Commission.

43d. (1) The pension, gratuity or retiring allowance granted to a retired member under the Pension Scheme shall be paid to such retired member by the Commission.

In this section and the succeeding provisions of this Part, "retired member" means a member who has retired from the Service.

(2) The pension granted to the widow and children of a deceased member under the Widows' and Orphans' Pension Fund or Scheme shall be paid to the person or persons entitled thereto by the Commission

Payments to be
made to Com-
mission by local
authorities in
respect of
pensions, etc.

43e. (1) Where—

- (a) a retired member who is granted a pension, gratuity or retiring allowance under the Pension Scheme, has, until his retirement from the Service (and whether before or after April 1, 1946), been employed under only one local authority, or
- (b) a deceased member whose widow and children are granted a pension under the Widows' and Orphans' Pension Fund or Scheme had, until his death (and whether before or after April 1, 1946), been employed under only one local authority—

that local authority shall—

- (i) in the case of a grant which is payable monthly, pay out of its funds to the Commission, before the tenth day of each month, the amount of the grant payable under the Pension Scheme to such retired member in respect of that month, or, as the case may be, the amount of the grant payable under the Widows' and Orphans' Pension Fund or Scheme to the widow and children of such deceased member in respect of that month; or
- (ii) in the case of a grant payable in a lump sum, pay out of its funds to the Commission, within ten days of the receipt of a written notice from the Commission in that behalf, the amount of the grant so payable under the Pension Scheme to such retired member, or, as the case may be, the amount of the grant payable under the Widows' and Orphans' Pension Fund or Scheme to the widow and children of such deceased member

(2) Where—

- (a) a retired member who is granted a pension, gratuity or retiring allowance under the Pension Scheme, has, until his retirement from the Service (and whether before or after April 1, 1946), been employed under more than one local authority, or
- (b) a deceased member whose widow and children are granted a pension under the Widows' and Orphans' Pension Fund or Scheme had, until his death (and whether before or after April 1, 1946), been employed under more than one local authority—

every such local authority shall—

- (i) in the case of a grant which is payable monthly, pay out of its funds to the Commission, before the tenth day of each month, the prescribed proportion of the amount of the grant payable under the Pension Scheme to such retired member in respect of that month, or, as the case may be, the prescribed proportion of the amount of the grant payable under the Widows' and Orphans' Pension Fund or Scheme to the widow and children of such deceased member in respect of that month, or
- (ii) in the case of a grant payable in a lump sum, pay out of its funds to the Commission, within ten days of the receipt of a written notice from the Commission in that behalf, the prescribed proportion of the amount of the grant so payable under the Pension Scheme to such retired member, or, as the case may be, the prescribed proportion of the amount of the grant payable under the Widows' and Orphans' Pension Fund or Scheme to the widow and children of such deceased member

43r. The provisions of Part III of this Ordinance shall not apply to any member of the Service to whom the Pension Scheme applies or commences to apply

Part III. not to apply to members to whom Pension Scheme applies.

43c (1) Where the Pension Scheme commences to apply to any member of the Service, who has been a contributor to the Local Government

Closing of Provident Fund accounts of contributors to whom Pension Scheme applies.

Service Provident Fund, the account of that contributor in the Fund shall be closed forthwith, and as soon as may be thereafter—

- (a) the amount of the contributions of that member to the Provident Fund and the interest thereon shall be paid to him, and
- (b) the amount of the contributions made in respect of that contributor under section 31 by each local authority under which the contributor has been employed, and the interest thereon, shall be paid to that local authority

(2) Before the payment of any moneys is made to any person under sub-section (1), any sum or sums due from him to the Commission or to any local authority under which he has been employed may be deducted from such moneys

Regulations for
pensions, etc

43H (1) Regulations may be made under this Ordinance providing for—

- (a) the establishment, regulation, administration and management of a Scheme for the grant of pensions, gratuities or retiring allowances to members of the Service, the conditions and circumstances in which, and the restrictions subject to which, members will be eligible for such grants, the payments to be made thereunder to such members, and all matters incidental to or connected with such Scheme for which no express provision is made in this Ordinance; and
- (b) the establishment, regulation, administration and management of a Widows' and Orphans' Pension Fund or Scheme for the grant of pensions to the widows and children of members of the Service, the conditions and circumstances in which, and the restrictions subject to which, members will be eligible for such grants, fixing the contributions, if any, to be made thereto by the Commission, fixing the contributions to be made thereto by such members, and the payments to be made therefrom to such widows and children; authorising the contributions of members to be deducted from their salaries, prescribing the procedure for making such deductions, and all matters incidental to or connected with the Fund or Scheme for which no express provision is made in this Ordinance

(2) Regulations made under sub-section (1) in relation to the Pension Scheme may contain provision corresponding as nearly as may be to the

provisions contained in that behalf in the Minutes regulating the pensions or gratuities to be granted to public servants of Ceylon for the purpose of authorising the grant of pensions by the Commission to members of the Service transferred to or from the Service from or to pensionable office under the Government of Ceylon, and regulations made under sub-section (1) in relation to the Widows' and Orphans' Pension Fund may contain such provision as may be deemed reasonable for the grant by the Commission of pensions and gratuities to the widows and children of any such member "

13. (1) Section 44 of the principal enactment is hereby amended as follows:—

Amendment of section 44 of the principal enactment.

- (a) by the re numbering of that section as sub-section (1) of section 44.
- (b) in re-numbered sub-section (1), by the insertion, immediately after the definition of " transferred member ", of the following new definition:—
 " " retiring allowance " includes any long service allowance; ;
 and
- (c) by the addition, immediately after sub-section (1), of the following new sub-sections:—

" (2) Where any person who, having been a transferred member as defined in sub-section (1), is deemed by virtue of section 3 of Ordinance No 37 of 1947, to be an officer or servant of any local authority for any period, again becomes a member of the Service before the first day of January, 1949, by reason of his appointment to a scheduled post or by reason that his post becomes a scheduled post, he shall, notwithstanding anything in the aforesaid section 3, be, and be deemed always to have been, a transferred member for the purposes of this Part, and nothing in sub-sections (3) to (6) of the aforesaid section 3 shall apply or be deemed to have applied in the case of such member:

Provided, however, that the preceding provisions of this sub-section shall not be taken or construed to require or have required that the provisions of sections 30 to 32 of this Ordinance should apply or have applied in the case of such member during the period mentioned in the preceding provisions of this section

(3) The provisions of section 53 of this Ordinance shall not apply in any case to which sub-section (2) of this section applies. ”.

(2) The amendments made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the fifteenth day of July, 1947.

Amendment of section 16 of the principal enactment.

14. (1) Section 46 of the principal enactment is hereby amended, by the substitution, for the words “thirty-six months”, of the words “sixty months”.

(2) The amendment made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the first day of April, 1946

Amendment of section 47 of the principal enactment.

15. (1) Section 47 of the principal enactment is hereby amended, by the substitution, for the words “pension or gratuity” wherever they occur collectively therein, of the words “pension, gratuity or retiring allowance”.

(2) The amendment made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the first day of April, 1946.

Amendment of section 48 of the principal enactment.

16. (1) Section 48 of the principal enactment is hereby amended as follows:—

(a) by the re-numbering of that section as sub-section (1) of section 48;

(b) in re-numbered sub-section (1)—

(i) by the substitution, for the words “whose aggregate service,”, of the words “whose aggregate service up to the date immediately preceding the date of his retirement from the Service,”,

(ii) by the substitution, for the words “pension or gratuity” wherever they occur collectively therein, of the words “pension, gratuity or retiring allowance”,

and

(iii) by the substitution, for the words “be granted”, of the words “be granted by the Commission”;

(c) by the addition, immediately after re-numbered sub-section (1), of the following new sub-section:—

“(2) Upon the death, while in the Service, of a transferred member whose aggregate service up to the date immediately preceding the date of his death, had it been wholly under the local authority in whose employ he was on the day immediately preceding the appointed date, would have qualified his widow or children or other dependants to a death gratuity under the by-laws or rules of that local authority, the widow or children or other dependants, as the case may be, may be granted

by the Commission a death gratuity not less in amount than the death gratuity which would have been awarded under such by-laws or rules if his aggregate service up to the date immediately preceding the date of his death had been under that local authority."

(2) The amendments made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the first day of April, 1946

17. (1) Section 49 of the principal enactment is hereby repealed.

Repeal of section 49 of the principal enactment

(2) The amendment made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the first day of April, 1946.

18. (1) Section 50 of the principal enactment is hereby amended as follows:—

Amendment of section 50 of the principal enactment.

- (a) by the re-numbering of that section as sub-section (1) of section 50;
- (b) in re-numbered sub-section (1), by the substitution, for the words "pension or gratuity", of the words "pension, gratuity or retiring allowance";
- (c) by the addition, immediately after re-numbered sub-section (1), of the following new sub-section:—

"(2) The death gratuity granted under section 48 (2) in respect of a deceased member of the Service shall be paid by the Commission."

and

- (d) in the marginal note thereto, by the substitution, for the word "Pensions", of the words "Pensions, gratuities, etc."

(2) The amendments made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the first day of April, 1946

19. (1) Section 51 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement of section 51 of the principal enactment.

51. (1) Where—

- (a) a retired member who is granted a pension, gratuity or retiring allowance under section 47 or section 48 (1) has, until his retirement from the Service (and whether before or after the appointed date), been employed under only one local authority; or
- (b) a deceased member whose widow and children are granted a death gratuity under section 48 (2) had, until his death (and whether before or after the appointed date), been employed under only one local authority,

Payments to be made by local authorities in respect of pensions, etc

that local authority shall—

- (i) in the case of a grant which is payable monthly, pay out of its funds to the Commission, before the tenth day of each month, the amount of the grant payable under section 47 or section 48 (1) to such retired member in respect of that month, or, as the case may be, the amount of the death gratuity payable under section 48 (2) to the widow and children of such deceased member in respect of that month, or
- (ii) in the case of a grant payable in a lump sum, pay out of its funds to the Commission, within ten days of the receipt of a written notice from the Commission in that behalf, the amount of the grant payable under section 47 or section 48 (1) to such retired member, or, as the case may be, the amount of the grant payable under section 48 (2) to the widow and children of such deceased member.

(2) Where—

- (a) a retired member who is granted a pension, gratuity or retiring allowance under section 47 or section 48 (1) has, until his retirement from the Service (and whether before or after the appointed date), been employed under more than one local authority; or
- (b) a deceased member whose widow and children are granted a death gratuity under section 48 (2) had, until his death (and whether before or after the appointed date), been employed under more than one local authority,

every such local authority shall—

- (1) in the case of a grant which is payable monthly, pay out of its funds to the Commission, before the tenth day of each month, the prescribed proportion of the amount of the grant payable under section 47 or section 48 (1) to such retired member in respect of that month, or, as the case may be, the prescribed proportion of the amount of the grant payable under section 48 (2) to the widow and children

- of such deceased member in respect of that month, or
- (ii) in the case of a grant payable in a lump sum, pay out of its funds to the Commission, within ten days of the receipt of a written notice from the Commission in that behalf, the prescribed proportion of the amount of the grant payable under section 47 or section 48 (1) to that member, or, as the case may be, the prescribed proportion of the amount of the grant payable under section 48 (2) to the widow and children of such deceased member.

(2) The amendment made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the first day of April, 1946.

20. (1) The following new section shall be inserted immediately after section 51 of the principal enactment and shall have effect as section 51A of that enactment.—

51A (1) Where a transferred member is a contributor to a provident fund established under any by-laws or rules of the local authority under which he was employed immediately prior to the appointed date, the account of such member in the fund shall be closed on the appointed date, and as soon as may be the amount standing to his credit in the fund at the closing of such account shall be paid by the local authority to that member or any other person to whom by virtue of such by-laws or rules, as the case may be, payment may lawfully be made.

(2) Before payment of any moneys is made to any person by a local authority under sub-section (1) any sum or sums due from him to that local authority may be deducted from such moneys.

(2) The amendment made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the first day of April, 1946.

21. Section 52 of the principal enactment is hereby amended, by the substitution, for the words "the Service.", of the words "the Service; and such accounts shall be audited annually by the Auditor-General."

22. (1) Section 53 of the principal enactment is hereby repealed and the following new section substituted therefor—

53 Every person in the employment of a local authority who is on any date appointed to a scheduled post or is the holder of a post which becomes

Insertion of new section 51A in the principal enactment.

Provident fund accounts of transferred members to be closed and moneys paid

Amendment of section 52 of the principal enactment

Replacement of section 53 of the principal enactment

Transfers to Service

on any date a scheduled post shall, on that date, be transferred to the Service, and the provisions of this Part shall apply to such person as though every reference in this Part to the appointed date were a reference to the date of his transfer as aforesaid

(2) The amendment made in the principal enactment by sub-section (1) of this section shall be deemed for all purposes to have come into operation on the fifteenth day of July, 1947

Amendment of section 59 of the principal enactment.

23. Section 59 of the principal enactment is hereby amended, in the definition of "local authority", by the omission of the words "Sanitary Board".

Date of operation of the new Part IIIA

24. The provisions of the new Part IIIA inserted by this Act in the principal enactment shall come into operation on the date of the commencement of this Act.

Special provision for certain cases of reversion to Service.

25. (1) Where any person who, having been a member of the Service (but not a transferred member as defined in section 44 (1) of the principal enactment), is deemed by virtue of section 3 of Ordinance No 37 of 1947 to be an officer or servant of any local authority for any period, again becomes a member of the Service before the first day of January, 1949, by reason of his appointment to a scheduled post or by reason that his post becomes a scheduled post, he shall notwithstanding anything in the aforesaid section 3 be, and be deemed always to have been, a member of the Service, and nothing in sub-sections (3) to (6) of the aforesaid section 3 shall apply or be deemed to apply in his case:

Provided, however, that the preceding provisions of this sub-section shall not be taken or construed to require or have required that the provisions of sections 30 to 32 of the principal enactment should apply or have applied in the case of such person during the period mentioned in the preceding provisions of this sub-section.

(2) The provisions of sections 53 of the principal enactment shall not apply in any case to which sub-section (1) of this section applies.

(3) The provisions of sub-section (1) and sub-section (2) of this section shall be deemed for all purposes to have come into operation on the fifteenth day of July, 1947.

Transitional provisions as to commencement of office of new Commission, etc

26. (1) Notwithstanding the repeal and replacement by this Act of section 3 of the principal enactment and notwithstanding anything in section 5 of that enactment, the Local Government Service Commission as constituted under the aforesaid section 3 (hereinafter referred to as the "old Commission") shall continue to be the Commission for the purposes of that enactment until the prescribed date, and the persons who, at the date of the commencement of this Act, are holding office as members of that Commission, shall continue to hold office as such until the prescribed date and no longer.

(2) As soon as may be after the commencement of this Act, the Minister shall cause necessary steps to be taken for the constitution of the Local Government Service Commission in terms of section 3 of the principal enactment as replaced by this Act; the Commission so constituted (hereinafter referred to as the "new Commission") shall, on and after the

prescribed date, be the Commission for the purposes of the principal enactment, and the persons who are members of that Commission by virtue of the said section 3 or of nominations made thereunder shall commence to hold office as members of that Commission on the prescribed date, which date shall be deemed for the purposes of section 5 of that enactment to be the date of their appointment.

(3) Notwithstanding the repeal and replacement by this Act of section 3 of the principal enactment—

- (a) all regulations, orders or appointments made and acts or things done by the old Commission, and in force or having effect immediately prior to the prescribed date, shall continue in force and have effect in like manner as though they had been made or done by the new Commission, and may accordingly be varied, altered or revoked by the new Commission in pursuance of the powers conferred by the principal enactment as amended by this Act;
- (b) any inquiry or other matter which on the day immediately preceding the prescribed date was pending before the old Commission may be continued, heard and determined by the new Commission, or, if the new Commission so thinks fit, be held or considered afresh and determined by that Commission

(4) In this section, "prescribed date" means such date as may be declared by the Minister by Order published in the *Gazette* to be the date on which the Local Government Service Commission, constituted under the principal enactment as amended by this Act, shall commence to hold office.

L D — O. 28/48

P. C. C. — A 365

Customs (Amendment) Act, No 9 of 1949.

AN ACT TO AMEND THE CUSTOMS ORDINANCE.

Cap. 185
Vol IV, p 491

[Date of Assent · March 15, 1949.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Customs (Amendment) Act, No 9 of 1949.

Short title

2. Section 9 of the Customs Ordinance (hereinafter referred to as "the principal Ordinance") is hereby amended, in the proviso thereto, by the addition at the end of paragraph (a) of that proviso, of the following:—

Amendment of
section 9 of
Chapter 185

" or may amend or alter the provisions of the said Schedule by the deletion of references to goods stated therein to be exempt from import duty, or by specifying that goods of any class or description shall, subject to such terms and conditions as may be expressed in the resolution, be exempt from export duty, or by adding to, deleting from or in any manner varying the

classification or description of goods specified in the said Schedule or any provision contained therein relating to any such goods, whether or not the duty on such goods is varied, imposed or abolished by the resolution,"

Amendment of section 21 of the principal Ordinance

3. Section 21 of the principal Ordinance is hereby amended in sub-section (1) thereof, by the substitution for the words "imported by", of the words "imported or cleared out of bond by"

Amendment of section 60 of the principal Ordinance

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

"Every person knowingly concerned in the lading, putting off or carrying of such goods, or into whose hands and possession such goods shall knowingly come, contrary to the provisions of this section or of any such regulation, shall forfeit and pay a sum not exceeding one thousand rupees, or treble the value of such goods, at the election of the Collector."

Replacement of Part IXA of the principal Ordinance

5. Part IXA of the principal Ordinance (inserted by Ordinance No 3 of 1939) shall be repealed and the following new Part is hereby substituted therefor:—

PART IXA

REGULATION OF MOVEMENTS, ETC OF SHIPS UNDER 250 TONS TONNAGE

Regulation of movements, etc of ships under 250 tons tonnage

68A. (1) The Minister of Finance may make any such regulations as may appear to him expedient for the purpose of enabling the officers of customs to have full cognizance of the movements, to or from any port or place in the Island, of ships not exceeding 250 tons tonnage, and generally for the purpose of the prevention of the smuggling of goods into or from the Island or of the importation or exportation of goods contrary to any such prohibitions or restrictions as may be applicable by virtue of any other written law

(2) Without prejudice to the generality of the powers conferred by sub-section (1), regulations made under that sub-section may provide for all or any of the following matters.—

- (a) the registration by the Collector of Customs of ships ordinarily based or stationed at any port or place in the Island, and the prohibition of the use of ships or of the making of voyages or the conveyance of goods by ships which are not duly registered;
- (b) the limits within which ships may be used or make voyage, the places at which they may be stationed or anchored, the mode of navigation thereof, the purposes for which and the manner in which they may be employed, and the marking of ships with their names or with numbers assigned to them by the Collector;
- (c) the prohibition of the employment or engagement on ships, whether as master or member of the crew, of any person who has at any time been convicted of any offence mentioned in section 127 or section 128 or any other specified section of this Ordinance;

(d) the issue of licences by the Collector of Customs exempting ships from the operation of any regulation made in respect of any matter referred to in the preceding paragraph (b), and the circumstances in which, and the conditions and restrictions subject to which, such licences may be issued

(3) Any regulation made under the preceding provisions of this section may be limited in its application to ships of any specified tonnage, build or description or to ships ordinarily based at or departing from or arriving at, any port or place in any specified area in the Island; and any such regulation may provide different requirements in respect of ships of different tonnage, build or description or ordinarily based or stationed at ports or places in different areas.

(4) Every regulation made by the Minister under the preceding provisions of this section shall be brought before the Senate and the House of Representatives for approval, and if so approved shall come into force on the date of its publication in the *Gazette* or on such later date as may be specified in such regulation.

(5) Every ship which is used or employed or makes voyage in any manner contrary to any regulation made under the preceding provisions of this section which may be applicable to such ship, shall be liable to forfeiture.

(6) Any person who knowingly or wilfully contravenes or fails to comply with any provision of any regulation made under the preceding provisions of this section shall be liable to a penalty not exceeding one thousand rupees.

6. Section 124 of the principal Ordinance shall be repealed and the following new section is hereby substituted therefor:—

124. (1) Where any officer of customs, or any peace officer or excise officer acting in aid or assistance of any officer of customs, has reason to suspect that smuggled goods are being transported or removed in any vehicle of any description whatsoever, it shall be lawful for such officer—

(a) to give such orders, directions or signals, or to use such devices, or to take such other measures, as may be necessary to stop the vehicle or to cause it to be halted; and

(b) to inspect and search the vehicle.

(2) Where the Collector of Customs has reason to suspect that any road is being used by vehicles which transport or remove smuggled goods, he may erect or cause to be erected across the road or any part thereof a barrier or barriers of such nature and description as to him may seem necessary for the purpose of stopping vehicles using that road or causing such vehicles to be halted.

(3) Where any barrier has been erected under sub-section (2) across any road or any part thereof, it shall be lawful for any officer

Replacement of section 124 of the principal Ordinance.

Stoppage, inspection and search of vehicles suspected to be transporting smuggled goods, etc

of customs or for any peace officer or excise officer acting in his aid or assistance—

- (a) to give such orders, directions or signals as may be necessary to cause any vehicle of any description whatsoever using such road to stop or to be halted at such barrier; and
- (b) to inspect and search every vehicle stopped or halted at such barrier, for the purpose of ascertaining whether any smuggled goods are being transported or removed in such vehicle.

(4) Where any order, direction or signal is given under any of the preceding provisions of this section for the purpose of stopping any vehicle, the driver or other person for the time being in charge of such vehicle shall forthwith stop the vehicle or cause it to be halted in accordance with such order, direction or signal; and any driver or other person who fails or refuses to comply with such order, direction or signal shall be guilty of an offence and liable on conviction thereof to a fine not exceeding one thousand rupees

(5) Neither the Collector of Customs, nor any other officer of customs, nor any peace officer or excise officer acting in aid or assistance of any officer of customs, shall be liable to any action or prosecution, whether civil or criminal, by reason of the erection of any barrier, or the stoppage, inspection or search of any vehicle, or of any other act or thing done in pursuance of the powers conferred by the preceding provisions of this section, notwithstanding that smuggled goods may not in fact be found in any vehicle which is stopped, inspected or searched as hereinbefore provided

(6) In this section—

Cap. 16.

(a) "peace officer" has the same meaning as in the Criminal Procedure Code,

Cap. 42.

(b) "excise officer" has the same meaning as in the Excise Ordinance

Insertion of new section 138A in the principal Ordinance

Power to fire at vessels failing to bring to when required.

7. The following new section shall be inserted immediately after section 138 of the principal Ordinance, and shall have effect as section 138A of that Ordinance —

138A. (1) If any ship or boat which is liable to seizure or examination under this Ordinance, or which officers of custom are empowered by this Ordinance to board, shall not bring to when required so to do—

- (a) the master of such ship or boat shall forfeit the sum of two hundred rupees; and
- (b) it shall be lawful for the officer of customs having the charge or command of any vessel flying the Ceylon Customs Flag, having first caused a gun to be fired as a signal, to fire at or into such ship or boat; and such officer of customs or any other person acting in his aid or assistance or

by his direction shall be and is hereby indemnified and discharged from any action or prosecution, whether civil or criminal, in respect of any act done in pursuance of the powers conferred by this section :

Provided, however, that the powers conferred on any officer of customs by the preceding provisions of this section shall not be exercised except in relation to a ship or boat which is for the time being within the territorial waters of Ceylon.

(2) Where any vessel, other than a vessel duly authorised by the Collector in that behalf, flies the Ceylon Customs Flag, the master or person in charge of the vessel shall be guilty of an offence and liable to a fine not exceeding one hundred rupees.

(3) In this section, "Ceylon Customs Flag" means a flag of such design or description as may be specified by the Principal Collector by notice published in the *Gazette* to be the Ceylon Customs Flag

8. Schedule B to the principal Ordinance (as amended by the Proclamation published in *Gazette Extraordinary* No. 9,773 of September 24, 1947), is hereby further amended in the item—

Amendment of
Schedule B to
the principal
Ordinance

" Any article exported from Ceylon and refused admittance by the authorities at the port to which it was exported except by permission of the Minister "

by the substitution, for the word " Minister ", of the words " Collector of Customs "

L.D.—O.17/48.

Medical (Amendment) Act, No. 10 of 1949

AN ACT TO AMEND THE MEDICAL ORDINANCE

Chapter 90
Vol. III., p 6

[Date of Assent : March 15, 1949.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Medical (Amendment) Act, No 10 of 1949, and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*

Short title
and date of
operation

2. Section 10 of the Medical Ordinance (hereinafter referred to as " the principal Ordinance ") is hereby amended as follows :—

Amendment of
section 10 of
Chapter 90.

(1) by the re-numbering of that section as sub-section (1) of section 10,

(2) in the re-numbered sub-section (1)—

(a) by the substitution, in paragraph (e) thereof, for the word " pharmacists.", of the words " pharmacists; and "

(b) by the addition, at the end thereof, of the following new paragraph:—

“(f) certificates of efficiency as nurses.”;

(3) by the addition, after the re-numbered sub-section (1), of the following new sub-section:—

“(2) Any person on whom any diploma or certificate has been conferred under sub-section (1) may be deprived of such diploma or certificate by the College Council in such circumstances and in accordance with such procedure as may be prescribed.”

Amendment of section 23 of the principal Ordinance.

3. Section 23 of the principal Ordinance is hereby amended in sub-section (1) thereof as follows:—

(1) in paragraph (d) of that sub-section, by the substitution for the word “Ceylon.” of the words “Ceylon, and”;

(2) by the addition at the end of that sub-section of the following new paragraph:—

“(e) a register of persons qualified to practise as nurses in Ceylon.”

Insertion of new Part in the principal Ordinance

4. The following new sections shall be inserted immediately after section 61 of the principal Ordinance, and shall have effect as sections 61A to 61C in Part IXA of that Ordinance.—

PART IXA

NURSES

Advisory Board

61A. (1) There shall, for the purposes of this Part, be an Advisory Board consisting of—

- (a) six persons elected in the prescribed manner by the Ceylon Nurses Association,
- (b) two medical practitioners appointed by the Minister;
- (c) two persons, not being medical practitioners or registered nurses, appointed by the Minister; and
- (d) one member of the teaching profession appointed by the Minister of Education.

(2) The Minister shall nominate one of the persons appointed by him under sub-section (1) to be the Chairman of the Advisory Board

(3) It shall be the function of the Advisory Board to make recommendations to the Ceylon Medical Council or the College Council on such matters relating to the administration of this Part of this Ordinance as may from time to time be referred to the Board for advice or as may, in the opinion of the Board, require consideration by any such Council; and the Ceylon Medical Council or the College Council shall give due consideration to the recommendations of the Board

(4) Regulations may be made providing for the procedure to be followed at meetings of the Advisory Board. Subject to the provisions of any such regulation, the Board may regulate its own procedure

(5) Every member of the Advisory Board shall, unless he earlier vacates his office by resignation or revocation of appointment, hold office for a period of two years from the date of the election or appointment of such member.

61B. (1) The register of nurses maintained under sub-section (1) of section 23 shall be divided into separate parts as follows —

Register of
nurses to be
in separate
parts

- (a) Part A shall contain the names of all persons of the female sex who satisfy the conditions of admission to the register as *General Nurses*.
- (b) Part B shall contain the names of all persons of the male sex who satisfy the conditions of admission to the register as *General Nurses*.
- (c) Part C shall contain the names of all persons who satisfy the conditions of admission to the register as *Public Health Nurses*.
- (d) Part D shall contain the names of all persons who satisfy the prescribed conditions of admission to the register as *Assistant Nurses*.
- (e) Part E shall contain the names of all persons who comply with the conditions specified in sub-section (3) of section 61c.
- (f) Part F shall contain the names of all persons who, having qualified as nurses outside Ceylon, satisfy the Ceylon Medical Council that they possess sufficient knowledge and skill to enable them to carry on efficiently the practice of nursing.

(2) Regulations may be made providing for the maintenance of additional Parts in the register of nurses, and prescribing the conditions of admission to any such additional Part.

(3) The name of any person entitled to be registered in more than one Part of the register may be registered accordingly.

61c. (1) The conditions of admission to the register as a General Nurse shall be that the applicant—

Conditions of
admission to
register.

- (a) holds a certificate of efficiency as a nurse issued by the College Council or by the Director of Medical and Sanitary Services; or
- (b) is certified or qualified to be certified under the Nurses Act, 1919, of the Imperial Parliament.

(2) The conditions of admission to the register as a Public Health Nurse shall be that the applicant is a female and holds the following certificates, that is to say—

- (a) a certificate of efficiency as a nurse issued by the College Council or the Director of Medical and Sanitary Services,
- (b) a certificate of efficiency as a midwife issued by the College Council or the Director of Medical and Sanitary Services; and
- (c) a certificate issued by the Director of Medical and Sanitary Services to the effect that she has had the prescribed training in public health and passed the Public Health Nursing Examination.

(3) The conditions of admission to Part E of the register shall be—

- (a) that the application for registration in Part E is made before September 30, 1949, and
- (b) that the Ceylon Medical Council is satisfied, upon production of two certificates in that behalf, that the applicant was actually engaged in the practice of nursing for at least one year during the period of three years ending on the date of application

(4) Notwithstanding anything in the preceding provisions of this section, no applicant shall be registered under this Ordinance as a nurse except upon payment to the Registrar of a fee of ten rupees :

Provided, however, that in the case of a person who is to be registered (whether at the same time or at different times) in more than one Part of the register, the fee for registration in any second or subsequent Part shall be five rupees.

Erasure of
names from
register of
nurses

61D. The name of any person registered under this Ordinance as a nurse may be erased from the register of nurses—

- (a) if the name of that person is removed from the Roll of Nurses kept under the Nurses Act, 1919, of the Imperial Parliament, for disobedience to any rules or regulations or for other misconduct; or
- (b) if that person is deprived of any diploma, degree, or certificate on the faith of which that person was registered as a nurse; or
- (c) if that person is convicted of an offence which is punishable with imprisonment and which shows that person to be unfit to practise as a nurse; or
- (d) if that person is of a character or has been guilty of conduct unbecoming the profession of a nurse; or
- (e) if, by reason of negligence or incapacity as a nurse, that person cannot be safely allowed to continue to practise as such.

Unlawful
pretence
to be a nurse,
&c

61E. (1) No person, not being a registered nurse, shall—

- (a) use the title of "registered nurse" or its equivalent in any other language, either alone or in combination with any other word or letters; or
- (b) use any name, title, addition, description, uniform or badge implying that that person is registered under this Ordinance as a nurse; or
- (c) use any title, uniform or badge prescribed for the use of nurses so registered

(2) No person whose name is included in any Part of the register of nurses shall use any name, title, addition, description, uniform or badge or otherwise do any act of any kind, implying that the name of such person is also included in some other Part of that register in which it is not in fact so included

(3) No person shall, with intent to deceive, make use of any certificate of registration as a nurse which has been issued to any other person

61F. No person, not being a registered nurse, shall—

- (a) practise or profess to practise nursing for gain, or publish his or her name as practising nursing; or
- (b) be entitled to recover any charge in any court for services rendered as a nurse

Restriction on practice of nursing by unregistered persons

61G. Regulations may be made restricting and regulating the practice of nursing by nurses and providing for their proper supervision.

Regulation of the practice of nursing

5. Section 67 of the principal Ordinance is hereby amended by the addition, in paragraph (a) of that section after the figure "IX", of the word and figure "and IXA".

Amendment of section 67 of the principal Ordinance.

6. Section 68 of the principal Ordinance is hereby amended by the insertion, immediately after the definition of "register", of the following new definition.—

Amendment of section 68 of the principal Ordinance

' "registered nurse" means a person for the time being registered under this Ordinance as a nurse; '

L D.—O. 54/48.

*Public Works Loan (1937) (Amendment) Act,
No 11 of 1949.*

AN ACT TO AMEND THE PUBLIC WORKS LOAN (1937)
ORDINANCE

Cap. 285,
(Vol. VI,
page 270)

[Date of Assent: March 15, 1949]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Public Works Loan (1937) (Amendment) Act, No. 11 of 1949

Short title.

2. Section 7 of the Public Works Loan (1937) Ordinance (as modified by the Proclamation published in *Gazette Extraordinary* No 9,828 of February 5, 1948) is hereby amended, in the proviso thereto, by the substitution, for the words "House of Representatives and sanctioned by a Secretary of State", of the words "House of Representatives".

Amendment of section 7 of Chapter 285

L D.—O 53/48
P C C—A 363

No. 1/43/4 (MFG)

*Desiccated Coconut (Export Duty) Act
No. 12 of 1949.*

AN ACT TO MAKE SPECIAL PROVISION RELATING TO THE
EXPORT DUTY LEVIABLE ON DESICCATED COCONUT
UNDER THE CUSTOMS ORDINANCE

Cap. 185.

[Date of Assent March 15, 1949]

WHEREAS an Order under section 2 of the Revenue Protection Ordinance, dated August 25, 1948, was published in the *Gazette* of that date, providing for the levy from midnight of August 25/26, 1948, of export duties on desiccated coconut at the rates set out in the Schedule to that Order

Cap. 191

And whereas the resolution under section 9 of the Customs Ordinance in respect of which that Order

was made was passed by the House of Representatives on November 23, 1948, and published in *Gazette* No. 9,925 of December 3, 1948 :

And whereas by reason of the passage by the House of Representatives on September 2, 1948, of a resolution under the aforesaid section 9 providing for the levy on desiccated coconut of export duty at a rate different from the rates set out in the Schedule to the Order of August 25, 1948, doubts have arisen as to the export duty leviable on desiccated coconut during the period commencing on August 25, 1948, and ending on December 3, 1948 :

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows :—

Short title .

1. This Act may be cited as the Desiccated Coconut (Export Duty) Act, No. 12 of 1949

Declaration as to export duty payable on desiccated coconut during specified period

2. It is hereby declared that, notwithstanding anything in the resolution under section 9 of the Customs Ordinance, published in *Gazette* No. 9,902 of September 10, 1948, export duty on desiccated coconut shall be deemed for all purposes to have been leviable during the period commencing at midnight of August 25/26, 1948, and ending on December 3, 1948, at the rates set out in the Schedule to the Order under the Revenue Protection Ordinance, published in *Gazette* No. 9,897 of August 25, 1948, in addition to the export duties leviable or payable thereon under any written law other than the Customs Ordinance; and accordingly that all export duties which during the said period were demanded, levied or paid in terms of the aforesaid Order were, and shall be deemed for all purposes to have been, duly demanded, levied and paid.

L D.—O.8/47.

Crown Lands (Amendment) Act, No 13 of 1949.

AN ACT TO AMEND THE CROWN LANDS ORDINANCE.
No. 8 OF 1947

[Date of Assent : March 15, 1949]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows :—

Short title

1. This Act may be cited as the Crown Lands (Amendment) Act, No 13 of 1949.

Replacement of section 102 of the Crown Lands Ordinance No. 8 of 1947

2. Section 102 of the Crown Lands Ordinance, No. 8 of 1947, is hereby repealed and the following new section substituted therefor :—

Title to public roads, &c., vested in the Crown.

102. It is hereby declared that—

- (a) every public road, carriage-way, cart-way, path-way, path and thoroughfare,
- (b) every bridge, drain, embankment causeway and ditch belonging to or appertaining to a public road, carriage-way, path-way, path or thoroughfare; and
- (c) every road reservation and Crown reservation,

is the property of the Crown.

NOTICES OF INSOLVENCY

In the District Court of Colombo

Insolvency. In the matter of the insolvency of Ranjit Wijemanne No 5,806 of 2, Ripon Road, Colpetty, Colombo, insolvent.

NOTICE is hereby given that a special sitting of this court will be held on Tuesday, April 12, 1949, at 10.45 in the forenoon for the approval of the conditions of sale for the sale of all the right, title and interest, shares, debentures, &c., of the insolvent above named in and over the firm "Ranjit Wijemanne & Co., Limited" of Colombo

March 21, 1949

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

In the District Court of Colombo

Insolvency In the matter of the insolvency of P. H. Dias of No 5,886 Battaramulla in the Palle Pattu of Hewagama Korale, insolvent

WHEREAS the above-named P. H. Dias has filed a declaration of insolvency, and a petition for the sequestration of his estate has also been filed by B. Peter Cooray of Etul Kotte, under the Ordinance No. 7 of 1858: Notice is hereby given that the said court has adjudged the said P. H. Dias, insolvent, accordingly, and that two public sittings of the court, to wit, on May 10, 1949, and on May 31, 1949, 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

March 16, 1949

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

In the District Court of Kandy

No I-150 In the matter of the insolvency of Matara Liyanage Don Simon Perera of 326, Ampitiya, Kandy

WHEREAS Segu Madar Saibo of 40, Castle Hill Street, Kandy, has filed a declaration of insolvency, and a petition for the sequestration of the estate of Matara Liyanage Don Simon Perera of Ampitiya, Kandy, under the Ordinance No. 7 of 1858: Notice is hereby given that the said court has adjudged the said Matara Liyanage Don Simon Perera, insolvent, accordingly, and that two public sittings of the court, to wit, on May 3, 1949, and on June 7, 1949, 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.

March 22, 1949

By order of court, M. G. ARYASENA,
Secretary.

NOTICES OF FISCALS' SALES

Western Province

In the District Court of Colombo

N. M. N. Muthiah Chettiar of 208, Sea Street, Colombo. Plaintiff
No. 8,418/S Vs

(1) T. C. C. Jayatunga and (2) M. S. Jayatunga, both of 145, St. Sebastian Hill, Colombo Defendants.

NOTICE is hereby given that on Wednesday, April 20, 1949, at 10.30 a.m., will be sold by public auction at the premises the right, title, and interest of the said defendants in the following property for the recovery of the sum of Rs. 800 with interest on Rs. 800 at 12 per cent per annum from October 19, 1947, to January 26, 1948, and thereafter legal interest on the aggregate amount of the decree till payment in full and costs of suit, viz:—

All that land marked lot B bearing present assessment No. 145, situated at St. Sebastian Hill within the Municipality and District of Colombo, Western Province; bounded on the north by lot A, east by premises bearing assessment No. 149, formerly garden of Davith Aratchi and Kretser, south by St. Sebastian Hill, and west by premises bearing assessment No. 139, formerly garden of Lisbert de Rosario alias de Rosario and R. Spenser; containing in extent 11.27 perches, and registered in A. 314/265

Fiscal's Office,
Colombo, March 22, 1949

G. M. CHINNATAMBY,
Deputy Fiscal.

In the District Court of Colombo

D. F. E. Panagoda of Dutugemunu Street, Dehiwala. Plaintiff
No. 8,426/S Vs

N. M. M. Junaid of 24, High Street, Wellawatta Defendant

NOTICE is hereby given that on Wednesday April 20, 1949, at 2 p.m., will be sold by public auction at 241, High Street, Wellawatta, the following movable property for the recovery of the sum of Rs. 5,087.50 together with further interest on Rs. 5,000 at 6 per cent per annum from October 15, 1947, to date of decree (January 16, 1948), and thereafter legal interest on the aggregate amount of the decree to the date of payment in full, less Rs. 3,500, viz:—

Four teak colour mirrored wardrobes, 1 refrigerator, 3 toilet tables, 1 teak colour almirah, 2 dining tables, 8 chairs, 1 glass

B 11

almirah, 6 arm chairs, 1 lounge, 3 teapots, 1 brass flower vase, 3 upholstered settees, 1 upholstered chair, 2 small tables, 1 wicker set, 1 wall clock, 6 arm chairs, 10 flower pots, 2 electric fans, 1 writing desk

Fiscal's Office,
Colombo, March 22, 1949

G. M. CHINNATAMBY,
Deputy Fiscal

In the District Court of Colombo

(1) Shanmuganathan Chettiar, son of Socklingam Chettiar, and
(2) Meenatchi Achi, wife of Shanmuganathan Chettiar, both
carrying on business under the name, style, and firm of
Meeyanna Sana of 301, Sea Street, Colombo Plaintiffs

No 9,986/S

Vs

M. Quintus Goonewardene of Sisiya, Homagama

Defendant

NOTICE is hereby given that on Thursday, April 21, 1949, at 2 p.m., will be sold by public auction at the premises the right, title, and interest of the said defendant in the following property for the recovery of the sum of Rs. 1,031.70 with interest on Rs. 1,000 at 5 per cent per annum from November 12, 1948, till January 31, 1949, and thereafter legal interest on the aggregate amount till payment in full, viz:—

All that portion of land called Dolgahawatta, situated at Homagama in the Palle Pattu of Hewagama Korale in the District of Colombo, Western Province, and bounded on the north by cart road to Pitipane, on the east by the wire fence separating a portion of this land, on the south by Hunarawaladeniyakumbura and the wire fence separating a portion of this land, and on the west by the wire fence separating a portion of this land and that of Felix Mudalali and another, containing in extent 1 acre, and registered in the Colombo District Land Registry in volume G. 196, folio 62

Fiscal's Office,
Colombo, March 22, 1949

G. M. CHINNATAMBY,
Deputy Fiscal

In the District Court of Avissawella

K. A. Davith Singho of Maniyangama Plaintiff
No 5,141 Vs

K. A. Hendrick Singho of Maniyangama Defendant

NOTICE is hereby given that on Tuesday, April 26, 1949, commencing at 3 p.m., will be sold by public auction at the respective premises the right, title, and interest of the said defendant in the following property for the recovery of sum of Rs. 856.80 with further damages at the rate of Rs. 30 per mensem from September 6, 1948, till restoration of possession and enjoyment of rubber plantation, viz:—

At 3 p.m.

1 An undivided $\frac{1}{2}$ share less 1 acre of the subject matter of District Court, Avissawella, case No. 8,635, called Pinnapolewatta, situate at Maniyangama in Panawal Korale of Three Korales, Kegalla District, Province of Sabaragamuwa, bounded on the north by Kospelchena and Pahaladeniya, east by Galabalanalage deniya and Uduwage kumbura, south by Iriyagahakumbura, Thaladeniya-asweddumewatta, Galgodewatta alias Kandowatta, and west by Gedarawatta alias Kandewatta; and containing in extent 12 acres 1 rood and 5 perches, and more fully depicted in plan No. 3,309 of Mr. A. F. Binduhewa, Licensed Surveyor, together with everything thereon.

Valuation Rs. 800.

At 3.30 p.m.

2 An undivided $\frac{1}{2}$ share of the land called Tunmoderawatta, situate at Maniyangama aforesaid, and bounded on the north by Mohottiwediyewatta galwetiya, south by Thalagedarawatta galwetiya and Maladola, east by Kandewatta, and west by Getaheti-ela, and containing in extent within these boundaries about 5 acres subject to a mortgage

Valuation Rs. 350

At 4 p.m.

3. An undivided $\frac{1}{2}$ share of the land called Mohottiwediyewatta, bounded on the north by galwetiya and Galgedehena, south by galwetiya of Tunmoderawatta, east by Kahatagaha and Karadetta, and on the west by agala, containing in extent within these boundaries about 4 acres together with everything thereon, excluding therefrom house, rubber plantation, coconut plantation, 3 jak trees, and 3 breadfruit trees, belonging to the judgment-creditor, subject to a mortgage by the judgment-debtor, and situate at Maniyangama aforesaid

Valuation Rs. 100

At 4.30 p.m.

4 An undivided $\frac{1}{15}$ share of the land called Tunandekellewatta, subject matter of District Court, Avissawella, case No. 4,614, situated at Maniyangama aforesaid, bounded on the north by Moiragahawatta ihala irawella, south by Galgodewatta galwetiya, east by Tunandehena, and west by agala, containing in extent about 2 acres together with everything thereon.

Valuation Rs. 50.

Fiscal's Office,
Avissawella, March 21, 1949,

S. D. WILFRED,
Deputy Fiscal.

Central Provinces

In the District Court of Kandy

Jayaweeraratne Patabendige Samarasuriya Jayaweeraratne of
Pellepetiya in Dolosbage of Ganga Ihala Korale of Uda-
palata Plaintiff.

No M B 1.062 Vs

(1) Meetalawwe Alindureyalagedera Setuwa Vidane alias Alut-
gamage Setuwa Vidane of Alugolle in Dolosbage of Ganga
Ihala Korale in Uda-palata, (2) E. G. Jonklass of Gam-
pola Defendants

NOTICE is hereby given that on Friday, April 29, 1949, com-
mencing at 2 o'clock in the afternoon, will be sold by public
auction at the respective premises the right, title, and interest
of the said 1st defendant in the following property mortgaged
by bond No. 3,842 dated January 17, 1940, and attested by
M. W. R. de Silva, Notary Public, for the recovery of the sum
of Rs. 1,548, with interest on Rs. 900 at the rate of 12 per cent
per annum from February 1, 1946, till the date of decree (i.e.,
9.12.46) and thereafter on the aggregate amount at the legal rate
of 9 per cent per annum till payment in full and the costs
of this action and poundage, viz. —

1. An undivided one-fourth part or share from and out of all
that field called Thalawatuagumbura of twelve lahass in paddy
sowing extent in the whole together with a like share of every
thing thereon, situate at Alugolle, in Dolosbage of Ganga Ihala
Korale of Uda-palata; and which said entire field is bounded on the
north by the ella of Menika's garden, east by ella and by the
Imaniyara of Dingara's field, on the south by ella, and west by the
limit of Peragolledeniya.

2. All that field called Gederacumbura of five lahass in paddy
sowing extent together with everything standing thereon, situate at
Alugolle aforesaid, and bounded on the north by ella, east by the
limit of the portion belonging to Kuda Dureya, south by the
Imawella of the field belonging to Kiri Ukkuwa officer and west
by ella.

3. All that field called Gedoracumbura of one pela in paddy
sowing extent together with everything standing thereon, situate at
Polmalagams in Dolosbage aforesaid, and bounded on the east
by the field belonging to Kadawathpedigedera Sirmala, on the
south by the watta ella, west by the field belonging to Kiri Ukkuwa,
and north by the field belonging to Salelu.

4. An undivided 3/6 part or share from and out of all that
field called Gederacumbura of twelve lahass in paddy sowing extent
in the whole together with everything thereon, situate at Polmalaga-
ma aforesaid, and which said entire field is bounded on the
north by ella, east by the ella of Pealladeniyacumbura, south by the
ella of Kudaduraya's garden, and west by the galwells of the field
belonging to Kudadureya.

5. All that land called Sundaracumbura described as of about
two pelas in paddy sowing extent, situate at Alugolle aforesaid, and
bounded on the east by the stone fence of Pallewatta, south by
Copiwatta and stone fence, west by Copiwatta and north by the
ella of Pallewatta, containing in extent by survey, one acre two
roods and nineteen perches (Registered in D.146/207-208, 107/51,
67/254 and 107/164, Kandy)

Fiscal's Office,
Kandy, March 14, 1949

H. F. RATWATTE,
Deputy Fiscal

In the District Court of Colombo

Brown & Co., Ltd., of Colombo Plaintiff

No. 19,558/Money Vs

Gunesinghe Cornelius Dias, carrying on business under the name,
style, and firm of G. C. Dias & Co., 46, King's Street,
Kandy Defendant

NOTICE is hereby given that on Thursday, April 21, 1949,
commencing at 2 p.m., will be sold by public auction at the
premises of the defendant at 46, King's Street, Kandy, the right,
title, and interest of the said defendant in the following property
for the recovery of the sum of Rs. 431.77 with legal interest thereon
from June 9, 1948, to date of decree (August 23, 1948), and there-
after on the aggregate amount of the decree till payment in full
and costs of suit and poundage, less Rs. 175 paid, viz. —

Four chairs, 1 cushioned settee, 1 arm chair, 1 writing table,
2 small tables, 1 big almshah with glass, 2 cat battenes, 2 loud
speakers, 2 wireless set metres, 1 wall clock, 1 table for drawing
plans, 2 old wireless boxes, 40 old English gramophone records,
1 cor carpet, 2 large tables and 3 racks

Fiscal's Office,
Kandy, March 17, 1949.

H. F. RATWATTE,
Deputy Fiscal

In the District Court of Kegalla

Dissanayake Mudiyanselege Punched Banda Dissanayake of
Hakurugammana Plaintiff

No. 5,308 Vs

Dissanayake Mudiyanselege Kumarihamy Dissanayake of Neda-
gamuwa in Dasiya Pattuwa, Aluthkuru Korale, Negombo
District Defendant

NOTICE is hereby given that on Saturday, April 23, 1949, at
10.30 a.m. will be sold by public auction at the
respective premises the right, title, and interest of the said defend-
ant for the recovery of Rs. 1,470.45 with further interest on
Rs. 1,000 at the rate of 15 per cent per annum from July 21, 1947,
till October 1, 1947, and thereafter with legal interest till payment
in full, due in respect of mortgage bond No. 1,947, viz. —

1. An undivided 1/2 share of the land called Panagamuwe
Kabatagahamulehena, now tea estate of one laha kurakkan sowing

in extent, and bounded on the east by the stone fence of Maha-
kumburegederahena, south by stone fence of Appuhamyewatta,
west by the stone fence of Nikatanawala, and on the north by the
stone fence of Vedaralagehena, situated at Udamakuruppe
Bogamuwasama, Kohoka Korale, Udahaweheta in Nuwara Eliya
District, Central Province, and registered in R. 90/137

2. An undivided 1/2 share of land called Ukandugahawatta in
extent 5 nellies kurakkan, and bounded on the east by Kinnamige-
watta, south by Ukku Bandagewatta, west by Pilunagewatta and
Kapuralagewatta, and north by Kapuralagewatta together with the
1/2 share of the tiled house thereon, and situated at Pallemakuruppuwe,
Pallwala Wasama, Kohoka Korale in Nuwara Eliya District,
Central Province, now registered in R. 90/188

3. An undivided 1/2 share of Gederakumbura of 15 lahass paddy
sowing extent, bounded on the east by the stone fence of land
belonging to Samel Mahatmaya, south by ella, west by the stone
fence of Pansalewatta, and on the north by limitary ridge of
Dinawalagewatta and situated at Pallemakuruppe aforesaid, and
registered in R. 90/189

4. An undivided 1/2 share of Pallearawekumbura of 2 pelas paddy
sowing extent, and bounded on the east by the ella, south by
Meewakkalekumbura, west by field belonging to Bastian Peter,
north by wealla of Mahakumbura, and situated at Pallemakurup-
pe aforesaid, and registered in R. 90/140

5. An undivided 1/2 share of Talawekumbura of 15 lahass paddy
sowing extent, and bounded on the east by stone boundary of
Kalu Banda's field, south by the limit of Galpota-wedakumbura,
west by stone limit of Appuhamyge hena, and north by the limit
of Kalu Banda's field, and situated at Pallemakuruppe aforesaid,
and registered in R. 90/141.

Fiscal's Office,
Nuwara Eliya, March 18, 1949.

W. I. DE MEL,
Additional Deputy Fiscal

Northern Provinces

In the Court of Requests of Point Pedro

Vairathamby Sinnathambu of Alva South Plaintiff

No. 269. Vs

Velupillai Kandiah of Alva South Defendant

NOTICE is hereby given that on Friday, April 22, 1949, at
2 p.m., will be sold by public auction at the premises the right,
title, and interest of the said defendant in the following property,
for the recovery of the sum of Rs. 280 with interest on Rs. 200
at 8 per cent per annum from September 15, 1948, till October 13,
1948, and thereafter on the aggregate at 5 per cent per annum, till
payment in full and costs Rs. 29.58 and poundage and charges,
viz. —

S R A

1. An undivided 1/2 share, excluding the superstructure of the
houses and huts and coconut trees of an extent of 8 lachams varagu
culture being 1/2 share on the northern side according to possession
of 1/2 share on the southern side according to possession of the
parcels of land called Kombianvalalai, in extent 12 1/2 lachams
varagu culture, Kombianvalalai in extent 3 thoddams (72 kulies),
Kombianvalalai in extent 1 1/2 lachams varagu culture, Kombian-
valalai in extent 3 thoddams (72 kulies), and Kombianvalalai in
extent 1 veedu (24 kulies), situated at Alva Vettaiyinar Kurichchy
in Kaddaveiy parish, Vadamaratchey Division of the Jaffna
District, Northern Province, and the said 8 lachams varagu culture with
house, huts, palm trees and coconut trees, is bounded on the east
by the property of Muttumaraswamy Subramaniam, north by
Pandaram Kandavanam and another, west by lane, and south by
Velupillai Kandiah and another.

2. A 19/60 share of an undivided 1/2 share of all that piece of
land, situated at Alva Malavarayakurichchy, Kaddaveiy parish aforesaid,
called Pitchumpilana, in extent 26 1/2 lachams varagu culture,
and Pitchumpilana, in extent 8 1/2 lachams varagu culture with
palm trees, mango tree and wells, and bounded on the east and
north and west by lane, and south by the property of Velupillai
Kandiah and others.

3. All that extent of 7 lachams varagu culture and 13 12/32 kulies
being for lot No. 2 of the survey plan annexed to the final partition
decree in case No. 19,470, D. C. J., prepared for that piece of
land called Kombianvalalai, in extent 16 lachams varagu culture and
2 16/32 kulies, situated at Alva Pettanarkurichchy aforesaid, and
the said extent of 7 lachams varagu culture and 13 12/32 kulies
together with the share belonging thereto of the bye-lane allowed
for common use and numbered 4 in the above-said plan, is bounded
on the east and west by Ponnachchy, wife of Vairilungam and
another, north by lane allowed for public use and south by
Sinnathambiar Murugesu and another.

4. Those pieces of lands situated at Alva Malavarayakurichchy
aforesaid, called Mudavanaththai, in extent 17 1/2 lachams varagu
culture, Mudavanaththai, in extent 2 lachams varagu culture, In-
paaai, in extent 4 1/2 lachams varagu culture, and that piece of
land situated at Thunnalai Veersuntharamuthal Kurichchy aforesaid,
called Vaikkatpalam, in extent 13 1/2 lachams varagu culture. All
these form one piece of land and make up 70 lachams varagu culture
and 9 1/2 kulies, as per plan No. 4,684 drawn up by surveyor K. Kana-
pattupillai, on August 17, 1926. Plot No. 4 of the said plan is in
extent 2 lachams varagu culture and 9 1/2 kulies with palm trees,
and bounded on the east by the property of Parupathy, wife of
Kathirupillai, north by Pandaram Kandavanam and another, west by
Ponnachchy, wife of Vairilungam, and south by land allowed from
this land for public use. The whole of the land within the
boundaries above

Lands Nos. 2, 3, and 4 are said to be under mortgage

Fiscal's Office,
Jaffna, March 21, 1949.

S. SINNATAMBI,
for Fiscal.

Eastern Province

In the District Court of Trincomalee

Muthupillai, widow of Sinnathamby of Division No 2, Trincomalee Plaintiff

No 3,142 Vs.

(1) Santiapillai Muthia Gabriel (2) and wife Mary Margiot, both of 37, Dyke Street, Trincomalee Defendants

NOTICE is hereby given that on Thursday, April 28, 1949, at 8 p.m., will be sold by public auction at the spot the following property for the recovery of the sum of Rs 1,724.10 being the aggregate amount of the principal and interest due in respect of mortgage bond No 1,058 dated January 15, 1946, and attested by Mr S M Manikkaraiah, Notary Public, with interest on Rs 1,500 at 10 per cent per annum from June 30, 1948, till July 15, 1948, on the aggregate amount at 5 per cent per annum till payment in full, provided such interest does not exceed Rs 1,275.90 and costs Rs 143.30, fiscal's fees and charges and poundage, viz —

An undivided $\frac{1}{2}$ share of piece of land called Naduthivu, situated at Muthur in Koddiyar Pattu, Trincomalee District, Eastern Province, together with the house, well and well sweep and posts, coconut trees and fruit trees, bounded on the north by lot No 93,291 described in the title plan No 3,691, on the east by lot No 93,297 described in title plan No 3,691 and Crown land, on the south by Crown land, and on the west by lot No 93,291 in title plan No 3,691, containing in extent 4 acres and 25 perches, registered B6/17

Deputy Fiscal's Office,
Trincomalee, March 16, 1949C SHIVASUBRAMANYAN,
Additional Deputy Fiscal

North-Western Province

In the Additional Court of Requests of Kurunegala

(1) Jayawardana Aratchige Anohamy in her personal capacity and as duly appointed next friend, (2) Ranaweeia Edirisinghe Mudiyansele Goonaratne Banda, (3) ditto Wijeratne Banda, all of Maholawa Plaintiffs

No 11,689 Vs.

(1) Tennakoon Aratchige Pesonahamy, (2) Hetta Aratchige Manatunge, (3) ditto Eugmahamy, (4) ditto John Singho, (5) ditto Sopia Nona, (6) ditto Magalin Nona, (7) ditto Jayasekara, (8) ditto Rajap Appuhamy, (9) ditto Dharmadasa, all of Pahalakotuvelwa (minors by guardian *ad litem*) Defendants

NOTICE is hereby given that on Wednesday, May 4, 1949, at 8 p.m., will be sold by public auction at the premises commencing from the 1st land the right, title, and interest of the said defendants in the following property, viz: —

1 All that divided lot marked A 1 in plan No 662A dated July 18, 1944, and made by Mr A. C. S. Goonaratno, Licensed Surveyor, and filed of record in D. C., Kurunegala, partition case No 525, of the lands called Meegahayawatta, Kongahamulahena and Meegahayahona, and containing in extent 1 acre 3 roods and 20 5 perches, situate at Pahala Kotuwella in Katugampola Madapattu Korale East of Katugampola, Hatpattu in the District of Kurunegala, North-Western Province, and which said lot marked A 1 is bounded on the north by the land of Mr D J Jayakody, east by the land of Jayatilake and Chettiar, south by lot marked B, and west by lot marked A with everything thereon

2 All that divided lot marked B in the said plan of the said lands, and containing in extent 1 acre 1 rood and 25 4 perches, situate at Pahala Kotuwella aforesaid, and which said lot marked B is bounded on the north by lot marked A 1, east by the land of Jayatilake and Chettiar, south by lot marked C, and west by lot marked A with everything thereon

3 All that divided lot marked C in the said plan of the said lands, and containing in extent 37 56 perches, situate at Pahala Kotuwella aforesaid, and which said lot marked C is bounded on the north by lot marked B, east by the land of Jayatilake and Chettiar, south by lot marked D, and west by lot marked A with everything thereon

4 All that divided lot marked D in the said plan of the said lands, and containing in extent 37 56 perches, situate at Pahala Kotuwella aforesaid, and which said lot marked D is bounded on the north by lot C, east by the land of Jayatilake and Chettiar, south by lot marked E, and west by lot marked A with everything thereon

Amount to be recovered Rs 418.75, to wit damages at Rs 75 per annum from September 17, 1942, up to May 19, 1948, the date on which the obstruction was removed, and costs Rs 4 and poundage.

Fiscal's Office,
Kurunegala, March 21, 1949L A POTURRA,
Additional Deputy Fiscal.

North-Central Province

In the Court of Requests of Anuradhapura

P N S Mohammodu of Pauraduwa Plaintiff.

No 3,445 Vs.

Ana Mohammodu Cassim Manikar Nachchaduwa Defendant

NOTICE is hereby given that on Friday, April 22, 1949, at 10 o'clock in the forenoon, will be sold by public auction at the spot the right, title, and interest of the said defendant in the following property for the recovery of the sum of Rs 52.75 with Fiscal's fees, &c, viz —

All that field of 9 acres and garden of one acre with the plantations standing thereon, situated at Kusawe, in Nachchaduwa in Ulagalla

Korale in Hurulu Palata; and bounded on the north by reservation along the oys, east by Crown road reservation, south by field of Muna Meera Saibo, and west by field of Muna Meera Saibo, containing in extent 10 acres. The land is said to be subject to a mortgage

Fiscal's Office,
Anuradhapura, March 17, 1949K. B. DORANEGAMA,
for Fiscal.

Province of Uva

In the District Court of Badulla

S K Carols Appu of Ella Plaintiff
No 8,743 Vs.

C Kadurugamuwa of Ratnagiri Estate, Ella, presently of Avenue Road, Badulla Defendant.

NOTICE is hereby given that on Saturday, April 30, 1949, at 11 o'clock in the forenoon, will be sold by public auction at the premises the right, title, and interest of the said defendant in the following property for the recovery of a sum of Rs 5,840.78, viz. —

All those lands called and known as Pitangumulla Palana and Tennehons being lots 28 and 28D in P 361, 487 together with the zinc roofed buildings, tea plantations and everything standing thereon, situated at Idanegama in Kurunegala Korale, Yatikinda Division, Badulla District of the Province of Uva, and bounded on the north by L. P 1,985, lot 28A and Pattuwa Ambura village boundary, east by reservation along the footpath, south by reservation along the road, and west by lot 28, containing in extent 20 acres 1 rood and 35 perches, and registered under B 137/158 at the Badulla Land Registry, subject to the mortgages effected by the defendant upon deed Nos 6,779 dated March 23, 1948, and 6,985 dated June 9, 1948, both attested by S. H. Abeysekere, Notary Public

(An undivided $\frac{1}{2}$ share of the above land has also been seized under writ in D. C. Badulla case No 8,825 and writ in D. C. Colombo case No 8,786)

Fiscal's Office,
Badulla, March 19, 1949A SIVASITHAMPARAN,
for Fiscal

Province of Sabaragamuwa

In the Rural Court of Hottinulla

The Chairman of Village Committee, Mawata and Kanduaha Pattus Complainant

No 439 Vs.

Illandaripede Sedara of Gantune, Pallegama Accused

NOTICE is hereby given that on Saturday, April 30, 1949, at 11 a.m., will be sold by public auction at the premises the right, title, and interest of the said accused in the following property, viz. —

The land called Bogahamulahena, bounded on the north by bank of Liyanalocumbura, east by Nikapitiye Kadigamwala Hewatta and the village limit of Nikapitiya, south by Galenda of Himpalapitiya, and west by Gurugawatticla, situated at (Belahuluwina) Gantune in Kanduaha Pattu, Kegalla District in the Province of Sabaragamuwa, and containing in extent 10 acres.

To recover Rs 8 25

Deputy Fiscal's Office,
Kegalla, March 21, 1949.D G WRATUNGA,
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 Jurisdiction Hormusji Rustomjee Billimoria of Bombay, No. 13,250 deceased

Burjor Ruttonshaw Rustomjee of Boyd Place in Colombo Petitioner.

And

(1) Maneckbai Hormusji Billimoria, (2) Kaikhusroo Hormusji Billimoria, (3) Dhumrai Hormusji Billimoria, all of Bombay, India Respondents.

THIS matter coming on for disposal before N Sinnatamby, Esq., Additional District Judge of Colombo, on February 25, 1949, in the presence of Mr. H. C. J. Rustomjee, Proctor, on the part of the petitioner above named, and (1) the affidavit of the petitioner dated February 15, 1949, (2) the affidavit of one of the witnesses to the will dated July 12, 1944, (3) the affidavit of the other witness dated July 12, 1944, (4) Supreme Court Order dated March 23, 1948, and (5) power of attorney dated December 13, 1948, having been read

It is ordered that the last will and testament made by Hormusji Rustomji Billimoria, the deceased above named, on September 21, 1943 (the original of which has been produced and is now deposited in this court) be and the same is hereby declared proved, and that the petitioner be and he is hereby declared entitled, as attorney of the widow of the deceased, an executrix under the will, to have letters of administration (with will annexed) to the estate of the deceased issued to him, unless the respondents or any other person or persons interested shall, on or before April 7, 1949, show sufficient cause to the satisfaction of this court to the contrary

March 15, 1949.

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 Charles Vivian Walwin Pereira of 9, Havelock No 13,361. Place, Havelock Town, Colombo, deceased.

(1) Prosper Joseph Loos and (2) Vyvette Zita Mary Loos, both of Kingston, Negombo Petitioners.

THIS matter coming on for disposal before N Sinnatamby, Esq., Additional District Judge of Colombo, on February 24, 1949, in the presence of Mr. D L Salgadoe, Proctor, on the part of the petitioner above named, and (1) the affidavit of the petitioner dated February 18, 1949, and (2) the affidavit of the attesting notary and of the subscribing witness, namely, Eugene Oswald Pereira dated February 22, 1949, having been read

It is ordered and decreed that the last will and testament No. 255 made by Charles Vivian Walwin Pereira, the deceased, above named, and attested by D L Salgadoe, Notary Public, on September 2, 1948, the original of which has been produced and is now deposited in this court, be and the same is hereby declared proved.

It is further ordered that the petitioners above named are the executor and executrix named in the said will, and they are hereby declared entitled to have probate thereof issued to them accordingly, unless any person or persons interested shall, on or before March 31, 1949, show sufficient cause to the satisfaction of this court to the contrary

March 2, 1949

N. SINNETAMBY,
Additional District Judge.

In the District Court of Colombo

Order Nisi

Testamentary In the Matter of the Intestate Estate of Maka- Jurisdiction vitage Sylvester Pereira of 236, Baseline Road, No 13,363. Colombo, deceased.

Layanage Josephina Lillian Perera of 236, Baseline Road, Colombo Petitioner

And

(1) Makavitage Earnest Bastian Perera, (2) Makavitage Henry Richard Perera, (3) Makavitage Vernon Roch Perera, (4) Makavitage Rita Marcellina Leela-yathie Perera, (5) Makavitage Charles Vincent Perera, (6) Makavitage Felix Isidore Perera and (7) Makavitage Clayton Stanley Perera, all of 236, Baseline Road, Colombo, the 5th, 6th and 7th respondents appearing by their guardian *ad litem* the 1st respondent above named Respondents

THIS matter coming on for disposal before N. Sinnatamby, Esq., Additional District Judge of Colombo, on February 24, 1949, in the presence of Mr. G. E. de Chickera, Proctor, on the part of the petitioner above named, and the affidavit of the petitioner dated February 23, 1949, having been read

It is ordered that the 1st respondent above named be and he is hereby declared appointed guardian *ad litem* over the 5th, 6th and 7th respondents, minors, and that the petitioner be and she is hereby declared entitled, as widow of the deceased above named, to have letters of administration to the estate of the deceased issued to her, unless the respondents above named or any person or persons interested shall, on or before March 31, 1949, show sufficient cause to the satisfaction of this court to the contrary

February 26, 1949.

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 Bastian Korallage James Rodrigo Weerasinghe No. 13,368 Goonewardene, also known as James Rodrigo of Daisy Villa, Uswetekaiyawa, deceased

Samaratunga Muhandirame Dona Theodora Sophaya Rodrigo Weerasinghe Goonewardene of Daisy Villa, Uswetekaiyawa Petitioner

Vs.

(1) Bastian Korallage Paul Aloysius Rodrigo Weerasinghe Goonewardene of St Leonard's Estate, Halgranoya, (2) Bastian Korallage Raphael Bernard Rodrigo Weerasinghe Goonewardene of Glen Devon Estate, Halgranoya, (3) Bastian Korallage Regina Daisy Perera *nee* Rodrigo Weerasinghe Goonewardene of Shady Grove, Telengapatha, (4) Bastian Korallage Herlene Frieda de Saram *nee* Rodrigo Weerasinghe Goonewardene of 326, Wabawahala, Kelaniya . . . Respondents

THIS matter coming on for disposal before N. Sinnatamby, Esq., Additional District Judge of Colombo, on February 25, 1949, in the presence of Mr. G. A. Nissanka, Proctor, on the part of the petitioner above named, and (1) the affidavit of the petitioner dated February 25, 1949, and (2) the affidavit of the five witnesses to the last will dated February 22, 1949, having been read

It is ordered that the last will and testament made by the deceased above named on April 6, 1947, the original of which has been produced and is now deposited in this court, be and the same is hereby declared proved

It is further ordered that the petitioner above named is the executrix named in the said will, and she is hereby declared entitled to have probate thereof, unless the respondents or any other person or persons interested shall, on or before March 31, 1949, show sufficient cause to the satisfaction of this court to the contrary.

March 8, 1949

N. SINNETAMBY,
Additional District Judge

In the District Court of Colombo

Order Nisi

Testamentary In the Matter of the Intestate Estate of Don Jurisdiction Endoris Wickremesinghe of Wattala, deceased. No. 13,369

Dona Kithi Wickremesinghe *nee* de Silva Jayasekera of Wattala Petitioner.

And

(1) Behan Ranjit Wickremesinghe, minor, (2) Patirage Norbert Francis Perera of Talangaha South Respondents

THIS matter coming on for disposal before N. Sinnatamby, Esq., Additional District Judge of Colombo, on March 1, 1949, in the presence of Mr. D. L. Gnanasekera, Proctor, on the part of the petitioner above named; and the affidavit of the petitioner dated February 25, 1949, having been read:

It is ordered that the 2nd respondent above named be and he is hereby declared appointed guardian *ad litem* over the 1st respondent above named, minor, and that the petitioner be and she is hereby declared entitled, as widow of the deceased above named, to have letters of administration to the estate of the deceased issued to her, unless the respondents above named or any person or persons interested shall, on or before April 7, 1949, show sufficient cause to the satisfaction of this court to the contrary

February 8, 1949

N. SINNETAMBY,
Additional District Judge

In the District Court of Colombo

Order Nisi

Testamentary In the Matter of the Intestate Estate and Effects of Jurisdiction Bodage Cauunadas Gooneratne of 29, Beira Road, No. 13,376. Colombo, deceased

Gallap Pathige Sumanawathie Gooneratne *nee* de Silva of 29, Beira Road, Colombo Petitioner.

And

(1) Bodage Pemasiri Gooneratne, (2) Bodage Daisy Gooneratne, (3) Bodage Amara Gooneratne, minors, by their guardian *ad litem* (4) Gallap Pathige John de Silva of Mirissa Respondents

THIS matter coming on for disposal before N. Sinnatamby, Esq., Additional District Judge of Colombo, on March 3, 1949, in the presence of Mr. B. W. de Silva, Proctor, on the part of the petitioner above named; and the affidavit of the petitioner dated March 2, 1949, having been read

It is ordered that the 4th respondent above named be and he is hereby declared appointed guardian *ad litem* over the 1st, 2nd, and 3rd respondents, minors above named, and the petitioner above named be and she is hereby declared entitled, as widow of the deceased, to have letters of administration to the estate of the deceased above named issued to her, unless the respondents above named or any person or persons interested shall, on or before April 7, 1949, show sufficient cause to the satisfaction of this court to the contrary.

March 7, 1949.

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 Anne Harriet Rosemale Fonseka of 1, Siripa Lane, No 13,377 Thumbungasayaya, Colombo, deceased.

Eric Lawrence Fonseka of 1, Siripa Lane aforesaid Petitioner

THIS matter coming on for determination before N. Sinnatamby, Esq., Additional District Judge of Colombo, on March 3, 1949, in the presence of Messrs. P. D. A. Mack & Sons, Proctors, on the part of petitioner, after reading the petition and the affidavit of the petitioner above named dated March 1, 1949, and January 19, 1949, respectively, the affidavit of the attesting notary of the will dated March 1, 1949:

It is ordered that the last will and testament No 432, made by Anne Harriet Rosemale Fonseka, the deceased above named, and attested by Mr. P. D. A. Mack, Notary Public, on May 22, 1936, the original of which has been produced and is now deposited in this court, be and the same is hereby declared proved

It is further ordered that the petitioner above named is one of the executors named in the said will, the other executor having died, and he is hereby declared entitled to have probate thereof issued to him, unless any person or persons interested shall, on or before April 7, 1949, show sufficient cause to the satisfaction of this court to the contrary

March 18, 1949.

N. SINNETAMBY,
Additional District Judge

In the District Court of Colombo

Notice of Application

Testamentary In the Matter of the Last Will and Testament of Jurisdiction Augusta Nevile Wyatt of "Cloudford" Sutherland Grove, Rutney, London, S.W. 18, England, spmster, deceased.

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 probate of the last will and testament of Augusta Neville Wyatt, deceased, granted by the Principal Probate Registry of His Majesty's High Court of Justice in England, on the 9th day September, one thousand nine hundred and forty-eight.

F J & G DE SARAM,
Proctors for Roderick Strachan McDonald
of the National Bank of India, Ltd., Col-
ombo, the attorney of John Melior Stevens,
D S O, O B E, of 42, Bedford Row, Lon-
don W C 1, England, Solicitor, one of the
surviving executors named in the said will

Colombo, March 18, 1949

In the District Court of Colombo

Order Absolute in the First Instance Declaring Will Proved, &c
Testamentary In the Matter of the Last Will and Testament of
Jurisdiction Julia Malleappah of Mabole, Wattala, deceased
No 13,384

Thomas Edward Malleappah of 876, Mabole, Wattala Petitioner

THIS matter coming on for final determination before N Sinnetamby, Esq., Additional District Judge of Colombo, on March 7, 1949, in the presence of Mr L. L. Fonseka, Proctor, on the part of the petitioner above named, and (1) the affidavit of the petitioner dated December 8, 1918, and (2) the affidavit of the attesting notary and the attesting witnesses dated December 8, 1918, having been read:

It is ordered that the last will and testament No 190 made by Julia Malleappah, the deceased above named, and attested by Mr D S A Jayalath, Notary Public, on February 9, 1947, (the original of which has been produced and is now deposited in this Court) be, and the same is hereby declared proved.

It is further ordered that the petitioner above named is the executor named in the said will and he is hereby declared entitled to have probate thereof issued to him accordingly on his taking the usual oath

March 15, 1949.

N. SINNETAMBY,
Additional District Judge.

In the District Court of Colombo

Order Nisi

Testamentary In the Matter of the Intestate Estate of Bamun-
Jurisdiction singhe Aratchige Jacob Perera of 27, Old Avissaw-
No 13,390 wells Road, Wellampitiya, Colombo, deceased

Bamunusinghe Aratchige Francis Perera of 27, Old Avissawella Road, Wellampitiya Petitioner

Vs

(1) Bamunusinghe Aratchige Stephen Perera of Nugegoda,
(2) Bamunusinghe Aratchige Theresia Perera of Nanamadama,
Wenappuwa, (3) Tudor Kenneth Perera, (4) Julian Rennie
Perera, (5) Anastasia Eunice Aileen Perera, (6) Lucien Godfrey
Perera, (7) Malcolm Perera, (8) Quintin Marcus Perera,
(9) Eathel Elizabeth Sylvia Perera, (10) Melvin Ronald
Joseph Perera, (11) Philomena Perera, all of 27, Old Avissaw-
wells Road, Wellampitiya Respondents

THIS matter coming on for disposal before N Sinnetamby, Esq., Additional District Judge of Colombo, on March 11, 1949, in the presence of Mr P. M. de S. Seneyaratne, Proctor, on the part of the petitioner above named, and the affidavit of the said petitioner dated March 9, 1949, having been read.

It is ordered that the 11th respondent above named be and she is hereby declared appointed guardian *ad item* over the minors, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 10th 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 her accordingly, unless the respondents above named or any person or persons interested shall, on or before April 7, 1949, show sufficient cause to the satisfaction of this court to the contrary.

March 11, 1949

N SINNETAMBY,
Additional District Judge

In the District Court of Negombo

Order Nisi

Testy In the Matter of the Intestate Estate of the late
No 3,494. Kalumarakalage Istevan Appuhamy of Nana-
madama, deceased

Koswattamuhandhrame Mary Dalphin Thamel of Nana-
madama Petitioner.

Vs

(1) Kalumarakalage Isabel Fernando of Nanamadama,
(2) Pallyaralalage Mahilda, (3) ditto Tidy Almeida, (4) ditto
Gerti Almeida, all of Haththunya, (5) Kalumarakalage Mary
Catherine Fernando of Batepola, (6) ditto Maria Theresa
Fernando, minor, by her guardian *ad item* the 7th res-
pondent, (7) Ponnamperrumage Ana Maria Fernando of
Nanamadama Respondents

THIS matter coming on for disposal before N Krishnadasan, Esq., District Judge of Negombo, on March 8, 1949, in the presence of Mr F W Gooneratne, Proctor, on the part of the petitioner; and the affidavit of the petitioner dated March 1, 1949, having been read.

It is ordered that the 7th respondent above named be appointed guardian *ad item* over the 6th respondent, minor above named, and the petitioner above named be and she is hereby declared entitled,

as the widow of the said deceased above named, to have letters of administration issued to her accordingly, unless the respondents above named or any other person or persons interested shall, on or before April 8, 1949, show sufficient cause to the satisfaction of this court to the contrary

March 8, 1949.

N. KRISHNADASAN,
District Judge.

In the District Court of Kalutara

Order Nisi

Testamentary In the Matter of the Estate of the late George
Jurisdiction. Alexander D'Silva, deceased, of Kalutara.
No 3,357

Amees Ida Benjamin nee D'Silva of Kalutara Petitioner
Vs

(1) George Noel D'Silva of Anuradhapura, (2) Dorothy Mildred
Kirrton nee D'Silva of Ragama, (3) Leslie Harold D'Silva
of Mount Lavina, (4) Christopher Mathew D'Silva of
Mount Cristo Estate, Nawalapitiya Respondents.

THIS matter coming on for disposal before M. C. Sansoni, Esq., District Judge, Kalutara, on February 14, 1949, in the presence of Messrs De Abrew & de Silva, Proctors, on the part of the petitioner, and the affidavit of the above-mentioned petitioner dated February 10, 1949, having been read.

It is ordered that Amees Ida Benjamin nee D'Silva of Kalutara, the petitioner, is entitled to have letters of administration issued to her to the estate of George Alexander D'Silva, deceased, as daughter of the deceased, unless the respondents or any person or persons interested shall, on or before April 1, 1949, show sufficient cause to the satisfaction of this court to the contrary.

February 14, 1949.

M. C. SANSONI,
District Judge.

In the District Court of Kandy

Order Nisi

No. T 783 In the Matter of the Estate of the late Ranmula
Marshal de Soysa Deldeniya in Medapalata of
Yatinuwara, deceased

Arambegedera Dingirhamy of Deldeniya aforesaid Petitioner.
R. D de Soysa of Dadalla, Galle Respondent.

THIS matter coming on for disposal before H. A. de Silva, Esq., District Judge of Kandy, on December 11, 1948, in the presence of Mr L B Kolugala, Proctor for the petitioner above named, and affidavit of the said petitioner dated November 22, 1948, having been read

It is ordered that the said petitioner be and she is hereby declared entitled, as widow of the above-named deceased, to have letters of administration to this estate issued to her, unless the respondent or any other person or persons interested shall, on or before February 14, 1949, show sufficient cause to the satisfaction of this court to the contrary

December 11, 1948.

H A DE SILVA,
District Judge.

This *Order Nisi* is extended for March 28, 1949

February 14, 1949

A. JAYARATNE,
Additional District Judge

In the District Court of Balapitiya

Order Nisi

Testamentary. In the Matter of the Intestate Estate of Hala-
No T 61 kirthe Adrian Mendis Wickramaratne, late of
Randombe, deceased

Justan Henry Mendis Wickramaratne of Springwell, Campbell
Terrace, Maradana, Colombo Petitioner

Vs

(1) Mrs Lillian Mendis Wijeratne nee Wickramaratne of Was-
giri, Panadura, (2) Solomon Victor Mendis Wickramaratne
of Balapitiya, (3) Mrs S. Salma Mendis Weerasinghe nee
Wickramaratne of Cotta Road, Colombo Respondents.

THIS matter coming on for disposal before T. P. P. Goonetilleke, Esq., District Judge, Balapitiya, on February 10, 1949, in the presence of Mr H. E. M. Karunaratne, Proctor, on the part of the petitioner, and the affidavit of the petitioner dated January 26, 1949, having been read.

It is ordered that the petitioner above named, as the eldest son of the deceased, be entitled to have letters of administration of the estate of the above-named deceased, unless the above-named respondents or some other person or persons interested shall, on or before March 30, 1949, show sufficient cause to the contrary to the satisfaction of this court

T. P. P. GOONETILLEKE,
District Judge.

In the District Court of Balapitiya

Order Nisi

Testy Case In the Matter of the Intestate Estate of the late
No T-62. Don Carmanis Wijayawardena of Gonagala in
Induruwa.

Don Martin Wijayawardena of Gonagala in Induruwa . Petitioner.
Vs

(1) Mrs Dona Carlinahamy Wijewardena, (2) Don David
Wijewardena, both of Gonagala in Induruwa, (3) Mrs. Dona
Umawathie Wijewickrema *nee* Wijewardena of Old Road,
Panadura, (4) Mrs Dona Hemawathie Jayatilleke *nee* Wijc-
wardena of Ariya Bawana, Panadura, (5) Mrs Dona Wimala-
wathie *nee* Wijewardena of Kalutara, (6) Miss Dona Dharm-
awathie Wijayawardena of Gonagala Respondents

THIS matter coming on for disposal before T. P. P. Goonatilleke,
Esq., District Judge of Balapitiya, on February 11, 1949, after
reading the petition and affidavit of the petitioner and the motion of
Mr. W. A. C. Sirisena, Proctor, on the part of the petitioner.

It is ordered that the petitioner above named be and he is
hereby declared entitled, as one of the children of the deceased
above named, to have letters of administration to the above estate
issued to him accordingly, unless the respondents or any other
person or persons interested shall, on or before March 30, 1949,
show sufficient cause to the satisfaction of this court to the contrary

February 11, 1949

T. P. P. GOONATILLEKE,
District Judge

In the District Court of Galle

Order Nisi

Testy In the Matter of the Intestate Estate of the late Gan-
No 8,300. hewage Sirmal Wijesuriya of Abangama, deceased.
Ganhewage Banduwathie Wijesuriya of Epipaya Petitioner

THIS matter coming on for disposal before V. E. Rajakarier,
Esq., District Judge of Galle, on February 11, 1949, in the presence
of Mr. G. P. Samarawickrema, Proctor, on the part of the petitioner,
and after reading the amended petition dated February 11, 1949,
and affidavit dated August 9, 1948, and motion of Mr G. P.
Samarawickrema dated September 21, 1948.

It is ordered that the petitioner, as only heir of the deceased, be
and she is hereby declared entitled to have the letters of adminis-
tration issued to her, unless any person or persons interested in the
above estate shall, on or before April 1, 1949, show sufficient cause
to the satisfaction of this court to the contrary

February 11, 1949.

V. E. RAJAKARIER,
District Judge

In the District Court of Jaffna

Order Nisi

Testamentary In the Matter of the Intestate Estate of the late
Jurisdiction. Vallammai, widow of Nagamuttu of Araly East,
No. 998 Vaddukodda, deceased

Nagamuttu Kanagasingham *alias* N. K. Singham, of Vaddu-
koddai Petitioner

R. T. Chelliah of Jaffna town Respondent

THIS matter coming on for disposal before R. R. Selvadurai,
Esq., District Judge, Jaffna, on February 11, 1949, in the presence
of Messrs Saravanamuttu & Nadarajah, Proctors, on the part of
the petitioner, and the affidavit of the above-mentioned petitioner
dated February 7, 1949, having been read.

It is hereby ordered that the letters of administration in respect
of the estate of the above-named deceased be granted to the above-
named petitioner, unless the above-named respondent or any other
person shall, on or before March 11, 1949, show sufficient cause to
the satisfaction of this court to the contrary

February 11, 1949.

R. R. SELVADURAI,
District Judge.

Time to show cause extended until April 1, 1949

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. Sinnathamby Ratnam of, Vannarponnai West,
No 1,010 deceased

Nagamamah, widow of Sinnathamby Ratnam of Vannarponnai
West Petitioner

(1) Manomany, daughter of Ratnam of ditto, (2) Parameswary,
daughter of Ratnam of ditto, (3) Sironmany, daughter of
Ratnam of ditto, (4) Ratnam Balachandram of ditto, minors,
appearing by their guardian *ad litem* (5) Ariyadurai Ponnudurai
of Vannarponnai East Respondents

THIS matter coming on for disposal before R. R. Selvadurai,
Esq., District Judge of Jaffna, on February 24, 1949, in the
presence of Mr V. Navaratnajaian, Proctor, on the part of the
petitioner, and the affidavit of the petitioner dated August 31, 1948,
having been read

It is ordered that the 5th respondent be and he is hereby
appointed guardian *ad litem* over the 1st to 4th respondents, minors,

and the petitioner be and she is hereby declared entitled, as the
widow of the deceased, to have letters of administration to the
estate of the deceased issued to her accordingly, unless the res-
pondents or any other person or persons interested shall, on or
before March 31, 1949, show sufficient cause to the satisfaction of
this court to the contrary

February 24, 1949

R. R. SELVADURAI,
District Judge

In the District Court of Jaffna

Order Nisi

Testamentary In the Matter of the Intestate of the late
Jurisdiction. Annapoorani, wife of T. Thambiah Sivathasan of
No 1,013 Suthumalai, deceased

Thambiah Kandiah of Navaly Petitioner

(1) Kandiah Sivagnanam of Navaly North and (2) T. Tham-
biah Sivathasan of Suthumalai, presently clerk, Narangkalai
Estate, Ledger Watta Group, Kadulla Respondents

THIS matter coming on for disposal before R. R. Selvadurai,
Esq., District Judge, Jaffna, on February 28, 1949, in the pro-
sence of Mr S. Rajendran, Proctor for the petitioner, and the
affidavit of the petitioner having been read

It is ordered that letters of administration to the estate of the
deceased be issued to the petitioner, as father and one of the
heirs, unless the respondents or any other person appear before this
court on March 28, 1949, and state objections to the contrary.

February 28, 1949

R. R. SELVADURAI,
District Judge

In the District Court of Point Pedro

Order Nisi

Testamentary In the Matter of the Intestate Estate of Vetha-
Jurisdiction nayagam, widow of Ariyadurai of Karavaddy
No 401 North, deceased

Varamuttu Sinnadurai of Karavaddy North Petitioner
Sabhathayapillai Ariyadurai Rajanayagam of ditto Respondent

THIS matter coming on for disposal before S. R. Wijeyetilleke
Esq., District Judge, on February 11, 1949, in the presence of
Messrs Kandayya & Mallayaganam, Proctors, on the part of the
petitioner, and the affidavit of the petitioner dated January 31,
1949, having been read.

It is ordered that the said petitioner be and he is hereby declared
administrator of the estate of the said deceased Vethanayagam,
widow of Ariyadurai, and that letters of administration be issued
to him accordingly, unless the respondent or any other person shall,
on or before March 16, 1949, show sufficient cause to the satisfaction
of this court to the contrary

February 11, 1949

S. R. WIJEYETILLEKE,
District Judge

Issue *Order Nisi* now for April 27, 1949

March 16, 1949

S. R. WIJEYETILLEKE,
District Judge

In the District Court of Batticaloa

Order Absolute declaring Will proved

Testamentary In the Matter of the Last Will and Testament of
Jurisdiction the late Sinnathamby Pona Thana Mylvaganam
No 578 of Kallady-Uppodai, deceased

P. H. Mylvaganam Ponnammah of Nochimnapai Petitioner

THIS matter coming on for disposal before M. M. Maharooof,
Esq., District Judge of Batticaloa, on February 23, 1949, in the
presence of Mr K. V. M. Subramaniam, Proctor, on the part of the
petitioner, and the affidavit of the petitioner dated January 25, 1949,
and also the affidavit of Sinnathamby Vythian Kanthappen of
Nochimnapai the only surviving witnesses of the last will dated
February 19, 1949, having been read

And it is further ordered that the will of Sinnathamby Pona
Thana Mylvaganam No 9220 dated March 3, 1928, and attested
by N. D. Masilany, Notary Public, the original of which
is deposited in this court, be and the same is hereby declared
proved.

And it is further ordered that the petitioner, as sole legatee
mentioned in the said will, is entitled to have letters of adminis-
tration with the copy of the will annexed issued to her, unless sufficient
cause be shown to the contrary on or before March 17, 1949

February 22, 1949

M. M. MAHAROOOF,
District Judge

Order Nisi extended to March 31, 1949

March 17, 1949

M. M. MAHAROOOF,
District Judge.

In the District Court of Ratnapura

Oide Nisi declaring Will proved

Testamentary In the Matter of the Last Will and Testament of
Jurisdiction Mabel Mahawalatenne Ellawala Kumarihamy of
No 1,258 Balangoda, deceased

Between

George Delgoda of Ratnapura

Petitioner

And

(1) Ananda Cyril Mahawalatenne Ellawala of Balangoda,
(2) Pathma Ellawala Delgoda Kumarihamy of Ratnapura,
(3) Somawathe Lalitha Ellawala Muttucumarage of Ragolla
Estate of Bulathkohupitiya, (4) Ranjanie Swanitha Delgoda,
a minor, by her guardian *ad litem* the 2nd respondent above
named both of Ratnapura, (5) Kudawithanage Podihamillage
Podihamy, and (6) Kaluwahampurage Sitti, both of Balan-
goda Respondents

THIS matter coming on for disposal before N Sivagnanasun-
deram Esq, District Judge, Ratnapura, on March 8, 1949, in
the presence of Mr E J Dharmaratne, Proctor, on the part
of the petitioner and the petition and affidavit of the petitioner
above named dated February 28 and 26, 1949, respectively, the
affidavit of the attesting notary dated March 1, 1949, and the

affidavits of the attesting witnesses dated February 19, 1949, and
March 4, 1949, respectively, having been read.

It is ordered that the will No 494 of September 28, 1948, of
Mabel Mahawalatenne Ellawala Kumarihamy of Balangoda,
deceased, and attested by Mr E J Dharmaratne, Notary Public,
of Ratnapura, and now deposited in this court, be and the same
is hereby declared proved, unless the respondents above named or
any other person or persons interested shall, on or before May 3,
1949, show sufficient cause to the satisfaction of this court to the
contrary

It is further ordered that George Delgoda of Ratnapura, the
petitioner above named is the executor named in the said last will
and that he is entitled to have probate of the same issued to
him accordingly unless the respondents above named or any other
person or persons interested shall, on or before May 3, 1949, show
sufficient cause to the satisfaction of this court to the contrary

And it is further ordered that Pathma Ellawala Delgoda Kumari-
hamy of Ratnapura, the 2nd respondent above named, be and she
is hereby appointed guardian *ad litem* over the minor, Ranjanie
Swanitha Delgoda of Ratnapura, the 4th respondents above named,
unless the respondents above named or any other person or
persons interested shall, on or before May 3, 1949, show sufficient
cause to the satisfaction of this court to the contrary.

March 8, 1949

N SIVAGNANASUNDERAM,
District Judge